

DUTCH STEWARDSHIP CODE

ADOPTED ON 20 JUNE 2018

Preamble

1. Since its establishment, Eumedion has been a strong advocate of good governance of Dutch listed companies¹. Eumedion is one of the seven supporting organisations of the Dutch corporate governance code that contains principles and best practices for an effective corporate governance model that is intended to promote long-term value creation at Dutch listed companies.² According to the recitals of the recently adopted revised Shareholder Rights Directive³ “effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies”. Asset owners⁴ and asset managers⁵ hold the overwhelming majority of the shares in Dutch listed companies and manage other people’s and institutions’ money. As a result, society at large expects that both Dutch and non-Dutch asset owners and asset managers take their responsibility in playing an active role in promoting good corporate governance and sustainability practices at Dutch listed investee companies. It is for this reason that Eumedion has drafted this Stewardship Code (hereinafter: Code), explaining how asset owners and asset managers can meet their stewardship responsibilities in a way that contributes to long-term value creation by Dutch listed investee companies and consequently to the long-term risk-adjusted returns on their investments. The Code also makes asset owners more accountable to their beneficiaries and asset managers more accountable to their clients. Furthermore, it accommodates companies in identifying which of its investors are committed to vote in an informed manner and are prepared to enter into a constructive dialogue. The Code should be read in conjunction with applicable legislation and regulations.
2. It is not the asset owner’s nor the asset manager’s role to manage the companies in which it invests. They do have, however, a role to play in monitoring the boards of those companies and that is why they need to gain understanding on how the boards fulfil their responsibilities. This **stewardship** role of asset owners and asset managers includes the casting of informed⁶ votes at general meetings and the monitoring of and the engagement with listed companies on aspects related to the strategy, the

¹ A ‘Dutch listed company’ means a company whose registered office is in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system.

² Principle 1 of the Dutch corporate governance code.

³ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ 2017, L 132; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0828&from=EN>).

⁴ As defined in Art. 2, point (e) of the revised Shareholder Rights Directive (in brief: pension funds and life insurance companies).

⁵ As defined in Art. 2, point (f) of the revised Shareholder Rights Directive (in brief: investment firms providing portfolio management services to investors, managers of UCITS and alternative investment funds).

⁶ An informed vote means that the voting right is exercised in accordance with the asset owner’s or asset manager’s voting policy. In the event that the investor makes use of voting advice from third parties, it should independently form its own opinion on the voting recommendations provided by this adviser.

performance and risks and opportunities of the company, the capital structure, the social and environmental impact and corporate governance. **Engagement** is conducting a meaningful dialogue with listed companies on these aspects as well as on issues that are the subject of votes at general meetings. This can help to build trust and develop mutual understanding that supports the objective of long-term value creation by companies. To advance the goals of engagement, asset owners and asset managers are, where appropriate and at their discretion, also expected to cooperate with other shareholders and to communicate with other stakeholders of the company.

3. This Code builds on, and supersedes, the Eumedion Best Practices for Engaged Share-Ownership of 2011. This Code incorporates the new stewardship obligations for asset owners and asset managers stemming from the earlier mentioned revised Shareholder Rights Directive.⁷ As from 10 June 2019, all Dutch asset owners and Dutch asset managers will be legally required to comply with these new obligations or to publicly disclose a clear and reasoned explanation why they have chosen not to comply with one or more of those obligations. This Code also incorporates the best practices of the Dutch Corporate Governance Code that apply to asset owners and asset managers and contains a number of additional principles as a result of evolving stewardship expectations. This Code provides a clear-cut, state of the art set of principles for stewardship by asset owners and asset managers towards Dutch listed investee companies. Asset owners and asset managers of Dutch listed companies are encouraged to commit to the principles of this Code. They must be aware of the legal obligations for shareholders of Dutch listed companies, e.g. the legal requirement to behave towards the company and its stakeholders in a manner that is reasonable and fair.⁸
4. As from book year 2019 onwards, asset owners and asset managers are expected to report on their compliance with the principles and to disclose the specific information requested in the principles. While this Code's principles are principally focused on stewardship towards Dutch listed investee companies, the principles can also be applied to non-Dutch listed investee companies, as appropriate.
5. The Code's principles build on the already existing responsibilities of shareholders and provide further guidance on the behaviour that is expected from asset owners and asset managers as shareholders of Dutch listed investee companies. This Code should be read in conjunction with the Dutch Corporate Governance Code which sets out standards guiding the behaviour of the executive and supervisory directors of Dutch listed companies. The principles are aligned with international stewardship codes and principles and may be regarded as an elaboration of the general principles of responsible and engaged share-ownership. Asset owners and asset managers are, therefore,

⁷ Art. 3g of the revised Shareholder Rights Directive.

⁸ In that context, shareholders are expected to be prepared to enter into dialogue with Dutch listed investee companies.

expected to apply all the principles. However, there can be specific circumstances in which one or more principles cannot be applied. Indeed, not all asset owners and asset managers are the same. As a consequence, the application level may differ, depending on factors such as the asset owner's or asset manager's size, its history, its investment policies (e.g. whether its policies are oriented towards active or passive strategies, towards quantitatively derived strategies or strategies based on fundamental analysis, etc.), its investment philosophy and its beliefs and the preferences of its beneficiaries and clients. Asset owners and asset managers have, therefore, the opportunity to apply the Code as each considers to be in their beneficiaries' or clients' best interests. However, in the situation of non-application of one or more principles, the asset owner or asset manager should publicly disclose a clear and reasoned explanation why it has decided not to apply these principles. The principles incorporated in this Code should not, however, restrict asset owners and asset managers from choosing to adopt more explicit and/or stronger stewardship practices.

6. Some asset owners use asset managers or external service providers to fulfil their stewardship activities on their behalf. Asset owners should clearly communicate their policies on stewardship to their asset managers or service providers, including how the principles of this Code should be applied. Asset owners should require their asset managers or service providers to demonstrate and report on the stewardship activities conducted on behalf of the asset owner. After all, it is the asset owner who is responsible for the fulfilment of the stewardship activities on its behalf. Asset owners who solely or partly invest indirectly in Dutch listed investee companies – via mutual or investment funds – have an obligation to effectively monitor the fund managers' stewardship activities, including the application of the principles of this Code and other (international) codes or guidelines with similar objectives.
7. Asset owners and asset managers cooperate where appropriate and at their discretion with other shareholders in performing their stewardship activities towards Dutch listed investee companies. In case of collaboration, asset owners and asset managers should respect the relevant laws, regulations and guidelines, such as the Market Abuse Regulation.⁹ They should also take note of the Dutch and European guidelines with respect to acting in concert, such as the guidelines of the Dutch Authority for the Financial Markets (AFM) in relation to the notification of substantial holdings¹⁰ and the public statement of the European Securities and Markets Authority (ESMA) regarding public bids¹¹.

⁹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014, L 173; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN>).

¹⁰ <https://www.afm.nl/~profmedia/files/wet-regelgeving/marktmisbruik/guideline-shareholders.ashx?la=en>.

¹¹ <https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-677.pdf>.

8. The Eumedion secretariat will annually monitor the compliance with the Code by asset owners and asset managers a) that are a participant of Eumedion, and b) that are not a participant of Eumedion but requested the Eumedion secretariat to be included in the monitoring. Compliance with the Code will be monitored on the basis of information provided by the aforementioned parties on their website and in the annual report. The results of the monitoring will be reported to the General Board of Eumedion, Eumedion participants and other asset owners and asset managers who are included in the monitoring. A summary of the monitoring report will be made public.
9. The Stewardship Code will enter into force on 1 January 2019. From book year 2019 onwards, asset owners and asset managers are expected to apply the principles of the Code and report on the implementation of it.

Principles

1. Asset owners and asset managers have a stewardship policy that describes how they integrate stewardship towards Dutch listed investee companies in their investment strategy. The stewardship policy should be aimed at preserving and enhancing value for their beneficiaries and/or clients, and should promote long-term value creation at Dutch listed investee companies. The stewardship policy should at least include the matters described in the principles of this Code and should be publicly disclosed on the asset owner's and asset manager's website. Asset owners and asset managers shall at least once a year publicly report on their website how they have implemented their stewardship policy, asset owners shall also report if and how they have integrated that policy into their arrangements with their asset managers.
2. Asset owners and asset managers monitor their Dutch listed investee companies on material issues, including, but not limited to, the company's business model for creating long-term value, the company's strategy, performance and risks and opportunities, the capital structure, social and environmental impact, corporate governance and corporate actions such as mergers and acquisitions. Material issues are those matters that are likely to significantly affect the company's ability to create long-term value.
3. Asset owners and asset managers are prepared to enter into dialogue with the executive and/or supervisory directors of their Dutch listed investee companies and are prepared to escalate their stewardship activities in case issues remain unresolved, where appropriate and at their discretion. In the event that an asset owner or asset manager enters into dialogue with a Dutch listed investee company on certain issues, outside the context of a general meeting, the asset owner or asset manager will disclose its full equity holding (long and short) at the request of that company.
4. Asset owners and asset managers cooperate with other shareholders in exercising stewardship activities towards Dutch listed investee companies, where appropriate and at their discretion.
5. Asset owners and asset managers communicate with relevant stakeholders of Dutch listed investee companies, where appropriate and at their discretion.
6. Asset owners and asset managers identify, manage and remedy actual and potential conflicts of interest in relation to their stewardship activities towards Dutch listed investee companies. Asset owners and asset managers publicly disclose their conflicts of interest policy in relation to their stewardship activities.

7. Asset owners and asset managers exercise their voting rights and other rights attached to shares in Dutch listed investee companies in an informed manner. They publicly disclose on their website: a) at least once every quarter how they have voted their shares in Dutch listed investee companies, at an individual company level and per voting item, and b) at least annually a general description of their voting behaviour at general meetings of Dutch listed investee companies and an explanation of the most significant votes. In the event that the asset owner or asset manager casts an against or a withhold vote on a management proposal, he should explain the reasons for this voting behaviour to the company's board either pro-actively or at the request of the company.
8. Asset owners and asset managers publicly disclose their voting policy and at least annually if and how they use proxy research and/or voting services. Asset owners and asset managers that use proxy research and/or voting services ensure that their votes are cast in line with their own voting policy.
9. Asset owners and asset managers that consider exercising their right to submit a request for convening an extraordinary general meeting or for tabling a shareholder resolution at a general meeting of a Dutch listed investee company should have consulted the company's board prior to exercising this right.
10. If a resolution proposed by an asset owner or asset manager has been put on the agenda of a general meeting of a Dutch listed investee company, the asset owner or asset manager should be present or represented at that meeting in order to explain this resolution and, if necessary, answer questions about it.
11. Asset owners and asset managers will abstain from voting if their short position in the Dutch listed investee company in question is larger than their long position. Asset owners and asset managers should recall their lent shares before the voting record date for a general meeting of a Dutch listed investee company, if the agenda for that general meeting contains one or more significant matters.

Guidance

Guidance principle 1

- Preference is given to the term 'stewardship policy' instead of 'engagement policy' that is used in the revised Shareholder Rights Directive. As described in section 2 of the preamble 'engagement' is considered to be an element of the broader concept of stewardship.
- Asset owners and asset managers have a fiduciary duty to act in the best interests of their beneficiaries and clients and for the exclusive purpose of providing benefits to their beneficiaries and clients. Therefore, the stewardship policy should be aimed at preserving and enhancing value for their beneficiaries and clients. Given the fact that asset owners and their asset managers generally have a long-term investment horizon, this stewardship policy's objective is congruent with an investee company's objective of promoting long-term value creation. As such, the stewardship policy can contribute to the long-term success of companies.
- If an asset owner is unable to exercise stewardship activities directly, he should ensure, through an arrangement, that his asset manager(s) or external service provider(s) is (are) undertaking these activities on his behalf. The asset owner is required to publicly disclose – on an apply-or-explain basis – certain key elements of this arrangement as stipulated by article 3h of the revised Shareholder Rights Directive. Some asset owners solely invest in mutual or investment funds and not directly in the shares of Dutch listed companies. As a consequence, those asset owners are unable to exercise stewardship activities themselves. Those asset owners should ensure that the managers of the mutual or investment funds they invest in have a stewardship policy in line with principle 1 or with other (international) codes or guidelines with similar objectives.

Guidance principle 2

- Every corporate action should be judged on its own merits, thereby taking into account the interests of other stakeholders of the Dutch listed investee company.
- In assessing the Dutch listed investee companies' long-term value creation opportunities, risks, strategy and performance, it is critical to consider environmental (including climate change risks and opportunities), social and governance information (including board composition and diversity) besides financial information.
- Material issues can include short-, mid- and long-term developments.

Guidance principle 3

- According to Dutch company law, shareholders of Dutch listed companies should act in keeping with the principles of reasonableness and fairness. In that context, shareholders are expected to be prepared to enter into dialogue with Dutch listed investee companies.

- If challenging issues need to be discussed with a company, it is beneficial if a relationship between the asset owner and/or asset manager and the Dutch listed investee company has already been established, particularly if such a discussion needs to be held urgently.

Escalation actions by asset owners and asset managers may include:

- Writing a letter to the executive and/or supervisory directors in which the matters of concern are explained;
- Holding additional meetings with the executive and/or supervisory directors, specifically to discuss the matters of concern;
- Holding meetings with other stakeholders, such as banks, creditors, customers, suppliers, the works council and non-governmental organisations;
- Attending the general meeting and expressing concerns at that meeting, including voting against management proposals;
- Issuing a public statement;
- Intervening jointly with other institutional investors and shareholders on specific issues;
- Requesting that certain subjects are placed on the agenda of the general meeting or asking that an extraordinary general meeting is convened;
- Submitting one or more nominations for the appointment of a member of the executive and/or supervisory board as appropriate;
- Taking legal action, when appropriate, such as initiating inquiry proceedings at the Enterprise Chamber of the Amsterdam Court of Appeal; and
- Selling the shares.

The escalation actions should be aimed at preserving and enhancing value for the beneficiaries and/or clients, and should promote long-term value creation at Dutch listed investee companies, as stipulated in principle 1 of this Code.

'Full equity holding' in the last sentence of principle 3 means the asset owner's or asset manager's full economic interest in the Dutch listed investee company as referred to in article 5:25kbis of the Dutch Financial Supervision Act.

Guidance principle 4

- Groups of investors may wish to discuss issues which are of common interest to them, and which they may wish to pursue collectively towards one or several companies. Collective engagement may deliver benefits to both companies and investors. For instance, because both the board and investors get familiar with each others views and perspectives and engagement is made more cost effective.

- Collective discussion may also generate a wider and deeper range of analysis compared to a one-to-one meeting, although there should be sensitivity to the fact that some issues are better discussed on a one-to-one basis, and that a constructive discussion of such issues may be inhibited in a group meeting context.

Guidance principle 5

- Asset owners and asset managers may aim to understand the aspirations and motivations of other relevant stakeholders of the company, for example banks, creditors, customers, suppliers, the works council and non-governmental organisations, to advance the goals of a dialogue with a Dutch listed investee company and/or their voting behaviour on material issues. The decision to respond to relevant stakeholders is determined by the asset owner or asset manager, based on the issue at hand.

Guidance principle 6

- Asset owners and asset managers should be aware of the possible existence of other interests involving themselves and the Dutch listed investee company apart from the shareholder's interest alone. This can occur, for example, when the asset owner or asset manager in question also offers financial products (such as insurance contracts) to the Dutch listed investee company, or when a member of the executive and/or supervisory board of the asset owner or asset manager is also a member of the executive and/or supervisory board of the Dutch listed investee company in question. It is also possible that an asset manager that invests for a pension fund holds shares in a Dutch listed investee company that sponsors the pension fund concerned, or that an asset owner or asset manager is affiliated in some way with a Dutch listed investee company whose shares are subject to a public bid.

Guidance principle 7

- Asset owners and asset managers should publicly disclose how they have implemented their voting policy including a general description of voting behaviour and an explanation of the most significant votes. A vote can be considered to be significant due to the subject matter of the vote or the size of the holding in the company. 'Significant votes' include votes cast on significant matters as mentioned in the guidance on principle 11 and votes cast at general meetings of Dutch investee companies where the asset owner or asset manager has a large holding compared to the asset owner's or asset manager's holdings in other investee companies.

Guidance principle 8

- Asset owners and asset managers should use their voting rights in a well informed manner and in line with their voting policy. Asset owners or asset managers that use the services of proxy advisors,

should – particularly in case of a standard voting policy – disclose to what extent the voting recommendations of those advisors are followed. Asset owners and asset managers should regularly evaluate that their proxy advisors have robust processes, policies and capabilities in place to ensure the quality of the voting recommendations made.

Guidance principle 11

Asset owners and asset managers do not borrow or lend shares for the primary purpose of exercising voting rights on these shares. Asset owners or asset managers who have lent shares will take reasonable steps to discourage that those shares are borrowed for the primary purpose of exercising voting rights.

In the situation of holding a short position that is larger than the long position in a Dutch listed investee company, the interests of the asset owner or asset manager might not be aligned with the objective of the investee company to create long-term value. Therefore, asset owners and asset managers should abstain from voting in such a situation. Asset owners and asset managers should already monitor their net short positions in Dutch listed investee companies in order to comply with the notification requirements stemming from the Short Selling Regulation.¹²

In practice many market participants take short positions by using specific legal entities for this purpose. The recommendation to abstain from voting if the short position is larger than the long position in a Dutch listed investee company is not applicable at group level and for the legal entities within the group that manage long positions in the same Dutch listed investee company. In that case, the manager of the legal entity that is used for taking short positions has no influence on the group's voting policy and behaviour.

The asset owner or asset manager determines what is considered to be a significant matter, but includes at least a proposal tabled at the agenda of a general meeting:

- that is of economic or strategic importance;
- which voting outcome is anticipated to be close or controversial; or
- where the asset owner or asset manager disagrees with the recommendation of the company's board.

¹² Regulation (EU) no 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (PbEU 2012 L86).

Appendix

The Dutch Stewardship Code was prepared by a special Eumedion working group consisting of the following members:

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