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CORPORATE GOVERNANCE

Netherlands

LEXOLOGY

Corporate Governance

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary sources are the Dutch Civil Code, the Dutch Financial Supervision Act, the Dutch Corporate Governance Code, the Euronext Listing Rules, EU regulations and Dutch case law. It is mandatory for listed companies to comply with the Euronext Listing Rules. The Dutch Corporate Governance Code, which contains best practice provisions for listed companies, applies on a 'comply or explain' basis. The Dutch Corporate Governance Code was enshrined in Dutch law as of 1 January 2018. Listed companies are required to account for compliance with the Dutch Corporate Governance Code in their directors' report.

An updated version of the Dutch Corporate Governance Code entered into force on 1 January 2023. Where principles or best practice provisions in this code, compared with the previous version of the code, require changes to rules, regulations, procedures or other written records, a company will be deemed to be compliant with this code if such changes were implemented no later than 31 December 2023.

On 5 January 2023 the Corporate Sustainability Reporting Directive (CSRD) entered into force. This new directive requires all large companies to publish regular reports on their environmental and social impact activities. The first reports must be published in 2025, therefore companies must apply the new rules in 2024 to report on their activities in 2025.

Law stated - 25 April 2024

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

Laws are made through the joint effort of the Dutch government, together with the Upper House and the Lower House. Usually, the government submits a bill, which was originally the initiative of a specific ministry; however, any member of the Lower House (but not the Upper House) may also submit a bill. The government often presents draft bills to the public for consultation, enabling anyone to comment on the draft bill. These comments, usually including comments from interest groups and prominent law firms, may influence the ultimate bill, but it is up to the Lower House and the Upper House to adopt the bill.

Law stated - 25 April 2024

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

In principle, an individual shareholder (not being the sole shareholder) does not have the power to appoint or remove directors as this requires a resolution by the general meeting (unless a separate class of shares is introduced for such shareholder). However, a shareholder who meets certain criteria can request that the management board add an item to replace managing and supervisory directors on the agenda of the general meeting. The power of the general meeting to appoint and remove managing and supervisory directors can be restricted. In addition, if the item that the shareholder wants to be put on the agenda may result in a change in the company's strategy (eg, as a result of the dismissal of managing or supervisory directors) the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). This follows from the Dutch Corporate Governance Code.

The Dutch Supreme Court has consistently ruled that the adoption of policies and strategy is, in principle, a matter for the management board. By extension, the Dutch Supreme Court has ruled that a shareholder cannot force the management board to bring an agenda item that falls within the competence of the management board to a vote in a general meeting. Therefore, it will be difficult for shareholders to require the board to pursue a particular course of action by requesting the change in strategy to be put to a vote in a general meeting.

Most listed companies have limited the rights of the general meeting to appoint and dismiss managing and supervisory directors in such a way that the resolution requires a (non-binding) nomination to be prepared by the supervisory board or, in some cases, by the meeting of holders of priority shares. A resolution to appoint a managing director or supervisory director nominated by the supervisory board must be adopted by an absolute majority of the votes cast.

The general meeting of shareholders of a company not having statutory two-tier status may adopt a resolution to cancel the binding nature of a nomination for the appointment of a member of the management or supervisory board, or to dismiss a member of the management or supervisory board by an absolute majority of the votes cast, or both. It may be provided that this majority should represent a given proportion of the issued capital, which proportion must not be set higher than one-third. If this proportion of the capital is not represented at the meeting, but an absolute majority of the votes cast is in favour of a resolution to cancel the binding nature of a nomination, or to dismiss a board member, a new meeting may be convened at which the resolution may be adopted by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

A different appointment and removal system applies to structure regime companies. The Dutch structure regime applies to companies (irrespective whether these are listed or not) that meet the following criteria: total equity of at least €16 million; the presence of a works council; and at least 100 employees working in the Netherlands with the company and its group companies. In these companies, the involvement of the supervisory board and the works council in the appointment of supervisory directors is greater than in other companies.

Law stated - 25 April 2024

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The following matters, among other things, are, in principle, reserved for general meetings:

- the appointment, suspension and dismissal of managing directors and supervisory directors;
- the determination of the general remuneration policy of the management board;
- the adoption of the annual accounts;
- the amendment of the articles of association;
- the issuing of shares and granting of rights to subscribe for shares, unless this authority has been delegated to another corporate body for a maximum period of five years;
- the restriction or exclusion of pre-emptive rights in relation to a share issuance, unless this authority has been delegated to another corporate body for a maximum period of five years;
- the delegation to another corporate body of the authority to issue shares, grant rights to subscribe for shares and restrict or exclude pre-emptive rights;
- the authorisation of the management board to repurchase shares (only for public limited companies (NVs));
- the reduction of the issued share capital;
- the approval for resolutions of the management board that result in changes of the identity or the character of the company or its enterprise;
- the distribution of dividends or distributable reserves;
- the dissolution of the company;
- the merger or demerger of the company;
- the appointment of auditors; and
- only applicable to an NV, resolutions of the management board regarding an important change in the identity or character of the company or the enterprise conducted by it, in any case:
    - the transfer of the entire business or almost the entire business to a third party;
    - starting or breaking up an important cooperation arrangement of the company itself or any of its subsidiaries insofar as this is of significant importance; and
    - invest or dispose of an interest with a value of at least one-third of the assets as shown on the balance sheet (or, insofar as applicable, the consolidated balance sheet) of the company.

Dutch law does not require matters to be subject to a non-binding shareholder vote, but the company's articles of association may stipulate otherwise.

Law stated - 25 April 2024

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The starting point is that each shareholder may cast as many votes as he or she holds shares. If the authorised share capital was divided into shares of an unequal nominal amount, the number of votes that may be cast by each shareholder is equal to the total nominal amount of his or her shares divided by the nominal amount of the smallest share. Thus, disproportionate voting rights can be created by issuing two types of shares with different nominal values (eg, class A shares with a nominal value of 1 cent carrying one vote each for all matters, and class B shares with a nominal value of 10 cents each carrying 10 votes). The class B shares would be held by the founding shareholders, enabling them to maintain a controlling interest in the company while acquisitions are financed by the issuance of class A shares.

Disproportionate voting rights may undermine the interests of the minority shareholders, and some institutional investors prefer to limit this construction as far as possible.

Law stated - 25 April 2024

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

For each general meeting of a listed company, the statutory record date will be applied to determine the shareholders in which voting rights and meeting rights are vested. The record date is 28 days before the date of the meeting. A shareholder who intends to attend the general meeting and who intends to vote should be a shareholder on this record date. In order to exercise its meeting and voting rights, a shareholder should submit at the meeting a deposit receipt that has been issued by his or her bank. Shareholders of listed companies in practice cannot act by written consent without holding a formal meeting as this would require the unanimous vote of all shareholders. However, shareholders of private companies can, in principle, act with written consent, provided all shareholders have consented; the articles of association may contain additional provisions for such procedure.

Current Dutch law offers the option of holding a 'hybrid' general meeting, whereby shareholders or members are authorised to participate in the general meeting and exercise their voting rights through an electronic means of communication. This is only possible if the articles of association contain this possibility and the shareholder or member can be identified via electronic communication, directly take note of the proceedings at the meeting and exercise the voting right. The articles of association cannot oblige the shareholder or member to participate digitally in the meeting and the company must therefore offer the shareholders and members the opportunity to physically appear at the meeting.

Pursuant to the Dutch Corporate Governance Code the company should, as far as possible, give shareholders the opportunity to vote by proxy and to communicate with all other

shareholders. Pursuant to the Temporary Act governing COVID-19 Measures, a general meeting could be held through livestream or audio, but this act is no longer in force.

After the implementation of the Digital General Meeting of Private Law Legal Entities Bill (expected in 2025 (see the website of the Dutch government)), it will be possible for Dutch legal entities under private law (private companies, NVs, associations, cooperatives and home owners' associations) to hold a general meeting that is exclusively virtually accessible, provided there is a basis in the articles of association of the company. This means that for a company to make use of the option to hold a general meeting that is exclusively virtually accessible, its articles of association must be amended first. There is some liberty to add specific conditions; for example, it is possible to include in the articles of association that it is not possible to hold a virtual meeting if certain (important) decisions are tabled for voting.

Law stated - 25 April 2024

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Shareholders who jointly represent at least 10 per cent (for NVs) (unless the NV's articles of association contain a lower percentage) or 1 per cent (for private limited companies (BVs)) of the company's issued capital may request the management board to convene a general meeting, stating specifically the business to be discussed. In addition, shareholders who jointly represent at least 10 per cent (for NVs) or 1 per cent (for BVs) of the issued share capital may be authorised by the provisional relief judge of a district court, upon their application, to convene a general meeting. This request will be rejected if the shareholder has not already requested the management board in writing to convene a general meeting, with a precise description of the matters to be discussed at this meeting, and the management board has not taken the necessary measures to ensure that the general meeting could be held within six weeks after the request was made to one of them.

Further, if a general meeting is convened by the company, shareholders who, alone or jointly, represent at least 3 per cent (for NVs) or at least 1 per cent (for BVs) of the company's issued share capital will have the right to request the management board to place items on the agenda of this general meeting, provided that the reasons for the request are stated therein and the request is received by the company in writing at least 60 days before the date of the general meeting.

The convocation right and the right to place items on the agenda are limited by the response time and the statutory reflection period.

Shareholders will be able to put resolutions and director nominations to a shareholder vote if the general meeting is authorised to resolve upon these resolutions. If the company's articles of association state that certain resolutions by the general meeting require approval or nomination by the supervisory board, it is doubtful whether without this approval the item could be put to a vote in the general meeting.

Law stated - 25 April 2024

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Shareholders may, in principle, be primarily guided by their own interests. However, this does not release them from the obligation to act reasonably and fairly, which could mean that they should take into account the interests of minority shareholders and the interests of other stakeholders, such as employees and creditors. As a general rule, one could argue that the bigger the stake the shareholder holds in the company, the bigger his or her responsiveness towards other shareholders will be. Enforcement actions can be brought against controlling shareholders for the breach of these duties on the basis of a breach of reasonableness and fairness. In addition, the company or minority shareholders who meet certain thresholds may request the Enterprise Chamber of the Amsterdam Court of Appeal to start an inquiry into the company affairs, and the Enterprise Chamber may order immediate relief.

Law stated - 25 April 2024

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Under Dutch law, shareholders can, in principle, not be held responsible for acts or omissions of the company. This may be different if a shareholder was acting as a policymaker of the company (ie, acting as if he or she was a managing director). In this case, a shareholder can be held liable as if he or she was a managing director. Further, it is conceivable that a shareholder could be held responsible if he or she violates a statutory duty or does not act reasonably and fairly towards those who, pursuant to the law and the articles of association, are involved in the company's organisation.

Law stated - 25 April 2024

Employees

What role do employees have in corporate governance?

Pursuant to amongst others the Works Councils Act, a company is obliged to establish a works council if a company has 50 employees or more. The management board is obliged to provide the works council with certain information and meet with the council at least once a year.

The works council should be consulted by the management board prior to taking certain decisions, which include, among other things, appointing or dismissing a managing or supervisory director, transferring control of or terminating all or part of the (activities of the) company, important investments, major organisational changes in the company and the remuneration policy of the managing directors. Dependent on the topic, the works council has the right to render advice or has the right to consent. If the structure regime applies to

a company, supervisory board members must be appointed by the general meeting on the recommendation of the works council.

Law stated - 25 April 2024

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

Anti-takeover devices are permitted in the Netherlands, provided, however, that the triggering of the device is justified if the measure is necessary, among other things, with a view to the continuity of (the policy of) the company and the interests of those involved. Anti-takeover devices will enable the management board under the supervision of the supervisory board to take care of all involved stakeholders, including the shareholders. Anti-takeover devices may be used in the case of a hostile takeover bid or in situations of shareholders' activism. The possibility to have preference shares issued to an independent foundation is the most commonly used protective measure in the Netherlands. In respect of listed companies, the management board may invoke a response time of 250 days in the case of a public takeover bid or in the case of one or more shareholders lodging a proposal for suspension or dismissal of one or more managing directors or supervisory directors or a proposal for an amendment of the articles of association regarding the procedure for appointment, suspension or dismissal of managing directors or supervisory directors. Shareholders may request the Enterprise Chamber of the Amsterdam Court of Appeal to end the reflection period, which request will be awarded if certain criteria have been met.

Law stated - 25 April 2024

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Shares may be issued pursuant to a resolution of the management board, if and insofar as that board is authorised to issue shares by the general meeting. This authorisation can be granted for a maximum period of five years at a time and can be extended by the general meeting each time for a maximum period of five years. General practice (for listed companies) is an authorisation for 18 months, which is limited to a maximum of 10 per cent or 20 per cent of the total issued share capital.

Upon the issuance of shares, each shareholder will have pre-emptive rights in proportion to the aggregate nominal value of his or her shares. A shareholder does not have pre-emptive rights in respect of shares issued against a non-cash contribution or shares issued to employees of the company. Holders of preference shares shall not have pre-emptive rights upon the issuance of ordinary shares (and vice versa) unless the articles stipulate otherwise. The pre-emptive rights can be excluded or restricted by the general meeting or by the corporate body that has been authorised to do so by the general meeting.

Law stated - 25 April 2024

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

No, listed shares should be freely transferable. The transfer of non-listed shares may be subject to a (non-mandatory) share transfer restriction clause in the articles of association, pursuant to which the approval from a corporate body, such as the management board or the supervisory board, will be required. The transfer of non-listed shares may also be subject to a right of first refusal. The transfer of shares in private companies is usually restricted by share transfer restriction clauses.

Law stated - 25 April 2024

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Repurchases for public limited companies (NVs) will be difficult as they require authorisation of the general meeting, whose authorisation may only last 18 months (in case of a listed NV) and five years (in case of a non-listed NV), and the purchase price must be paid out of the company's distributable reserves. For private limited companies (BVs), the management board resolves on share repurchases, which must meet certain criteria. The managing directors of a BV will be jointly and severally liable to make up any deficit insofar as they knew or ought to know that, after the share repurchase, the BV would not be in the position to continue payment of its due and payable debts.

Law stated - 25 April 2024

Dissenters' rights

Do shareholders have appraisal rights?

Shareholders do not have these statutory rights. There may be contractual agreements in place pursuant to which the company should buy shares from a shareholder if a specific circumstance arises, but this may be limited by financial assistance rules. If a shareholder disagrees with a merger, he or she should vote against the proposal to merge in the general meeting. If the result of the vote is that the motion to merge is passed, the shareholder may sell his or her shares on the stock exchange against the price listed there.

Law stated - 25 April 2024

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

Historically, Dutch law only provided for two-tier boards with a management board and separate supervisory board. Since 2013, Dutch law also provides for one-tier boards for private limited liability companies and public limited companies (including listed companies). Although several listed companies have adopted the one-tier board, the predominant board structure remains the two-tier board.

Law stated - 25 April 2024

Board's legal responsibilities

What are the board's primary legal responsibilities?

Under Dutch law, the main rule is that the management board manages the company. Several duties have been specified as falling within the scope of the management board, including:

- the day-to-day management of the company;
- adopting the company's policies and the strategy;
- monitoring the liquidity position of the company and the financial policy and fulfilling tax obligations (including tax planning);
- overseeing risk management;
- reporting to the (annual) general meeting;
- preparing, publishing and filing the annual accounts; and
- representing the company to third parties.

The management board must carry out its duties in line with the objectives of the company, which are included in the company's articles of association. Dutch law provides that managing directors when carrying out their duties, must be primarily guided by the interests of the company and the enterprise connected with it. This means that the management board should also take into account the interests of not only the shareholders but also the employees, creditors and other stakeholders, or even (local) society.

Pursuant to the Dutch Corporate Governance Code, the management board should develop a view on sustainable long-term value creation by the company and its affiliated enterprise and formulate a strategy in line with this. The management board should formulate specifc objectives in this regard. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy.

In addition, pursuant to the Dutch Corporate Governance Code, the management board and the supervisory board should ensure that decisions are made in a balanced and effective manner while taking account of the interests of stakeholders. The management board should ensure that information is provided in a timely and sound manner. The management board and the supervisory board should keep their knowledge and skills up to date and devote sufficient time to their duties and responsibilities. They should ensure that, in performing their duties, they have the information that is required for effective decision-making.

Law stated - 25 April 2024

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The primary concern of the management board is to be guided by their company's interests and enterprises connected with it. As such, the management board is largely autonomous when performing its duties, even if the managing directors risk being dismissed by the general meeting, for example, because some shareholders are of the opinion that their interests are being subordinated.

The management board's autonomy can be restricted to a certain extent. For example, certain resolutions by the management board can and will mostly be subject to approval by the general meeting or the supervisory board, or both. Management board resolutions pertaining to important changes to the identity of a listed company require the general meeting's approval in any case. Further, to a certain extent, the general meeting can have the right to issue instructions to the management board. The management board and the supervisory board must provide the general meeting with all requested information unless a substantial interest of the company opposes this.

Law stated - 25 April 2024

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

The corporate body that originally appointed a managing director – usually the general meeting – is authorised to suspend and dismiss a managing director. A managing director should be consulted before he or she is suspended or dismissed. Other managing directors must also be given the opportunity to express their views regarding the proposal to suspend or dismiss a managing director. In addition, minority shareholders who meet certain criteria may request the Enterprise Chamber of the Amsterdam Court of Appeal to start an inquiry into the company's affairs, and the Enterprise Chamber may order immediate relief, for example, by suspending or temporarily replacing a managing director. There is no business judgement rule.

Law stated - 25 April 2024

Care and prudence

Do the duties of directors include a care or prudence element?

Under Dutch law, a managing director must fulfil his or her duties with due care and attention. Should he or she fail this duty of care, then the managing director may be held personally liable for any damage caused to the company as a result. Based on Supreme Court case

law, it is established that a managing director is personally liable only if he or she could be blamed for seriously culpable conduct. Actions by the managing directors are most likely to constitute seriously culpable conduct if these actions would not have been taken by any other reasonably acting and fully experienced managing director.

Law stated - 25 April 2024

Board member duties

To what extent do the duties of individual members of the board differ?

A multi-member management board may divide duties among its various managing directors. This division is typically included in management board regulations. Dividing duties does not mean that responsibility for the actions of each of the managing directors is limited to the duties conferred to them. Managing directors have joint responsibility for the company's day-to-day business, general policy and financial affairs. The management board shall be joint and several liable for shortcomings in the performance of management board duties.

If an individual director can prove that he or she has not been negligent in taking measures to prevent improper management by demonstrating that he or she took all measures in his or her power to prevent improper management, this director may exculpate him or her from directors' liability.

Law stated - 25 April 2024

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

Listed companies often establish an executive committee. These executive committees usually consist of both statutory managing directors and members of the senior management. An executive committee can be defined as a management layer responsible for preparing and adopting resolutions of the company. It usually has an advisory and supportive function, but it can also have a more managerial function. In addition, the management board may grant (continuing) power of attorney. This type of power of attorney is also referred to as a power of procuration. Holders of powers of attorney will carry out their duties on the basis and within the limits of this power. It is often granted to officers in certain positions who are not a part of the statutory management board.

Law stated - 25 April 2024

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

A two-tier board structure does not have non-executive directors but a separate supervising body being the supervisory board. For structure regime companies, the supervisory board consists of at least three members. The supervisory board is responsible for supervising the policy pursued by the management board and the general course of affairs in the company and its business. The supervisory board also advises the management board. Pursuant to the Dutch Corporate Governance Code, the composition of the supervisory board should be such that the members are able to operate independently and critically in relation to one another, the management board and any particular interests involved. The Corporate Governance Code includes detailed independence criteria.

A one-tier board consists of executive and non-executive directors. The non-executive directors are charged with the general management of the company. To a certain extent, the role of non-executive directors can be compared to the role of supervisory directors; however, they are more actively involved than supervisory directors in the general policy of the company and decision-making of the board. Pursuant to the Dutch Corporate Governance Code, the majority of the board should be made up of non-executive directors. The Corporate Governance Code includes detailed independence criteria for non-executive directors.

Law stated - 25 April 2024

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

Regarding the management board, the minimum number of directors is one (in a one-tier board, the minimum number of executives is one and non-executive directors are two). Maximum numbers are not provided. The number of directors is usually set by the general meeting.

An individual shareholder does not have the power to appoint or remove directors as this requires a resolution by the general meeting. However, a shareholder who meets certain criteria can request that the management board put an item to replace managing and supervisory directors on the agenda of the general meeting. The power of the general meeting to appoint and remove managing and supervisory directors can be restricted.

Most listed companies have limited the rights of the general meeting to appoint and dismiss managing and supervisory directors in such a way that the resolution requires a (non-binding) nomination to be prepared by the supervisory board or, in some cases, by the meeting of holders of priority shares. A resolution to appoint a managing director or supervisory director nominated by the supervisory board must be adopted by an absolute majority of the votes cast.

The general meeting of shareholders of a company not having statutory two-tier status may adopt a resolution to cancel the binding nature of a nomination for the appointment of a member of the management or supervisory board, or to dismiss a member of the

management or supervisory board by an absolute majority of the votes cast, or both. It may be provided that this majority should represent a given proportion of the issued capital, which must not be set higher than one-third. If this proportion of the capital is not represented at the meeting, but an absolute majority of the votes cast is in favour of a resolution to cancel the binding nature of a nomination or to dismiss a board member, a new meeting may be convened at which the resolution may be adopted by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

A different appointment and removal system applies to structure regime companies. The Dutch structure regime applies to (listed) companies of which the majority of the employees are employed in the Netherlands. In these companies, the involvement of the supervisory board and the works council in the appointment of supervisory directors is greater than in other companies.

Shareholders will be able to put resolutions and director nominations to a shareholder vote if the general meeting is authorised to resolve upon these resolutions. If the company's articles of association state that certain resolutions by the general meeting require approval or nomination by the supervisory board, it is doubtful whether without this approval the item could be put to a vote in the general meeting

Directors of insolvent companies may be banned for five years from taking director positions.

Law stated - 25 April 2024

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

In the two-tier board structure, this issue does not apply as a managing director cannot be a member of the supervisory board at the same time.

In the one-tier board structure, only natural persons can be a non-executive director and only a non-executive director can become chair. The functions of the board chair and chief executive (the latter being an executive director) cannot be fulfilled by one person.

Law stated - 25 April 2024

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Public interest companies (ie, listed companies) must, pursuant to the terms of the law, establish an audit committee. The management board may establish an executive committee.

Pursuant to the Dutch Corporate Governance Code, if the supervisory board consists of more than four members, it should appoint from among its members an audit committee,

a remuneration committee and a selection and appointment committee. Without prejudice to the collegiate responsibility of the supervisory board, the duty of these committees is to prepare the decision-making of the supervisory board. If the supervisory board decides not to establish an audit committee, a remuneration committee or a selection and appointment committee, the best practice provisions applicable to these committees apply to the entire supervisory board. The committees of a one-tier board should be comprised exclusively of non-executive directors. Neither the audit committee nor the remuneration committee can be chaired by the chair of the board or by a former executive director of the company.

The Dutch Corporate Governance Code further elaborates on the duties and responsibilities of audit committees. In some cases, especially in companies operating in the financial sector, a risk committee is established in addition to the audit committee. Article 39(4) of the EU Statutory Audits Directive (Directive 2006/43/EC) stipulates that, if another body has been designated to perform the functions of the audit committee, the management report must state which body carries out those functions and how that body is composed. Various companies have set up a committee in addition to the audit committee to deal with sustainability issues relating to the company. Such a committee is often referred to as a sustainability committee or corporate responsibility committee. If a company has established such a committee, the preparation of the decision-making for the supervision of the integrity and quality of the sustainability reporting can also be carried out by such a committee instead of the audit committee.

Law stated - 25 April 2024

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

There is no statutory requirement regarding the minimum number of meetings of the management board or of the supervisory board. Usually, the minimum number is included in the articles of association or in the respective board regulations.

Law stated - 25 April 2024

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

Relationships between a company's corporate bodies (ie, the management board, the general meeting and, possibly, the supervisory board) and relationships within these corporate bodies can be included in the articles of association or in the board's regulations. As the articles of association of companies are publicly available through registration in the Trade Register of the Chamber of Commerce and usually also through publication on the company's website, this information is disclosed to the public. With regard to supervisory board regulations and management board regulations, the Dutch Corporate Governance Code prescribes that these should be posted on the company's website. The regulations usually contain detailed provisions on the board's practices.

In addition, pursuant to the Dutch Corporate Governance Code, the division of duties within the supervisory board and the procedures of the supervisory board should be laid down in terms of reference. The supervisory board's terms of reference should include a paragraph dealing with its relations with the management board, the general meeting, the employee participation body (if any) and the executive committee (if any). The terms of reference should also be posted on the company's website.

The Dutch Corporate Governance Code furthermore provides that the supervisory board should draw up terms of reference for the audit committee, the remuneration committee and the selection and appointment committee. The terms of reference should indicate the role and responsibility of the committee concerned, its composition and the manner in which it discharges its duties. The terms of reference should be posted on the company's website.

Law stated - 25 April 2024

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Pursuant to the Dutch Corporate Governance Code, at least once per year, outside the presence of the management board, the supervisory board should evaluate the functioning of the management board as a whole and of the individual managing directors. The management board, in addition, should evaluate its own functioning as a whole and the functioning of the individual managing directors at least once a year.

At least once per year, outside the presence of the management board, the supervisory board should evaluate its own functioning, the functioning of the various committees of the supervisory board and that of the individual supervisory directors.

The supervisory board's report should state in what manner the evaluations have been carried out and what has been or will be done with the conclusions from the evaluations.

Law stated - 25 April 2024

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

The general meeting adopts the remuneration policy of the management board. The works council (mandatory in companies with more than 50 employees) has the right to determine a position in advance on the remuneration policy and then explain this position at the general meeting. The remuneration itself is usually adopted by the supervisory board. Proposals for

remunerations that are to be paid in the form of shares or rights to subscribe for shares require the approval of the general meeting. The remuneration for the supervisory directors is adopted by the general meeting.

Pursuant to the Dutch Corporate Governance Code, the remuneration policy applicable to management board members should be clear and easy to understand, focus on sustainable long-term value creation for the company and its affiliated enterprise and take into account the internal pay ratios within the enterprise. The remuneration policy should not encourage management board members to act in their own interest nor to take risks that are not in keeping with the strategy formulated and the risk appetite that has been established. The supervisory board is responsible for formulating the remuneration policy and its implementation.

Specific remuneration rules apply in respect of the financial sector. The Netherlands have chosen a wider scope of the remuneration rules and a lower bonus ceiling than those indicated in the European regulations for financial institutions (banks, investment firms, insurers and managers of collective investment schemes). The Dutch Remuneration Policy (Financial Enterprises) Act includes additional requirements for variable remuneration. These rules include those relating to the bonus ceiling, retention payments, welcome and severance packages, and publication obligations.

In recent years, the remuneration paid to managing directors has become the subject of increasing scrutiny. This has manifested itself in a number of ways, including various pieces of (sectoral) legislation that impose limits on the remuneration paid to managing directors.

Law stated - 25 April 2024

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

In principle, the remuneration of senior management falls within the scope of the management board. The Dutch Corporate Governance Code prescribes that if the management board has an executive committee, the management board should inform the supervisory board about the remuneration of the members of the executive committee who are not management board members. The management board should discuss this remuneration with the supervisory board annually.

Law stated - 25 April 2024

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

The general meeting has the authority to adopt the remuneration policy of the managing directors and can also adopt the remuneration of the supervisory directors.

Pursuant to Dutch law, the remuneration policy for directors of companies whose shares or depositary receipts have been are admitted to trading on a regulated market should at least every four years after being established be presented to the general meeting for adoption. In addition, the company must prepare a remuneration report annually, which includes an overview of all remunerations that, over the past financial year, have been awarded or are owed to the individual directors. Pursuant to the Dutch Corporate Governance Code, the remuneration report should also be made available on the company's website (though companies are not expected to disclose the scenario analyses included in such report).

Pursuant to the Dutch Corporate Governance Code, the remuneration policy should focus on long-term value creation for the company and its affiliated enterprise and take into account the internal pay ratios within the enterprise. The remuneration of the managing directors is usually determined by the supervisory board within the limits of the remuneration policy adopted by the general meeting. Proposals for remuneration that is to be paid in the form of shares or rights to subscribe for shares must be approved by the general meeting. The remuneration policy of the managing directors should be presented to the shareholders every four years. In addition, the remuneration report must be submitted to the general meeting each year. The remuneration of the senior management (not being a member of the management board) is usually determined by the management board.

Law stated - 25 April 2024

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability is common practice in the Netherlands. Typically, the company is the policyholder and pays the insurance premiums, while managing directors and supervisory directors are the insured parties. Usually, all acts on the part of managing directors and supervisory directors are covered with the (usual) exception of wilful misconduct and fraud.

Law stated - 25 April 2024

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Managing directors and supervisory directors may be offered protection by the company by way of contractual indemnification or indemnification under the company's articles of association, provided that a company does not indemnify a director for his or her liability against the company itself. A director shall, however, have no right to be indemnified against

any liability in any matter if it is finally determined that this liability resulted from the intent, wilful recklessness or serious culpability of the director.

Law stated - 25 April 2024

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

Expenses in connection with the preparation and presentation of a defence to any claim, action, suit or legal proceeding may be advanced to the directors and officers by the company. However, any director and officer must repay these expenses if it is ultimately determined that any directors' or officers' liability resulted from the intent, wilful recklessness or serious culpability of this director or officer.

Law stated - 25 April 2024

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

The liability of directors cannot be limited, but the consequences of a director's liability can be mitigated. Members of the management board and the supervisory board may be granted discharge by the general meeting. This discharge releases the directors to a certain extent from (potential) liability towards the company. The general meeting is not obliged to discharge the directors, and shareholders may vote against or abstain from voting for this discharge. Once granted, the director, in principle, will no longer be able to be held liable by the company. Further, the directors can be indemnified, and it is common practice to have directors' and officers' liability insurance.

Law stated - 25 April 2024

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

The publicly available Trade Register of the Chamber of Commerce includes the corporate data of companies, including the registered seat and address, details of the directors, the articles of association and certain limited financial information. Further, listed companies usually publish their articles of association and the board regulations on their websites.

Law stated - 25 April 2024

Company information

What information must companies publicly disclose? How often must disclosure be made?

The publicly available Trade Register of the Chamber of Commerce includes the corporate data of companies, including the registered seat and address, details of the directors, the articles of association and certain limited financial information. Further, listed companies usually publish their articles of association and the board regulations on their websites.

In addition, the annual accounts must be filed with the Trade Register of the Chamber of Commerce annually, and listed companies should publish their half-year results also with the Dutch regulatory authority, the Authority for the Financial Markets (AFM). Further, each capital increase must be filed at the Trade Register. Listed companies are required to publish price-sensitive information directly related to the company via press release as quickly as possible and file (if the listing is in the Netherlands) the press release with the AFM. In addition, the yearly and half-yearly results of listed companies must be made publicly available.

As of 27 September 2020, the following information regarding an ultimate beneficial owner (UBO) of an entity must be registered in the UBO register: name, month and year of birth, country of residence, nationality and the nature and extent of the UBO's economic interest. The UBO register was initially publicly available, but as of 22 November 2022 this is no longer the case due to a decision by the European Court of Justice. The requirement to register UBOs in the UBO register has remained in force.

The registration of the UBOs in the register is a requirement for companies and other (legal) entities registered with the trade registry of the Dutch Chamber of Commerce. Dutch listed companies incorporated in the Netherlands are exempt from the obligation to register their UBOs in the UBO register. All Dutch subsidiaries of listed companies regulated within the European Union or European Economic Area are also exempt under certain circumstances from registering their UBOs in the UBO register.

A legislative proposal that implements a central shareholders register is pending. The central shareholder register collects and makes available information on shares and shareholders to assist designated public services, notaries and institutions focused on anti-money laundering and countering terrorist financing in carrying out their legal tasks and obligations. The register aims to prevent and combat financial crime by legal entities and increase certainty in legal transactions. For the sake of reliability, the register will only contain information registered by notaries and that originates from, or relates to, notarial deeds. The register will be kept by the Royal Notarial Professional Organisation. Currently, registration is on paper (a notebook or binder), but is often incomplete or outdated because changes have not been processed, or even lost. However, until further notice, paper registration will remain applicable alongside the central shareholders register.

Law stated - 25 April 2024

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Directors are appointed by a resolution of a general meeting. Dutch law does not contain any provisions that give individual shareholders the right to nominate directors for appointment. However, a company's articles of association can provide for this. Further, a shareholder holding at least 10 per cent or 1 per cent of the issued share capital can request the board to include the appointment of a director on the agenda of the general meeting.

Law stated - 25 April 2024

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

The management board and the supervisory board ensure proper engagement between the company and its shareholders. The management board and the supervisory board must provide the general meeting with all requested information unless a substantial interest of the company opposes this. However, the Dutch Supreme Court ruled that this right to information does not apply to individual shareholders or to shareholders outside of the general meeting. Bilateral contracts between the company and major shareholders are not uncommon. Pursuant to the Dutch Corporate Governance Code, companies should formulate a policy on bilateral contacts with the shareholders and should post this policy on its website.

Law stated - 25 April 2024

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

Listed companies that have at least an average of 500 employees must include a declaration in their annual report setting out how the company is dealing with, at least, environmental, social and staff matters; respecting human rights; and tackling corruption and bribery. Sustainability is more often put as a separate discussion item on the agenda of the general meeting. In addition, large listed companies must provide information on their diversity policy in relation to the composition of the management and supervisory board. The company should state the objectives of the policy, as well as the ways in which the policy is implemented and the results in the past financial year. If the company does not have a diversity policy, it must explain why this is the case.

Effective as of 1 July 2024, companies with more than 100 employees will be required to provide data on employees' commuting and business travel, with the specific aim of reducing 1.5 megatons of carbon dioxide by 2030. The registration encompasses, in principle, all travel for which the company provides financial compensation or provides a vehicle. The report

must include the number of kilometres travelled, the mode of transportation used and the type of fuel.

Law stated - 25 April 2024

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Pursuant to the Dutch Corporate Governance Code, the supervisory board should render the account of the implementation of the remuneration policy in a transparent manner in its remuneration report. This report must include whether the changes in the remuneration of managing and supervisory directors is in proportion to the salary of the average employee. The report should be posted on the company's website.

The remuneration report should explain, among other things, how the total remuneration of management board members is in line with the remuneration policy, how sustainability objectives have been taken into account in the implementation of the remuneration policy and how this contributes to the creation of long-term value. It should also be explained whether there have been any changes in the pay ratios in comparison with at least five previous financial years. In addition to the minimum information that can be expected in relation to pay ratios, additional information may be provided. Examples include the pay ratios for other management board members (besides the CEO), the pay ratios broken down by the main regions in which the company operates and/or the pay ratios for specific reference groups of employees.

Law stated - 25 April 2024

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

The European Parliament has published a proposal for a directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. This directive will have to be implemented into Dutch law once it has entered into force. At present, however, there is no statutory regulation that requires disclosure of gender pay gap information in the Netherlands.

Pursuant to the Dutch Civil Code and the Diversity Act, listed corporate entities are required to set targets for the ratio of men to women in management boards, supervisory boards and top management positions. In addition, the Dutch Civil Code includes a diversity quota of at least one-third male and one-third female for supervisory boards of listed companies. The diversity quota for supervisory boards applies to Dutch listed companies. Furthermore, pursuant to the Dutch Corporate Governance Code, the management board, the supervisory board and the executive committee (if any) should be composed in such a way as to ensure a degree of diversity appropriate to the company with regard to expertise, experience,

competencies, other personal qualities, sex or gender identity, age, nationality and cultural or other background.

In addition, as of 1 January 2022, large companies are required to set appropriate and ambitious target figures to improve gender diversity on their management and supervisory boards and in their sub-top management (categories of employees in managerial positions to be determined by the company). The definition of 'large company' is a public or private limited company (NV or BV) having at least two of the following characteristics, in at least two consecutive financial years:

- value of assets worth more than €20 million according to the balance sheet;
- a net turnover of more than €40 million in a financial year; and
- an average of at least 250 employees in a financial year.

In order to achieve the set targets, large companies must draw up a plan of action and provide a report to the Social and Economic Council.

Law stated - 25 April 2024

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

On 5 January 2023 the Corporate Sustainability Reporting Directive (CSRD) entered into force. This new directive requires all large companies to publish regular reports on their environmental and social impact activities. The first reports need to be published in 2025, therefore companies need to apply the new rules in 2024 in order to report on their activities in 2025.

The CSRD aims to increase the quality of information and transparency about the environmental and social impact of companies and supports the transition to a sustainable economy in line with the Paris climate agreement.

In addition, the CSRD strengthens the rules introduced by the Non-Financial Reporting Directive (Directive 2014/95/EU). Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS). The first draft of the ESRS was published on 22 December 2023. On 8 February 2024 the European Commission and the European Parliament agreed on postponing the adoption deadlines for certain ESRS standards from mid-2024 to mid-2026.

Adjustments to Chapter One of the Dutch Corporate Governance Code placed emphasis on environmental, social and governance (ESG) factors. Many of the ESG provisions in the Dutch Corporate Governance Code can be seen as a bridge until the implementation of the CSRD into Dutch legislation.

Furthermore, the European Council adopted a proposal for the Corporate Sustainability Due Diligence Directive (the Directive) on 15 March 2024. The Directive addresses the

negative impacts on human rights and the environment in value chains and aims to link the variable remuneration of directors to the sustainability objectives of companies. It is now up the European Parliament to approve the agreed text, which is considered a formality. The Directive is applicable to non-EU companies who generate more than €450 million of net turnover in the EU in each of the past two consecutive financial years. EU companies will – after a interim period in which higher thresholds apply – be required to comply if they meet the threshold of EUR €450 million of net turnover in the EU and have more than 1,000 full-time equivalent employees. The earliest compliance date will be in 2027. EU member states will need to implement the Directive into their national law.

On 1 June 2023, the Dutch Investments, Mergers and Acquisitions Security Screening Act (the Vifo Act) entered into force. Parties (buyer and target) involved in a transaction must notify the transaction to the Dutch Investment Screening Bureau (BTI) which is part of the Ministry of Economic Affairs and Climate Policy, if the transaction involves a target company that is a vital provider (as described in the act), a corporate campus manager, or active in the field of sensitive technology.

Subsequently, the BTI will review whether the transaction will have an impact on national security. The transaction may not be consummated unless the BTI has indicated that a review decision is not required, or a review decision has been taken allowing the transaction to take place. The review decision may prohibit the transaction or impose requirements or provisions (concerning the transaction) that must be complied with. If a transaction takes place without the approval of BTI, it could be declared null and void. On 24 January 2024, the European Commission presented a proposal for a regulation on the screening of foreign investments in the European Union (the Proposal), which seeks to harmonise foreign investment regimes within the EU. Once the Proposal is adopted in a final form, it is expected that it will lead to a wider scope of application of the Vifo Act.

A proposal to require civil society organisations to disclose big donations is currently pending before the Dutch Lower House. The proposal aims to increase transparency on the origin of donations. The Dutch parliament is currently discussing the proposal.

Some members of the Dutch Lower House have proposed new rules to ensure more due diligence in conducting foreign trade, to prevent the violation of human and environmental rights across various trade chains.

The Dutch Upper House is currently examining an amendment to the proposed Continuity of Enterprises Act 1. The proposed act provides a legal basis for 'pre-pack' practices, and increases the possibilities of preparing for bankruptcy. The act should ensure minimisation of the damage resulting from bankruptcy for creditors (including employees) and other stakeholders as much as possible. The Continuity of Enterprises Act 1 has been discussed extensively and has been up for consultation since 2016. The new amendment to the proposal is a result of these discussions and an attempt to get the act through parliament.

Law stated - 25 April 2024