



The Dutch

CORPORATE GOVERNANCE CODE

PROPOSAL FOR UPDATE

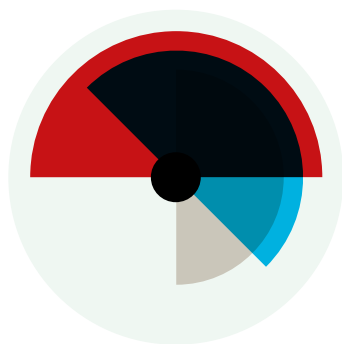
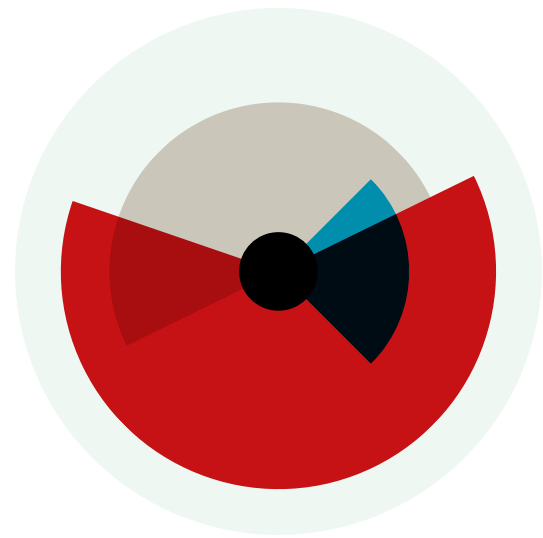
CONSULTATION DOCUMENT

Monitoring Committee
**CORPORATE
GOVERNANCE
CODE**

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PROPOSALS TO UPDATE THE DUTCH CORPORATE GOVERNANCE CODE

The Corporate Governance Code Monitoring Committee (referred to below as the Committee) has drafted this consultation document to present proposals to update the Dutch Corporate Governance Code (referred to below to as the Code).

All supporting parties and other stakeholders and interested parties are invited to respond to this consultation document and to take part in the public debate about updating the Code. The input and findings from the consultation will be used to update the Code.

The consultation runs for eight weeks, from 21 February to 17 April 2022 inclusive. Please send your comments to secretariaat@mccg.nl by 17 April at the latest.

Your comments will subsequently be published on the Committee's website, unless you express an objection to this.

CONTENTS

Introduction	5
Starting points for the update	5
Further steps	6
A.Explanatory notes on the proposals to update the Code	7
Long-term value creation	8
The role of shareholders	8
Diversity and inclusion	9
Other adjustments owing to amended laws and regulations	9
Recommendations in Strengthening the Accountability Chain	10
B.Proposed texts for the update	11
Chapter 1 Long-term value creation	12
Chapter 2 Effective management and supervision	16
Chapter 3 Remuneration	21
Chapter 4 The general meeting	24
C.Full amended text of the Code	28



INTRODUCTION

The Code focuses on encouraging good governance in Dutch listed companies.¹ The purpose of the Code is to facilitate – with or in relation to other laws and regulations – a sound and transparent system of *checks and balances* within Dutch listed companies and, to that end, to regulate relations between the management board, the supervisory board and shareholders (including the general meeting of shareholders). Listed companies use the Code as a guide for their governance structures. Other companies and institutions often regard the Code as a source of inspiration and choose to apply it voluntarily or use parts of it in their governance structures.

The Code is a self-regulation tool and was last revised in 2016, at the request of what are known as the supporting parties of the Code: Eumedion, Euronext, the Association of Stockholders (VEB), the Association of Securities Issuing Companies (VEUO), the Confederation of Netherlands Industry and Employers (VNO-NCW), and the employee representative bodies CNV and FNV. Since the last revision of the Code, there have been a number of important developments in the area of governance, including greater emphasis on ESG factors and sustainable corporate governance. These and other social trends, such as a new zeitgeist/spirit of the times and certain legislative changes, prompted the Committee, in consultation with the supporting parties, to submit proposals to update and clarify the Code. These proposals are set out in this consultation document.

¹ The Code applies to:

- › all companies with their registered office in the Netherlands and whose shares, or depositary receipts, are admitted to trading on a regulated market or comparable system; and
- › all large companies with their registered office in the Netherlands (balance sheet total > €500 million) and whose shares, or depositary receipts, are admitted to trading on a multilateral trading facility or comparable system.

For purposes of the Code, the holders of depositary receipts issued in cooperation with the company are treated as shareholders. The Code does not apply to investment companies or undertakings for collective investment in transferable securities that are not managers within the meaning of Article 1:1 of the Financial Supervision Act (*Wet op het financieel toezicht*, Wft).

Starting points for the update

Since its establishment, the Committee has consulted the supporting parties, management board and supervisory board members of listed companies and other stakeholders with the aim of keeping the Code current, future-oriented and relevant. These discussions revealed that the Code needs to be updated in areas such as long-term value creation, diversity and the role of shareholders.

The Committee has also made some proposals for updates based on legislative and regulatory changes, including the introduction of a statutory reflection period and new rules on the remuneration policy and report in Book 2 of the Dutch Civil Code (BW). In these proposals, the Committee has tried insofar as possible to avoid overlap or conflict with existing laws and regulations and to ensure that the Code is largely complementary.

Moreover, at the request of the Minister of Finance, the Committee has assessed whether, and to what extent, the recommendations in Leiden University's report *Strengthening the Accountability Chain (Versterking Verantwoordingsketen)* could be included in the update and further clarification of the Code. Amongst other things, this resulted in proposals to update provisions relating to internal audit departments and the periodic evaluation of management and supervisory boards.

When formulating proposals, the Committee set its sights on the future, taking into account the wishes and recommendations of the supporting parties and other stakeholders, as well as the national and international social context and anticipated legislative and regulatory developments.

Part A contains an explanation of the proposals to update the Code. Part B contains the text of these proposals. Part C contains the updated Code into which the proposals have been incorporated.

Further steps

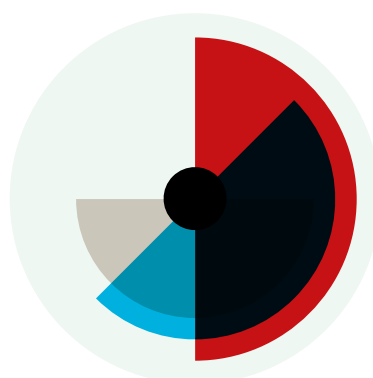
The consultation period for the proposals to update the Code will run for eight weeks, from 21 February until 17 April 2022 inclusive. The Committee aims to amend the Code, based on the responses it receives, before the end of this year and send it to the government with a request to enact the amended Code into law. The Code could then enter into force for the financial year beginning on or after 1 January 2023.



A.

EXPLANATORY NOTES ON THE PROPOSALS TO UPDATE THE CODE

In this part, the Committee explains the proposals to update the Code. The explanatory notes on the proposals are divided into the following themes: *long-term value creation, the role of shareholders, diversity and inclusion, other adjustments owing to amended laws and regulations and adjustments prompted by the Strengthening the Accountability Chain report*. The proposed texts to be used when adjusting the principles and best practice provisions of the Code are included in part B.



Long-term value creation

One of the most important changes made when revising the Code in 2016 involved putting long-term value creation at centre stage. In the years since, the focus on *Environmental, Social & Governance* (ESG) matters has increased significantly. Climate change is now considered one of the most important themes of the coming decades, affecting the way we view corporate governance.

ESG is an important part of the strategy of companies whose focus is on long-term value creation. Companies find themselves under increasing pressure to provide more detailed and meaningful reports on their efforts with regard to sustainability and the results produced. Lack of efforts in the area of ESG can have a significant impact on companies. Listed companies can be expected to place the subject of ESG high on their agendas and to provide in-depth insight into how they deliver on the ESG aspects of running a business. To underline the importance of this, the Committee is making the following proposals as regards long-term value creation and ESG:

- i. As part of their strategy for long-term value creation, companies should formulate a clear ESG strategy and set specific objectives (best practice provision 1.1.1).
- ii. The ESG strategy, actions and results, including the impact on the production and value chain, should be accounted for in the management report (best practice provision 1.1.4).
- iii. Shareholders, including institutional investors (pension funds, insurance companies, investment institutions and asset managers), recognise the importance of a strategy focused on long-term value creation (new best practice provision 1.1.5).
- iv. The interests of relevant stakeholders should be taken into account by the management board when determining the ESG strategy and, to that end, a policy for stakeholder dialogue should be drawn up, with the management board facilitating such dialogue (new best practice provision 1.1.6).
- v. The management report should account for the culture, values and behaviour encouraged within the company and explain how a contribution is made to long-term value creation (amendment of best practice 2.5.4, in connection with which best practice provision 2.5.1 will also be clarified).

The role of shareholders

When the Code was last revised, the provisions on shareholders were left virtually unchanged owing to national and international developments whose outcomes had not yet been established. For instance, the revised Shareholder Rights Directive (SRD II) was still being worked on at that time. It has since been adopted and implemented into the Dutch legislative and regulatory framework. This is why the importance of effective and lasting shareholder engagement should be underlined and the role of shareholders clarified in the Code. In that context, the Committee also looked at relevant elements from the Eumedion Stewardship Code and proposes that, in addition to the inclusion of new best practice provision 1.1.5 as described above with regard to long-term value creation, the following adjustments be made:

- i. the introduction of a provision to encourage dialogue between shareholders and companies (best practice provision 4.2.2);
- ii. the encouragement of informed voting by shareholders and, if the services of a voting adviser are used, the encouragement of dialogue between voting advisers and companies (best practice provision 4.3.1);
- iii. the introduction of rules pertaining to the engagement policy for institutional investors (best practice provisions 4.3.5 and 4.3.6);
- iv. the introduction of rules regarding abstention from voting by shareholders with greater short than long positions and on the recall of lent shares (best practice provisions 4.3.7 and 4.3.8).

Diversity and inclusion

As of 1 January 2022, a change in the law aimed at encouraging a more balanced male/female ratio on supervisory and management boards and at senior management level at large companies entered into effect. The Committee acknowledges the importance of this change in the law and expects it to contribute positively to increasing gender diversity in the boardroom. At the same time, the Committee would like to emphasise that diversity goes beyond gender and recognises that the change in the law does not take into account developments as regards gender identity and expression. In addition, based on compliance studies for previous financial years, the Committee has identified a need for improvement when it comes to compliance with diversity guidelines.

This has prompted the Committee to make the following proposals to amend principle 2.1 and best practice provisions 2.1.2, 2.1.5 and 2.1.6 of the Code:

- i. The management board, the supervisory board and the executive committee should be composed so that there is a good balance between expertise, experience, competencies, personal qualities, age, gender identity, nationality, background, including cultural background, and – as regards the supervisory board – independence (principle 2.1).
- ii. Information about gender *identity* (rather than simply gender) should be included in the report of the supervisory board if a supervisory board member so requests (best practice provision 2.1.2).
- iii. Companies should have a firmwide diversity and inclusion policy that covers all aspects and personal characteristics in which people may differ, including gender identity, age, ethnicity, occupational disabilities and sexual orientation (best practice provision 2.1.5).
- iv. Information pertaining to the inflow, progression and retention of diverse talent within the organisation should be included when reporting on the diversity and inclusion policy (best practice provision 2.1.6).

Other adjustments owing to amended laws and regulations

Response time

A statutory reflection period was introduced into Book 2 of the Dutch Civil Code on 1 May 2021. The statutory reflection period may be invoked if (a) one or more shareholders (usually representing at least 3% of the subscribed capital) request that a motion pertaining to the appointment, suspension or dismissal of one or more management board or supervisory board members or a change in relevant provisions of the articles of association be dealt with or (b) a hostile takeover bid is announced or made and the management board considers the request or offer to be essentially contrary to the interests of the company and its affiliated enterprise. If the reflection period is invoked, it will not be possible to vote on the motion, but the matter may be placed on the agenda as a discussion point. The reflection period may not exceed 250 days.

Best practice provisions 4.1.6. and 4.1.7 of the Code provide for a response time of up to 180 days, which may be invoked if one or more shareholders intend to request that an item that could result in a change in the company's strategy, for example, through the dismissal of one or more management board or supervisory board members, be placed on the agenda. The item will not be placed on the agenda if the response time is invoked. Although there is a degree of overlap between the Code's response time and the statutory reflection period, the Committee considers that there are sufficient differences for the two provisions to co-exist. The legislation also allows for this possibility. A minor adjustment to best practice provision 4.1.7 and a clarification in the explanatory notes to this provision are intended to address the potential overlap.

Remuneration

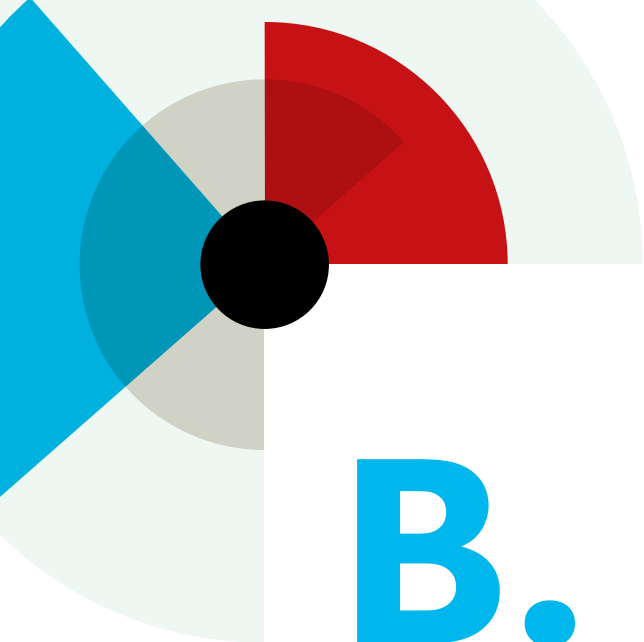
The implementation of SRD II led to new provisions in Book 2 of the Dutch Civil Code regarding the remuneration policy and remuneration report of public and private limited companies established in the Netherlands and (in short) listed on a regulated market in the EU (Article 135a of Book 2 of the Dutch Civil Code or Article 135b of Book 2 of the Dutch Civil Code). This raises the question of whether best practice provisions 3.1.2 and 3.4.1 should be amended. It is acknowledged that the law contains more detailed provisions for certain aspects than the Code, although the Code has a broader scope of application. The Committee does not propose making major changes to the content of these provisions, but rather intends to clarify in the explanatory notes how they relate to the amended legislation. The basic principle is that the Code supplements the law.

Recommendations in *Strengthening the Accountability Chain*

Leiden University, commissioned by the Minister of Finance, conducted research into strengthening the responsibility of audited entities with regard to audits and annual reporting. The results are set out in a report entitled *Strengthening the Accountability Chain*, which the Minister of Finance sent to the Lower House of Parliament on 9 July 2021. The report includes various recommendations aimed at amending the Code. The Minister of Finance brought these recommendations to the Committee's attention. The Committee has analysed the recommendations and included some of them in the proposals to update the Code.

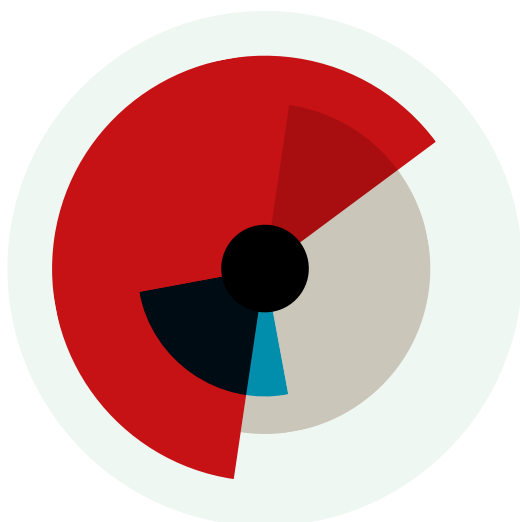
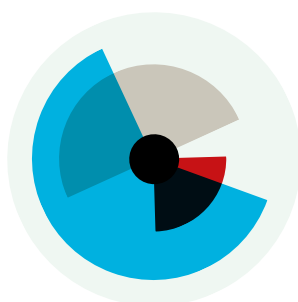
- i. It will be added in best practice provision 1.3.2 that an independent third party should assess the performance of the internal audit function at least once every five years.
- ii. It is stated in the explanatory notes to best practice provision 1.3.5 that the internal audit function should preferably report to the CEO.
- iii. It should be included in best practice provision 1.3.5 that the internal audit function should report the audit results to the management board and the audit committee (instead of reporting only the essence to the audit committee and the full results to the management board).
- iv. It should be included in best practice provision 1.3.3 that the internal audit function's audit plan should be drawn up *in consultation with* the management board, the audit committee and the external auditor.
- v. Greater emphasis should be given to behaviour and culture in the evaluations of the management board and supervisory board (adjustment of best practice provisions 2.2.6 and 2.2.7).
- vi. It should be added that the internal audit function should report any signs of actual or suspected material misconduct to the chair of the audit committee (new best practice provision 2.6.4).

Other recommendations regarding more controversial subjects, such as the 'in control statement', require further discussion and have not been included in this proposal to update the Code.



B.

PROPOSED TEXTS FOR THE UPDATE



CHAPTER 1. LONG-TERM VALUE CREATION

Principle 1.1 Long-term value creation

New text

The management board is responsible for the continuity of the company and its affiliated enterprise. The management board focuses on long-term value creation for the company and its affiliated enterprise, is aware of the impact the actions of the company and its affiliated enterprise have on the production and value chain and takes into account the relevant stakeholder interests ~~that are relevant~~ in this context. The supervisory board monitors the management board ~~in this~~.

Explanatory notes

Management board members and supervisory board members are expected to act in a sustainable manner by focusing on long-term value creation in the performance of their work. Long-term sustainability is the key consideration when determining strategy and making decisions, ~~and~~ Management board members and supervisory board members are aware of the impact the actions of the company and its affiliated enterprise have on the production and value chain and take stakeholder interests ~~are taken~~ into careful consideration. Stakeholders are groups and individuals that, directly or indirectly, influence – or are influenced by – the attainment of the company’s objectives: employees, shareholders, lenders, suppliers, customers, etc. Long-term value creation also requires awareness and anticipation of new developments in technology and changes to business models. Maintaining a sufficient level of awareness of the ~~wider-~~ broader context in which the enterprise affiliated with the company operates, contributes to continuing success, ~~and is therefore in line with~~ the company’s ~~interests~~ interest.

There may be situations in which a focus on the long term is no longer relevant for a company – for example in the event of a bankruptcy or takeover – and the company’s reason for existing ceases. In these ~~situations~~ cases, the company should comply with the Code by explaining why long-term value creation is not, or is no longer, a priority to be pursued.

1.1.1 Long-term value creation strategy

New text

The management board should develop a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy in line with this. This should include an ESG strategy (the Environmental, Social & Governance aspects of running a business), for which the management board should formulate specific objectives. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy.

When developing the strategy, attention should in any event be paid to the following:

- i. the strategy's implementation and feasibility;
- ii. the business model applied by the company and the market in which the company and its affiliated enterprise operate;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in on relevant markets;
- v. the interests of ~~the~~ stakeholders; and
- vi. ~~any other aspects relevant to the company and its affiliated enterprise, such as the environment, social and employee-related matters, the chain within which the enterprise operates, respect for human rights, and fighting corruption and bribery.~~
- vi. the balanced contribution to the communities in which the company operates through the payment of taxes; and
- vii. the ESG-related impact of the company and its affiliated enterprise, throughout the entire production and value chain.

Explanatory notes

~~The examples of relevant aspects of doing business specified in best practice provision 1.1.1, section vi reflect the topics listed in the EU Directive on disclosure of non-financial and diversity information. In addition to the topics listed in the Directive, section vi includes 'the chain within which the enterprise operates'. The OECD Guidelines for Multinational Enterprises provide guidance for companies with international operations in fulfilling their supply chain responsibility.~~

ESG

ESG aspects are an important part of the strategy of a company whose focus is on long-term value creation. ESG is a broad subject, which is in a transition phase worldwide. The same is true of the formulation of ESG standards to be applied in the future. It is important that companies provide information showing how they implement the ESG aspects of running a business. This can be achieved through use of the following framework set out in the Code.

As part of their strategy for long-term value creation, companies should formulate a clear ESG strategy, with specific objectives (best practice provision 1.1.1). Furthermore, companies should enter into dialogue with relevant stakeholders about their ESG strategy (best practice provision 1.1.6). The ESG strategy, the actions taken and the results pursued and achieved, including the impact on the production and value chain (where possible quantified and monetised) should be accounted for in the management report (best practice provision 1.1.4). (best practice provision 1.1.4).

If they wish, companies may formulate a 'purpose', possibly in their articles of association or as part of their strategy. The purpose can indicate, for example, what the company and its affiliated enterprise aim to achieve in society and the principles and values that guide them.

As stated above, ESG regulations are in a transition phase. The European Union, for instance, is working on an ESG accountability and reporting framework. The following draft or final provisions, or parts of them, can serve as a basis for interpretation of the term ESG as used in best practice provision 1.1.1, part vii:

- › the subjects for sustainability reporting (Ecological, Social and Governance factors) as defined in Articles 19b, 19c and 19d of the Proposal of the European Commission of 21 April 2021 for an amendment of Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (the 'CSRD'); the draft CRSD was adopted by the European Commission on 21 April 2021 and is currently under consideration by the European Parliament and the Council of the European Union [1].
- › the OECD Due Diligence Guidance for Responsible Business Conduct adopted in 2018 [2], which provides guidance for companies with international operations in fulfilling their supply chain responsibility.

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189&from=EN>

[2] [OECD: Due Diligence – Organisation for Economic Co-operation and Development \(oecd.org\)](https://www.oecd.org/due-diligence/)

1.1.4. Reporting by the management board

New text

In the management report, the management board should ~~give~~ provide a more detailed explanation of its view on long-term value creation and the strategy ~~for its realisation, as well as describing which~~ to realise this and describe the contributions ~~were~~ made to long-term value creation in the past financial year. In addition, the management board should describe the ESG strategy and objectives, the impact operational management has had on the production and value chain (quantified and monetised, where possible), how it takes account of the interests of stakeholders, what action has been taken in that context, and the extent to which the objectives have been achieved. The management board should report on both ~~the short-term~~ short- and long-term developments.

1.1.5 Role of shareholders (to be inserted as a new provision)

New text

Shareholders, including institutional investors (pension funds, insurers, investment institutions and asset managers), recognise the importance of a strategy focused on long-term value creation.

1.1.6 Dialogue with stakeholders (to be inserted as a new provision)

New text

To ensure that the interests of relevant stakeholders are included in the management board's considerations when determining the company's ESG strategy, the management board should draw up a policy for effective dialogue with these stakeholders and facilitate such dialogue.

Principle 1.3 Internal audit function

1.3.2 Assessment of the internal audit function

New text

The management board should assess on an annual basis, in consultation with the audit committee, the way in which the internal audit function fulfils its responsibility ~~annually, taking into account the audit committee's opinion~~. An independent third party should assess the performance of the internal audit function at least once every five years.

1.3.3 Internal audit plan

New text

The internal audit function should draw up an audit plan, ~~involving~~ in consultation with the management board, the audit committee and the external auditor ~~in this process~~. The audit plan should be submitted to the management board, and then to the supervisory board, for approval. In ~~this~~ the internal audit plan, attention should be paid to ~~the~~ interaction with the external auditor.

1.3.5 Reports of findings

New text

The internal audit function should report ~~its~~ the audit results to the management board and the ~~essence of its audit results to the~~ audit committee and ~~should~~ inform the external auditor.

The ~~research~~ findings of the internal audit function should ~~at least~~ include the following:

- i. any flaws in the effectiveness of the internal risk management and control systems;
- ii. any findings and observations with a material impact on the risk profile of the company and its affiliated enterprise; and
- iii. any failings in the follow-up of recommendations made by the internal audit function.

Explanatory notes

The internal audit function should report hierarchically to a member of the management board, preferably the CEO.

CHAPTER 2

EFFECTIVE MANAGEMENT AND SUPERVISION

Principle 2.1 Composition and size

New text

The management board ~~and~~, the supervisory board and the executive committee (if applicable) should be composed ~~such that the requisite~~ so that there is a good balance between expertise, experience, competencies, personal qualities, age, gender identity, nationality, background, ~~competencies including cultural background,~~ and – as regards the supervisory board – the requisite independence ~~are present for them~~ to to ensure that these bodies can carry out their duties properly. The size of ~~these two~~ the bodies reflects these requirements.

Explanatory notes

A diverse composition of the management board, supervisory board and executive committee (if applicable) contribute to effective management and supervision. Diversity of opinion, opposition, teamwork and cohesion are essential to a valuable discussion. Diversity of expertise, experience, competencies, personal qualities, age, gender identity, nationality and background, including cultural background, result in different perspectives which in turn can help to prevent group think. However, where there is a significant degree of diversity, additional care will have to be taken to ensure cohesion within the body.

2.1.2 Personal information

New text

The following information about each supervisory board member should be included in the report of the supervisory board:

- i. ~~sex~~ gender identity (provided the supervisory board member wishes to include this information);
- ii. age;
- iii. nationality;
- iv. ~~principal position;~~
- v. iv. principal and other positions, ~~in so far as they are~~ insofar as relevant to the performance of the duties of the supervisory board member;
- vi. v. date of initial appointment; and
- vii. vi. current term of office.

2.1.5 Diversity policy

New text

2.1.5 Diversity ~~Policy on diversity and inclusion (D&I policy)~~

The company should have a firmwide D&I policy. The D&I policy should set, amongst other things, appropriate and ambitious targets to achieve a good balance in gender diversity, and concrete targets as regards the composition of the management board, the supervisory board, the executive committee (if applicable) and, if this group is broader, a category of employees in managerial positions ('senior management', to be determined by the management board).

The supervisory board should ~~draw up a diversity~~ adopt the D&I policy for the composition of the management board, the supervisory board and, if applicable, the executive committee. ~~The policy should address the concrete targets relating to diversity and the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background.~~

The management board should adopt the D&I policy at senior management level and for the rest of the workforce, under the supervision of the supervisory board.

2.1.6 Accountability about diversity

New text

2.1.6 ~~Accountability about diversity~~ Reporting on the D&I policy

The corporate governance statement should explain the ~~diversity~~ D&I policy and the way that it is implemented in practice, addressing:

- i. the ~~policy~~ objectives of the D&I policy;
- ii. how the D&I policy has been implemented; and
- iii. the results of the D&I policy in the past financial year and – where relevant and applicable – insight into inflow, progression and retention of diverse talent within the organisation.

If the composition of the management board ~~and~~, the supervisory board, the executive committee (if applicable) and/or senior management diverges from the targets stipulated in the ~~company's diversity~~ policy and/or the statutory target for the male/female ratio, ~~if and to the extent that this is provided under or pursuant to the law,~~ company's D&I policy, the current state of affairs should be outlined in the corporate governance statement, ~~along with~~ and an explanation as to which ~~provided of the~~ measures are being taken to attain achieve the intended target, ~~targets~~ and by when this is ~~they are~~ likely to be achieved.

Explanatory notes on principles 2.1.5 Diversity policy & 2.1.6 Accountability about diversity

New text

Explanatory notes on provisions 2.1.5 (D&I policy) and 2.1.6 (Reporting on the D&I policy)

Diversity is also addressed in the EU Directive on disclosure of non-financial and diversity information. This Directive will be implemented in Dutch legislation. However, the Code goes further than the Directive. Best practice provision 2.1.5 stipulates that companies must explain what measures have been and will be taken in the event that the diversity policy's objectives are not achieved. In addition, the scope of the Directive is limited to large companies, while the Code is applicable to all companies. The legal target figure of at least 30% male/female diversity in the management board and the supervisory board lapsed as of 1 January 2016. Legislation is currently pending to once again establish the legal target figure in Section 2:166 of the Dutch Civil Code until 2020.

Article 166 of Book 2 of the Dutch Civil Code obliges large companies to formulate appropriate and ambitious targets for the gender ratio on the management board and the supervisory board as well as for senior level management. They must report this information to the Social and Economic Council of the Netherlands (Sociaal-Economische Raad/SER) and include it in the management report. Moreover, a statutory quota of at least one-third men and one-third women (Article 142b of Book 2 of the Dutch Civil Code) applies to companies whose shares, or depositary receipts, are admitted to trading on a regulated market as defined in Article 1:1 of the Financial Supervision Act (Wet op het financieel toezicht/Wft) in the Netherlands. It stands to reason that this male-female ratio – which by definition is a minimum – should also serve as a guideline for the targets to be set for the management board, the executive committee (if applicable) and senior management.

Best practice provisions 2.1.5 and 2.1.6 go further than the statutory requirements, since it is expected that companies will aspire to gender diversity not only for the management board, the supervisory board, the executive committee (if applicable) and senior management but for the organisation as a whole. Diversity concerns all aspects and personal characteristics in which people can differ, including visible characteristics such as gender identity, age and ethnicity, as well as less visible characteristics such as occupational disabilities and sexual orientation. Inclusion refers to an organisation's capacity to create a culture in which every employee feels valued and respected, so that, regardless of their identity, employees are given the same opportunities and the progression of diverse talent to the top is facilitated.

The management board and the supervisory board are expected to reflect on the company's societal role when it comes to D&I, its relevance to the culture of the company and how it can be implemented in leadership development. A D&I policy starts with awareness and objectives, even if it is still too early to set specific targets. Awareness entails gaining insight – where relevant and possible – into inflow, progression and retention of diverse talent within the organisation.

In this context, companies can examine the most recent findings regarding the promotion of diversity provided by the SER (including through the Diversity and Inclusion Programme).

Furthermore, the annual publication of aggregated information on the diversity of the management board and the supervisory board, based on self-identification (diversity matrix), is recommended. Self-identification is voluntary, and the number of members who do not make a declaration should be reported in the diversity matrix for each category (e.g. gender identity, cultural background and LGBTQ+).

Principle 2.2 Appointment, succession and evaluation

2.2.6 Evaluation by the supervisory board

New text

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 board members, and should discuss the conclusions ~~that are attached to the~~ of this evaluation. In doing so, attention should be paid to:

- i. substantive aspects, ~~the~~ behaviour and culture, mutual interaction and ~~the~~ cooperation, and interaction with the management board;
- ii. events that occurred in practice from which lessons may be learned; and
- iii. the desired profile, composition, competencies and expertise of the supervisory board.

Explanatory notes on provisions 2.2.6 and 2.2.7

The aim of the reviews is to assess the functioning of the members of the supervisory board and the management board. ~~A periodic~~ An annual review can enhance the quality of the functioning of the supervisory board and the management board, ~~and help to ensure that the right choices are made when preparing appointments or reappointments of supervisory and management board members, for example where the appropriate composition of the boards, or the appropriate levels of diversity in their composition, are concerned.~~

The manner in which the review is carried out is ~~a matter for~~ determined by the company and may therefore differ from one company to another. The review can take place collectively, on an individual basis between the ~~chairman~~ chair and each member separately, ~~or through the input of an external adviser~~ expert. Each supervisory board ~~member~~ and management board member should be able to confidentially express their views during the review. It is recommended that an external expert be hired periodically to oversee the annual evaluation process. In keeping with provision 2.2.8, the report of the supervisory board should contain a summary of the evaluation process and the actions resulting from it.

Principle 2.5 Culture

2.5.1 Management board's responsibility for culture

New text

The management board should adopt values for the company and its affiliated enterprise that contribute to a culture focused on long-term value creation, and discuss these with the supervisory board. The management board is responsible for the incorporation and maintenance of ~~the~~ these values within the company and its affiliated enterprise. The management board should encourage behaviour that is in keeping with the values and propagate these values through leading by example.

Attention must be paid to the following, ~~among~~ amongst other things:

- i. the strategy and ~~the~~ business model;
- ii. the environment in which the ~~enterprise~~ company operates; and
- iii. the existing culture within the ~~enterprise,~~ company and whether it is desirable to ~~implement~~ make any changes ~~in this~~ to it.

~~The management board encourages behaviour that is in keeping with the values, and propagates these values through leading by example.~~

2.5.4 Accountability regarding culture

New text

~~2.5.5~~ **Accountability regarding** 2.5.4 Reporting on culture

In the management report, the management board should explain:

- i. ~~the values and the way in which they are incorporated in~~ culture within the company and its affiliate enterprise ~~whether it is desirable to make changes to it;~~ and
- ii. how the company's culture and underlying values and encouraged behaviour contribute to long-term value creation; and
- iii. the effectiveness of, and compliance with, the code of conduct.

Principle 2.6 Misconduct and irregularities

2.6.4 Notification by the internal audit function (to be inserted as a new provision)

New text

The internal audit function should inform the management board and the chair of the audit committee if, during the performance of his or her duties, material misconduct or irregularities are discovered or suspected.

If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, the internal audit function should report this directly to the chair of the supervisory board.

CHAPTER 3. REMUNERATION

Principle 3.1 Remuneration policy – management board

3.1.2 Remuneration policy

[The text of best practice provision 3.1.2 will not change]

Explanatory note on 3.1.2 Remuneration policy & 3.2.1 Remuneration committee's proposal

Article 135a of Book 2 of the Dutch Civil Code entered into force on 1 December 2019. This article contains detailed provisions on the remuneration policy for companies whose shares, or depositary receipts, are admitted to trading on a regulated market as defined in Article 1:1 of the Financial Supervision Act. Article 135a of Book 2 of the Dutch Civil Code and best practice provision 3.1.2 of the Code overlap. Since the scope of the Code is broader than that of the Dutch Civil Code, best practice provision 3.1.2 can nevertheless be retained. For companies to which both the Dutch Civil Code and the Code apply, the Code supplements the provisions of the Dutch Civil Code. For companies that are not subject to the amended legislation, nothing will change, and best practice provision 3.1.2 will remain the main guideline for the remuneration policy.

As far as the objectives for the strategy to achieve long-term value creation (best practice provision 3.1.2.i) are concerned, attention will be paid, in particular, to integrating ESG objectives into the remuneration policy and the relevant criteria to achieve those objectives.

'Scenario analyses' are defined as analyses, conducted by the supervisory board when formulating the remuneration policy and before determining the remuneration of individual management board members, of the possible results of the variable remuneration components and the way in which ~~this affects~~ these affect the remuneration of ~~the~~ management board members. The supervisory board will establish whether the scenario analyses result in appropriate levels of remuneration, ~~and whether measures to limit remuneration~~ are required to limit the remuneration.

Principle 3.4 Reporting on implementation of the remuneration policy

3.4.1 Remuneration report

New text

The remuneration committee should prepare the remuneration report. This report should in any event describe, in a transparent manner, in addition to ~~the~~those matters required by law:

- i. how the remuneration policy has been implemented in the past financial year;
- ii. how ~~the~~ implementation of the remuneration policy contributes to long-term value creation;
- iii. ~~that~~ how scenario analyses have been taken into consideration;
- iv. the pay ratios within the company and its affiliated enterprise and, if applicable, any changes in these ratios ~~in comparison with~~ compared to the previous financial year;
- v. in the event ~~that~~ a management board member receives variable remuneration, how this remuneration contributes to long-term value creation, the measurable performance criteria determined in advance ~~upon~~ on which the variable remuneration depends, and the relationship between ~~the~~ remuneration and performance; and
- vi. in the event ~~that~~ a current or former management board member receives a severance payment, the reason for this payment.

Explanatory notes

The legal requirements for the remuneration report are stipulated in ~~Section~~ Article 2:135b and Article 2:383c to Section Article 2:383e, inclusive of the Dutch Civil Code. Best practice provision 3.1.4, ~~section iv 3.4.1.ii~~ stipulates that information about the pay ratios within the company and its affiliated enterprise ~~should form part of it~~ should be explained in the remuneration report. ~~The ratio between the~~ how implementation of the remuneration policy contributes to long-term value creation. An explanation should be provided showing, amongst other things, how consistent the total remuneration of ~~the~~ management board members ~~and that of a representative reference group determined by the company must be stated,~~ along with ~~whether there have been any changes in~~ these ratios compared to the previous financial year. is with the remuneration policy, how account is taken of ESG objectives when implementing the remuneration policy and how this contributes to long-term value creation.

Material benefits awarded in exceptional cases should also be included in the remuneration report.

The term 'pay ratios' as referred to in best practice provision 3.4.1.iv is defined as the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and of those group companies whose financial data are consolidated with the company, where:

- › a) the total annual remuneration of the CEO includes all remuneration components, such as fixed remuneration, variable cash remuneration (bonus), share-based remuneration, social security contributions, pension payments, expense allowance, etc., included in the consolidated financial statements on an IFRS basis;
- › b) the average annual remuneration of the employees is determined by dividing the total wage cost for the financial year (as recorded in the consolidated financial statements on an IFRS basis) by the average number of FTEs during the financial year. External employees should be taken into account to the extent they were hired for at least three months during the financial year; and
- › c) the value of share-based remuneration is determined at the time of assignment, in accordance with the applicable IFRS rules.

It should also be explained whether there have been any changes in the pay ratios compared to previous financial years. As well as the minimum information that can be expected based on the aforementioned definition of the term pay ratios as referred to in best practice provision 3.4.1.iv, 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.

Companies may also use the Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828, even if they have not yet been published in final form, when preparing the remuneration report.

CHAPTER 4. THE GENERAL MEETING

Principle 4.1 The general meeting

4.1.7 Stipulation of the response time

New text

If the management board stipulates a response time, ~~this~~^{it} should be a reasonable period that does not exceed 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting at which the item is to be dealt with. The management board should use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and should explore the alternatives. At the end of the response time, the management board should report on this consultation and the exploration to the general meeting. This should be monitored by the supervisory board.

The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which the response time had been previously stipulated; [or a statutory reflection period as referred to in Article 114b of Book 2 of the Dutch Civil Code was used](#) or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

Explanatory notes

[The statutory reflection period, which was introduced into the Dutch Civil Code on 1 May 2021 \(Article 114b of Book 2 of the Dutch Civil Code\), can be regarded as a partial codification of the response time provided for by the Code. However, there are sufficient differences between the two provisions to retain the response time. For instance, the response time can often be raised at an earlier stage and for more subjects than the reflection period, and the consequences of doing so are different. The starting point of the legislation is that the two provisions can co-exist. The legislation leaves it to the courts to rule on any undesirable overlap of the statutory reflection period and other protective measures.](#)

[The starting point of the Code is that, where the same matter is involved, overlapping or successive application of the response time and the statutory reflection period is undesirable. For that reason, a provision has been added to the Code to the effect that the response time may not be invoked if the statutory reflection period has previously been raised for the same matter. Where the response time is raised first, it would seem logical for the response time to be deducted from the statutory reflection period.](#)

Principle 4.2 Provision of information

4.2.2 Policy on bilateral contacts with shareholders

New text

4.2.2 Policy on ~~bilateral contacts~~ **Contact and dialogue** with shareholders

The company should formulate an outline policy on bilateral contacts with the shareholders and should post this policy on its website. Shareholders and the company are prepared to enter into a dialogue, where appropriate and at their own discretion. The company is expected to facilitate such dialogue unless, in the opinion of the management board, this is not in the interest of the company and its affiliated enterprise. In the event a shareholder enters into dialogue with the company outside the context of a general meeting, the shareholder shall disclose its full equity holding (long and short) at the request of the company.

Explanatory notes

Under Dutch company law, companies and shareholders must behave towards one another in accordance with standards of reasonableness and fairness. In this context, shareholders are expected to be prepared to enter into a constructive dialogue with companies.

Principle 4.3 Casting of votes

4.3.1 Voting as deemed fit

New text

~~A shareholder should vote as he sees fit. A shareholder who makes use of the voting advice of a third party is expected to form his own judgment on the voting policy or the voting advice provided by this adviser.~~ Shareholders, including institutional investors, should exercise their voting rights on an informed basis and as they see fit. Institutional investors who use the services of voting advisers (i) should encourage their voting advisers to be prepared to enter into a dialogue with the company regarding their voting policy and guidelines and (ii) ensure that their votes are cast in line with their own voting policy.

4.3.5 Publication of institutional investors' voting policy

New text

4.3.5 Publication of **engagement policy by** institutional investors' ~~voting policy~~

~~Institutional investors (pension funds, insurers, investment institutions and asset managers) should implement best practice provision 1.1.5 when drawing up their engagement policy. Institutional investors should post annually, in any event their voting policy on their website, their policy on the exercise of the voting rights for shares they hold in listed companies.~~ Institutional investors should implement best practice provision 1.1.5 when drawing up their engagement policy. Institutional investors should post annually, in any event their engagement policy on their website, their policy on the exercise of the voting rights for shares they hold in listed companies.

4.3.6 Report on the implementation of institutional investors' voting policy

New text

4.3.6 Report on the implementation of Reporting by institutional investors' ~~voting on implementation of their engagement~~ policy

Institutional investors should report, at least annually, on their website and/or in their management report, on how they implemented ~~their policy on the exercise of the voting rights in the relevant financial year.~~ engagement policy. The report should in any event provide a general description of their voting behaviour and an explanation of the most significant votes and the use of the services of voting advisers.

In addition, ~~they~~ institutional investors should report on their website at least once per quarter on whether and, if so, how they have voted as shareholders at ~~general meetings.~~ This report will be posted on the website of the institutional investor. for each company and each voting item.

In the event an institutional investor votes against or refrains from voting on a management proposal, it should explain the reasons for this voting behaviour to the company's board either pro-actively or at the company's request.

Explanatory notes

The term 'most significant votes' as referred to in best practice provision 4.3.6 should in any event be understood to mean:

- i. votes on matters that have received substantial media attention or votes on items that are regarded by the institutional investor as a priority in the run-up to the general meeting season;
- ii. votes on an item on the agenda of a general meeting (a) that is of economic or strategic importance, (b) where the outcome of the vote is expected to be uncertain or controversial or (c) where the institutional investor disagrees with the recommendation of the company's management board;
- iii. votes at general meetings of companies where the institutional investor has a large holding compared to the institutional investor's holdings in other investee companies.

4.3.7 Abstention in the event of a larger short than long position (to be inserted as a new provision)

New text

Shareholders shall abstain from voting if their short position in the company is larger than their long position.

4.3.8 Lent shares (to be inserted as a new provision)

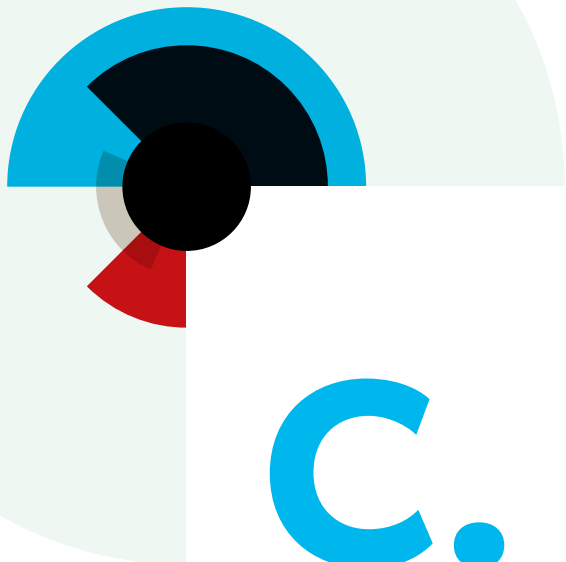
New text

Shareholders should recall their lent shares before the record date for a general meeting of the company if the agenda for the meeting contains one or more significant items.

Explanatory notes

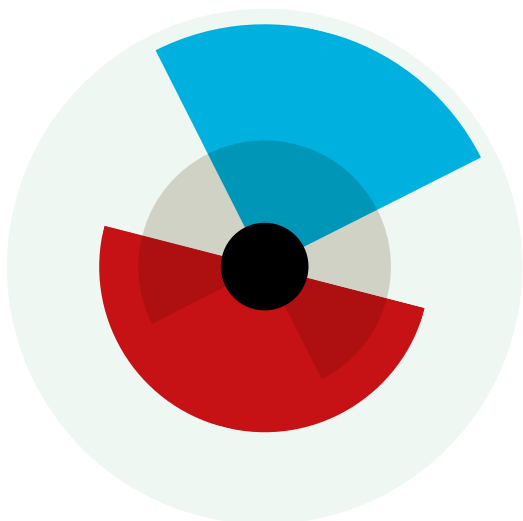
Shareholders shall determine what they consider to be a significant matter, but this definition should include at least a proposal on the agenda of a general meeting:

- i. that is of economic or strategic importance;
- ii. whose voting outcome is anticipated to be uncertain or controversial;
- iii. where the shareholder disagrees with the recommendation of the company's management board.



C.

FULL AMENDED TEXT OF THE CODE



PREAMBLE

Focusing on the governance of listed companies, the Dutch Corporate Governance Code (referred to below as the Code) provides guidance for effective cooperation and management. Governance is about management and control, about responsibility and influence, and about supervision and accountability. The purpose of the Code is to facilitate – with or in relation to other laws and regulations – a sound and transparent system of checks and balances within Dutch listed companies and, to that end, to regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). Compliance with the Code contributes to confidence in the good and responsible management of companies and their integration into society.

The Code was first adopted in 2003 and was amended ~~once~~ in 2008 [and 2016](#). At the request of the National Federation of Christian Trade Unions in the Netherlands (CNV), Eumedion, the Federation of Dutch Trade Unions (FNV), Euronext NV, the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW), the Code has been amended by the Corporate Governance Code Monitoring Committee (referred to below as the Committee). Ongoing developments, the spirit of the times and overlaps with legislation were reasons to amend the Code. The present Code ~~replaces~~ [is an updated version of the 2008](#) [2016](#) Code.

Scope

The Code applies to:

- i. all companies whose registered offices are in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system; and
- ii. all large companies whose registered offices are in the Netherlands (balance sheet value > €500 million) and whose shares, or depositary receipts for shares, have been admitted to trading on a multi-lateral trading facility or a comparable system.

For the purposes of the Code, holders of depositary receipts issued with the cooperation of the company are equated with shareholders. The Code does not apply to an investment company or an undertaking for collective investment in transferable securities that is not a manager within the meaning of [Section Article 1:1](#) of the Financial Supervision Act (*Wet op het financieel toezicht/Wft*).

Contents of the Code

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). The principles and provisions are aimed at defining responsibilities for long-term value creation, risk control, effective management and supervision, remuneration and the relationship with shareholders (including the general meeting of shareholders) and stakeholders. The principles may be regarded as reflecting widely held general views on good corporate governance. The principles have been supplemented in the form of best practice provisions. These provisions contain standards for the conduct of management board members, supervisory board members and shareholders. They reflect best practices and supplement the general principles of good corporate governance. Companies may depart from these best practice provisions, provided that they give reasons for doing so. The conditions for departures are explained below under ‘Compliance with the Code’

The relationship between the company and its employees (representatives) is regulated by law. This relationship is addressed in the Code in those provisions which relate to culture and the contact between the supervisory board and the employee participation body.

Underlying notions

The Code is based on the notion that a company is a long-term alliance between the various stakeholders of the company. Stakeholders are groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company’s objectives: employees, shareholders and other lenders, suppliers, customers and other stakeholders. The management board and the supervisory board have responsibility for weighing up these interests, generally with a view to ensuring the continuity of the company and its affiliated enterprise, as the company seeks to create long-term value.

If stakeholders are to cooperate within and with the company, they need to be confident that their interests are duly taken into consideration. Good entrepreneurship and effective supervision are essential conditions for stakeholder confidence in management and supervision. This includes integrity and transparency of the management board’s actions and accountability for the supervision by the supervisory board. The operation of the Code is not determined by the extent to which it is complied with to the letter, but rather by the extent to which all stakeholders are guided by the spirit of the Code.

Shareholders and institutional investors

Shareholders can give priority to their own interests, as long as they act in keeping with the principles of reasonableness and fairness in relation to the company, its organs and their fellow shareholders. This includes the willingness to engage with the company and fellow shareholders. The greater the interest which the shareholder has in a company, the greater is his responsibility to the company, fellow shareholders and other stakeholders. Institutional investors are responsible to the ultimate beneficiary owners for the careful and transparent assessment of how to exercise their rights as shareholders of companies.

Relation to legislation

The Code was formed by self-regulation. It was made by, and is intended for, the parties addressed by the Code. Self-regulation means that parties draw up their own rules, without government intervention, to which they then commit themselves by following, enforcing and updating those rules. Self-regulation supplements government regulation. The Code should be viewed in the context of Dutch and European legislation and case law on corporate governance. The particular merit of the Code as an instrument of self-regulation is that the Code focuses more on the behaviour of management board members, supervisory board members and shareholders.

The amendments to the Code are based on the applicable legislation and case law on the external and internal relations of companies, and take into account relevant corporate governance trends. When formulating the principles and best practice provisions, overlaps with legislation have been avoided as much as possible. For the sake of the Code’s readability and its internal coherence, some overlap between legislation and the Code is unavoidable, if only because the Code can supplement statutory provisions.

One-tier governance structure

The Netherlands traditionally works with a dualistic governance model (i.e. a two-tier governance structure). The Code is focused on this model. In companies with a two-tier governance structure, management and supervision are divided between two company bodies: the management board and the supervisory board. Chapter 5 pertains to companies with a one-tier governance structure. Companies with a one-tier governance structure have a single management board comprised of executive and non-executive directors. In this situation, the latter supervise the former, and there is no supervisory board. Non-executive directors and executive directors have joint management responsibility. It is important that independent supervision by non-executive directors is sufficiently ensured.

COMPLIANCE WITH THE CODE

The management board and the supervisory board are responsible for the corporate governance of the company and for compliance with this Code. Compliance with the Code is based on the 'comply or explain' principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the principles and best practice provisions. The management board and the supervisory board account for compliance with the Code in the general meeting, and provide a substantive and transparent explanation for any departures from the principles and best practice provisions.

The broad outline of the company's corporate governance is set out each year in a separate chapter of the management report or published on the company's website, partly on the basis of the principles stated in this Code. Here the company explicitly states the extent to which it complies with the principles and best practice provisions stipulated in this Code and, where it does not comply with them, why and to what extent it deviates from them.

Importantly, the explanation of any departures should in any event include the following elements:

- i. how the company departed from the principle or the best practice provision;
- ii. the reasons for the departure;
- iii. if the departure is of a temporary nature and continues for more than one financial year, an indication of when the company intends to comply with the principle or the best practice provision again; and
- iv. where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the purpose of the principle or the best practice provision or a clarification of how the measure contributes to good corporate governance of the company.

Shareholders, businesses that specialise in rating the corporate governance of listed companies and persons who advise on the exercise of voting rights attaching to shares should carefully assess the reason for each and every departure from the Code's principles and best practice provisions. Shareholders as well as the management board and supervisory board should be prepared to engage with each other to discuss the reason why a principle or best practice provision was not applied. It is up to the shareholders to call the management board and the supervisory board to account for compliance with the Code. The guiding principle here is that corporate governance requires a tailor-made approach and departures may be justified. Companies and shareholders share responsibility for good self-regulation according to the 'comply or explain' principle so that it can serve as an effective alternative to legislation

CHAPTER 1. LONG-TERM VALUE CREATION

Principle 1.1 Long-term value creation

The management board is responsible for the continuity of the company and its affiliated enterprise. The management board focuses on long-term value creation for the company and its affiliated enterprise, is aware of the impact the actions of the company and its affiliated enterprise have on the production and value chain and takes into account the relevant stakeholder interests ~~that are relevant~~ in this context. The supervisory board monitors the management board ~~in this~~.

1.1.1 Long-term value creation strategy

The management board should develop a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy in line with this. This should include an ESG strategy (the Environmental, Social & Governance aspects of running a business), for which the management board should formulate specific objectives. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy.

When developing the strategy, attention should in any event be paid to the following:

- i. the strategy's implementation and feasibility;
- ii. the business model applied by the company and the market in which the company and its affiliated enterprise operate;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in on relevant markets;
- v. the interests of ~~the~~ stakeholders; ~~and~~
- vi. ~~any other aspects relevant to the company and its affiliated enterprise, such as the environment, social and employee-related matters, the chain within which the enterprise operates, respect for human rights, and fighting corruption and bribery.~~
- vi. the balanced contribution to the communities in which the company operates through the payment of taxes; and
- vii. the ESG-related impact of the company and its affiliated enterprise, throughout the entire production and value chain.

1.1.2 Involvement of the supervisory board

The management board should engage the supervisory board early on in formulating the strategy for realising long-term value creation. The management board renders account to the supervisory board of the strategy and the explanatory notes to that strategy.

1.1.3 Role of the supervisory board

The supervisory board should supervise the manner in which the management board implements the long-term value creation strategy. The supervisory board should regularly discuss the strategy, the implementation of the strategy and the principal risks associated with it. In the report drawn up by the supervisory board, an account is given of its involvement in the establishment of the strategy, and the way in which it monitors its implementation.

1.1.4 ~~Accountability of~~ Reporting by the management board

In the management report, the management board should ~~give~~ provide a more detailed explanation of its

view on long-term value creation and the strategy for its realisation, as well as describing which to realise this and describe the contributions ~~were~~ made to long-term value creation in the past financial year. In addition, the management board should describe the ESG strategy and objectives, the impact operational management has had on the production and value chain (quantified and monetised, where possible), how it takes account of the interests of stakeholders, what action has been taken in that context, and the extent to which the objectives have been achieved. The management board should report on both ~~the short-term~~short- and long-term developments.

1.1.5 Role of shareholders

Shareholders, including institutional investors (pension funds, insurers, investment institutions and asset managers), recognise the importance of a strategy focused on long-term value creation.

1.1.6 Dialogue with stakeholders

To ensure that the interests of relevant stakeholders are included in the management board's considerations when determining the company's ESG strategy, the management board should draw up a policy for effective dialogue with these stakeholders and facilitate such dialogue.

Principle 1.2 Risk management

The company should have adequate internal risk management and control systems in place. The management board is responsible for identifying and managing the risks associated with the company's strategy and activities.

1.2.1 Risk assessment

The management board should identify and analyse the risks associated with the strategy and activities of the company and its affiliated enterprise. It is responsible for establishing the risk appetite, and also the measures that are put in place in order to counter the risks being taken.

1.2.2 Implementation

Based on the risk assessment, the management board should design, implement and maintain adequate internal risk management and control systems. To the extent relevant, these systems should be integrated into the work processes within the company and its affiliated enterprise it, and should be familiar to those whose work they are relevant to.

1.2.3 Monitoring of effectiveness

The management board should monitor the operation of the internal risk management and control systems and should carry out a systematic assessment of their design and effectiveness at least once a year. This monitoring should cover all material control measures relating to strategic, operational, compliance and reporting risks. Attention should be given to observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the external auditor. Where necessary, improvements should be made to internal risk management and control systems.

Principle 1.3 Internal audit function

The duty of the internal audit function is to assess the design and the operation of the internal risk management and control systems. The management board is responsible for the internal audit function. The supervisory board oversees the internal audit function and maintains regular contact with the person fulfilling this function.

1.3.1 Appointment and dismissal

The management board both appoints and dismisses the senior internal auditor. Both the appointment and

the dismissal of the senior internal auditor should be submitted to the supervisory board for approval, along with the recommendation issued by the audit committee.

1.3.2 Assessment of the internal audit function

The management board should assess [on an annual basis, in consultation with the audit committee](#), the way in which the internal audit function fulfils its responsibility ~~annually, taking into account the audit committee's opinion.~~ [An independent third party should assess the performance of the internal audit function at least once every five years.](#)

1.3.3 Internal audit plan

The internal audit function should draw up an audit plan, ~~involving~~ [in consultation with](#) the management board, the audit committee and the external auditor ~~in this process~~. The audit plan should be submitted to the management board, and then to the supervisory board, for approval. In ~~this~~ [the](#) internal audit plan, attention should be paid to ~~the~~ interaction with the external auditor.

1.3.4 Performance of work

The internal audit function should have sufficient resources to execute the internal audit plan and have access to information that is important for the performance of its work. The internal audit function should have direct access to the audit committee and the external auditor. Records should be kept of how the audit committee is informed by the internal audit function.

1.3.5 Reports of findings

The internal audit function should report ~~its~~ [the](#) audit results to the management board and the ~~essence of its audit results to the~~ audit committee and ~~should~~ inform the external auditor.

The ~~research~~ findings of the internal audit function should, ~~at least,~~ include the following:

- i. any flaws in the effectiveness of the internal risk management and control systems;
- ii. any findings and observations with a material impact on the risk profile of the company and its affiliated enterprise; and
- iii. any failings in the follow-up of recommendations made by the internal audit function.

1.3.6 Absence of an internal audit department

If there is no separate department for the internal audit function, the supervisory board will assess annually whether adequate alternative measures have been taken, partly on the basis of a recommendation issued by the audit committee, and will consider whether it is necessary to establish an internal audit department. The supervisory board should include the conclusions, along with any resulting recommendations and alternative measures, in the report of the supervisory board..

Principle 1.4 Risk management accountability

The management board should render account of the effectiveness of the design and the operation of the internal risk management and control systems.

1.4.1 Accountability to the supervisory board

The management board should discuss the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3 inclusive with the audit committee, and render account of this to the supervisory board.

1.4.2 Accountability in the [Reporting on risk management report](#)

In the management report, the management board should render account of:

- i. the execution of the risk assessment, with a description of the principal risks facing the company in relation to its risk appetite. These risks may include strategic, operational, compliance and reporting risks;

- ii. the design and operation of the internal risk management and control systems during the past financial year;
- iii. any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the audit committee and the supervisory board; and
- iv. the sensitivity of the results of the company to material changes in external factors.

1.4.3 Statement by the management board

The management board should state in the management report, with clear substantiation, that:

- i. the report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems;
- ii. the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
- iii. based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and
- iv. the report states those material risks and uncertainties that are relevant to the expectation of the company's continuity for the period of twelve months after the preparation of the report.

Principle 1.5 Role of the supervisory board

The supervisory board should supervise the policies carried out by the management board and the general affairs of the company and its affiliated enterprise. In so doing, the supervisory board should also focus on the effectiveness of the company's internal risk management and control systems and the integrity and quality of the financial reporting.

1.5.1 Duties and responsibilities of the audit committee

The audit committee undertakes preparatory work for the supervisory board's decision-making regarding the supervision of the integrity and quality of the company's financial reporting and the effectiveness of the company's internal risk management and control systems. Among other things, it focuses on monitoring the management board with regard to:

- i. relations with, and compliance with recommendations and following up of comments by, the internal and external auditors;
- ii. the funding of the company;
- iii. the application of information and communication technology by the company, including risks relating to cybersecurity; and
- iv. the company's tax policy.

1.5.2 Attendance of the management board, internal auditor and external auditor at audit committee consultations

The chief financial officer, the internal auditor and the external auditor should attend the audit committee meetings, unless the audit committee determines otherwise. The audit committee should decide whether and, if so, when the [chairman](#) [chair](#) of the management board should attend its meetings.

1.5.3 Audit committee report

The audit committee should report to the supervisory board on its deliberations and findings. This report must, at least, include the following information:

- i. the methods used to assess the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3, inclusive;
- ii. the methods used to assess the effectiveness of the internal and external audit processes;
- iii. material considerations regarding financial reporting;

- iv. the way material risks and uncertainties referred to in best practice provision 1.4.3 have been analysed and discussed, along with a description of the most important findings of the audit committee.

1.5.4 Supervisory board

The supervisory board should discuss the items reported on by the audit committee as per of best practice provision 1.5.3.

Principle 1.6 Appointment and assessment of the functioning of the external auditor

The supervisory board should submit the nomination for the appointment of the external auditor to the general meeting, and should supervise the external auditor's functioning.

1.6.1 Functioning and appointment

The audit committee should report annually to the supervisory board on the functioning of, and the developments in, the relationship with the external auditor. The audit committee should advise the supervisory board regarding the external auditor's nomination for appointment/reappointment or dismissal and should prepare the selection of the external auditor. The audit committee should give due consideration to the management board's observations during the aforementioned work. Also on this basis, the supervisory board should determine its nomination for the appointment of the external auditor to the general meeting.

1.6.2 Informing the external auditor about their functioning

The supervisory board should give the external auditor a general idea of the content of the reports relating to their functioning.

1.6.3 Engagement

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the financial statements. The management board should play a facilitating role in this process. In formulating the terms of engagement, attention should be paid to the scope of the audit, the materiality to be used and remuneration for the audit. The supervisory board should resolve on the engagement.

1.6.4 Accountability

The main conclusions of the supervisory board regarding the external auditor's nomination and the outcomes of the external auditor selection process should be communicated to the general meeting.

1.6.5 Departure of the external auditor

The company should publish a press release in the event of the early termination of the relationship with the external audit firm. The press release should explain the reasons for this early termination.

Principle 1.7 Performance of the external auditor's work

The audit committee and the external auditor should discuss the audit plan and the findings of the external auditor based on the work the external auditor has undertaken. The management board and the supervisory board should maintain regular contact with the external auditor.

1.7.1 Provision of information to the external auditor

The management board should ensure that the external auditor will receive all information that is necessary for the performance of his work in a timely fashion. The management board should give the external auditor the opportunity to respond to the information that has been provided.

1.7.2 Audit plan and external auditor's findings

The external auditor should discuss the draft audit plan with the management board before presenting it to the audit committee. The audit committee should annually discuss with the external auditor:

- i. the scope and materiality of the audit plan and the principal risks of the annual reporting identified by the external auditor in the audit plan; and
- ii. based also on the documents from which the audit plan was developed, the findings and outcomes of the audit work on the financial statements and the management letter.

1.7.3 Publication of financial reports

The audit committee should determine whether and, if so, how the external auditor should be involved in the content and publication of financial reports other than the financial statements.

1.7.4 Consultations with the external auditor outside the management board's presence

The audit committee should meet with the external auditor as often as it considers necessary, but at least once per year, outside the presence of the management board.

1.7.5 Examination of discussion points arising between the external auditor and the management board

The supervisory board should be permitted to examine the most important points of discussion arising between the external auditor and the management board based on the draft management letter or the draft audit report.

1.7.6 External auditor's attendance of supervisory board meetings

The external auditor should in any event attend the meeting of the supervisory board at which the report of the external auditor on the audit of the financial statements is discussed.

CHAPTER 2. EFFECTIVE MANAGEMENT AND SUPERVISION

Principle 2.1 Composition and size

The management board ~~and~~, the supervisory board and the executive committee (if applicable) should be composed ~~such that the requisite~~ so that there is a good balance between expertise, experience, competencies, personal qualities, age, gender identity, nationality, background, ~~competencies including cultural background,~~ and – as regards the supervisory board – the requisite independence ~~are present for them to, to ensure that these bodies can~~ carry out their duties properly. The size of ~~these two~~ the bodies reflects these requirements.

2.1.1 Profile

The supervisory board should prepare a profile, taking account of the nature and the activities of the enterprise affiliated with the company. The profile should address:

- i. the desired expertise and background of the supervisory board members;
- ii. the desired diverse composition of the supervisory board, referred to in best practice provision 2.1.5;
- iii. the size of the supervisory board; and
- iv. the independence of the supervisory board members.

The profile should be posted on the company's website.

2.1.2 Personal information

The following information about each supervisory board member should be included in the report of the supervisory board:

- i. ~~sex~~ gender identity (provided the supervisory board member wishes to include this information);
- ii. age;
- iii. nationality;
- iv. ~~principal position~~;
- v. iv. principal and other positions, ~~in so far as they are~~ insofar as relevant to the performance of the duties of the supervisory board member;
- vi. v. date of initial appointment; and
- vii. vi. current term of office.

2.1.3 Executive committee

If the management board works with an executive committee, the management board should take account of the checks and balances that are part of the two-tier system. This means, among other things, that the management board's expertise and responsibilities are safeguarded and the supervisory board is informed adequately. The supervisory board should supervise this whilst paying specific attention to the dynamics and the relationship between the management board and the executive committee.

In the management report, account should be rendered of:

- i. the choice to work with an executive committee;
- ii. the role, duty and composition of the executive committee; and
- iii. how the contacts between the supervisory board and the executive committee have been given shape.

2.1.4 Expertise

Each supervisory board member and each management board member should have the specific expertise required for the fulfilment of his duties. Each supervisory board member should be capable of assessing the broad outline of the overall management.

2.1.5 Diversity Policy on diversity and inclusion (D&I policy)

The company should have a firmwide D&I policy. The D&I policy should set, amongst other things, appropriate and ambitious targets to achieve a good balance in gender diversity, and concrete targets as regards the composition of the management board, the supervisory board, the executive committee (if applicable) and, if this group is broader, a category of employees in managerial positions ('senior management', to be determined by the management board.

The supervisory board should ~~draw up a diversity~~ adopt the D&I policy for the composition of the management board, the supervisory board and, if applicable, the executive committee. ~~The policy should address the concrete targets relating to diversity and the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background.~~

The management board should adopt the D&I policy at senior management level and for the rest of the workforce, under the supervision of the supervisory board.

2.1.6 Accountability about diversity Reporting on the D&I policy

The corporate governance statement should explain the ~~diversity~~ D&I policy and the way that it is implemented in practice, addressing:

- i. the ~~policy~~ objectives of the D&I policy;
- ii. how the D&I policy has been implemented; and
- iii. the results of the D&I policy in the past financial year and – where relevant and applicable – insight into inflow, progression and retention of diverse talent within the organisation.

If the composition of the management board ~~and~~, the supervisory board, the executive committee (if applicable) and/or senior management diverges from the targets stipulated in the ~~company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law,~~ company's D&I policy, the current state of affairs should be outlined in the corporate governance statement, ~~along with~~ and an explanation ~~as to which~~ provided of the measures ~~are~~ being taken to ~~attain~~ achieve the ~~intended target,~~ targets and by when ~~this is~~ they are likely to be achieved.

2.1.7 Independence of the supervisory board

The composition of the supervisory board is such that the members are able to operate independently and critically vis-à-vis one another, the management board, and any particular interests involved.

In order to safeguard its independence, the supervisory board is composed in accordance with the following criteria:

- i. any one of the criteria referred to in best practice provision 2.1.8, sections i. to v. inclusive should be applicable to at most one supervisory board member;
- ii. the total number of supervisory board members to whom the criteria referred to in best practice provision 2.1.8 are applicable should account for less than half of the total number of supervisory board members; and
- iii. for each shareholder, or group of affiliated shareholders, who directly or indirectly hold more than ten percent of the shares in the company, there is at most one supervisory board member who can be considered to be affiliated with or representing them as stipulated in best practice provision 2.1.8, sections vi and vii.

2.1.8 Independence of supervisory board members

A supervisory board member is not independent if they or their spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree:

- i. has been an employee or member of the management board of the company (including associated companies as referred to in [Section Article 5:48](#) of the Financial Supervision Act (Wet op het financieel toezicht/ Wft)) in the five years prior to the appointment;
- ii. receives personal financial compensation from the company, or a company associated with it, other than the compensation received for the work performed as a supervisory board member and in so far as this is not in keeping with the normal course of business;
- iii. has had an important business relationship with the company or a company associated with it in the year prior to the appointment. This includes in any event the case where the supervisory board member, or the firm of which he is a shareholder, partner, associate or adviser, has acted as adviser to the company (consultant, external auditor, civil notary or lawyer) and the case where the supervisory board member is a management board member or an employee of a bank with which the company has a lasting and significant relationship;
- iv. is a member of the management board of a company in which a member of the management board of the company which he supervises is a supervisory board member;
- v. has temporarily performed management duties during the previous twelve months in the absence or incapacity of management board members;
- vi. has a shareholding in the company of at least ten percent, taking into account the shareholding of natural persons or legal entities cooperating with him or her on the basis of an express or tacit, verbal or written agreement;
- vii. is a member of the management board or supervisory board – or is a representative in some other way – of a legal entity which holds at least ten percent of the shares in the company, unless the entity is a group company.

2.1.9 Independence of the chairman [chair](#) of the supervisory board

The [chairman-chair](#) of the supervisory board should not be a former member of the management board of the company and should be independent within the meaning of best practice provision 2.1.8.

2.1.10 Accountability regarding supervisory board member independence

The report of the supervisory board should state that, in the opinion of the supervisory board, the independence requirements referred to in best practice provisions 2.1.7 to 2.1.9 inclusive have been fulfilled and, if applicable, should also state which supervisory board member(s), if any, it does not consider to be independent.

Principle 2.2 Appointment, succession and evaluation

The supervisory board should ensure that a formal and transparent procedure is in place for the appointment and reappointment of management board and supervisory board members, as well as a sound plan for the succession of management board and supervisory board members, with due regard to the diversity policy. The functioning of the management board and the supervisory board as a collective and the functioning of individual members should be evaluated on a regular basis.

2.2.1 Appointment and reappointment periods – management board members

A management board member is appointed for a maximum period of four years. A member may be reappointed for a term of not more than four years at a time, which reappointment should be prepared in a timely fashion. The diversity objectives from best practice provision 2.1.5 should be considered in the preparation of the appointment or reappointment.

2.2.2 Appointment and reappointment periods – supervisory board members

A supervisory board member is appointed for a period of four years and may then be reappointed once for another four-year period. The supervisory board member may then subsequently be reappointed again for a period of two years, which appointment may be extended by at most two years. In the event of a reappointment after an eight-year period, reasons should be given in the report of the supervisory board. In any appointment or reappointment, the profile referred to in best practice provision 2.1.1 should be observed.

2.2.3 Early retirement

A member of the supervisory board or the management board should retire early in the event of inadequate functioning, structural incompatibility of interests, and in other instances in which this is deemed necessary by the supervisory board. In the event of the early retirement of a member of the management board or the supervisory board, the company should issue a press release mentioning the reasons for the departure.

2.2.4 Succession

The supervisory board should ensure that the company has a sound plan in place for the succession of management board and supervisory board members that is aimed at retaining the balance in the requisite expertise, experience and diversity. Due regard should be given to the profile referred to in best practice provision 2.1.1 in drawing up the plan for supervisory board members. The supervisory board should also draw up a retirement schedule in order to avoid, as much as possible, supervisory board members retiring simultaneously. The retirement schedule should be published on the company's website.

2.2.5 Duties of the selection and appointment committee

The selection and appointment committee should prepare the supervisory board's decision-making and report to the supervisory board on its deliberations and findings.

The selection and appointment committee should in any event focus on:

- i. drawing up selection criteria and appointment procedures for management board members and supervisory board members;
- ii. periodically assessing the size and composition of the management board and the supervisory board, and making a proposal for a composition profile of the supervisory board;
- iii. periodically assessing the functioning of individual management board members and supervisory board members, and reporting on this to the supervisory board;
- iv. drawing up a plan for the succession of management board members and supervisory board members;
- v. making proposals for appointments and reappointments; and
- vi. supervising the policy of the management board regarding the selection criteria and appointment procedures for senior management.

2.2.6 Evaluation by the supervisory board

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 board members, and should discuss the conclusions ~~that are attached to the~~ [of this](#) evaluation. In doing so, attention should be paid to:

- i. substantive aspects, ~~the~~ [behaviour and culture](#), mutual interaction and ~~the~~ [cooperation, and](#) interaction with the management board;
- ii. events that occurred in practice from which lessons may be learned; and
- iii. the desired profile, composition, competencies and expertise of the supervisory board.

2.2.7 Evaluation of the management board

At least once per year, outside the presence of the management board, the supervisory board should evaluate both the functioning of the management board as a whole and that of the individual management board members, and should discuss the conclusions that must be attached to the evaluation, such also in light of

the succession of management board members. At least once annually, the management board, too, should evaluate its own functioning as a whole and that of the individual management board members.

2.2.8 Evaluation accountability [Reporting on evaluation](#)

The supervisory board's report should state:

- i. how the evaluation of the supervisory board, the various committees and the individual supervisory board members has been carried out;
- ii. how the evaluation of the management board and the individual management board members has been carried out; and
- iii. what has been or will be done with the conclusions from the evaluations.

Principle 2.3 Organisation of the supervisory board and reports

The supervisory board should ensure that it functions effectively. The supervisory board should establish committees to prepare the supervisory board's decision-making. The foregoing does not affect the responsibility of the supervisory board as an organ and of the individual members of the supervisory board for obtaining information and forming an independent opinion.

2.3.1 Supervisory board's terms of reference

The division of duties within the supervisory board and the procedure 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 be posted on the company's website.

2.3.2 Establishment of committees

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 such committee(s) should apply to the entire supervisory board.

2.3.3 Committees' terms of reference

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.

2.3.4 Composition of the committees

The audit committee or the remuneration committee should not be chaired by the ~~chairman~~[chair](#) of the supervisory board or by a former member of the management board of the company. More than half of the members of the committees should be independent within the meaning of best practice provision 2.1.8.

2.3.5 Committee reports

The supervisory board should receive from each of the committees a report of their deliberations and findings. In the report of the supervisory board it should comment on how the duties of the committees were carried out in the financial year. In this report, the composition of the committees, the number of committee meetings and the main items discussed at the meetings should be mentioned.

2.3.6 **ChairmanChair of the supervisory board**

The ~~chairman~~chair of the supervisory board should in any case ensure that:

- i. the supervisory board has proper contact with the management board, the employee participation body (if any) and the general meeting;
- ii. the supervisory board elects a ~~vice-chairman~~vice-chair;
- iii. there is sufficient time for deliberation and decision-making by the supervisory board;
- iv. the supervisory board members receive all information that is necessary for the proper performance of their duties in a timely fashion;
- v. the supervisory board and its committees function properly;
- vi. the functioning of individual management board members and supervisory board members is assessed at least annually;
- vii. the supervisory board members and management board members follow their induction programme;
- viii. viii. the supervisory board members and management board members follow their education or training programme;
- ix. the management board performs activities in respect of culture;
- x. the supervisory board recognises signs from the enterprise affiliated with the company and ensures that any (suspicion of) material misconduct and irregularities are reported to the supervisory board without delay;
- xi. the general meeting proceeds in an orderly and efficient manner;
- xii. effective communication with shareholders is assured; and
- xiii. the supervisory board is involved closely, and at an early stage, in any merger or takeover processes.

The ~~chairman~~chair of the supervisory board should consult regularly with the ~~chairman~~chair of the management board.

2.3.7 **Vice-chairmanVice-chair of the supervisory board**

The ~~vice-chairman~~vice-chair of the supervisory board should deputise for the ~~chairman~~chair when the occasion arises.

2.3.8 **Delegated supervisory board member**

A delegated supervisory board member is a supervisory board member who has a special task. The delegation may not extend beyond the responsibilities of the supervisory board itself and may not include the management of the company. Its purpose is more intensive supervision and advice and more regular consultation with the management board. The delegation should be of a temporary nature only. The delegation may not detract from the duties and powers of the supervisory board. The delegated supervisory board member continues to be a member of the supervisory board and should report regularly on the execution of his special duty to the plenary supervisory board.

2.3.9 **Temporary management board function of a supervisory board member**

A supervisory board member who temporarily takes on the management of the company, where the management board members are absent or unable to fulfil their duties, should resign from the supervisory board.

2.3.10 **Company secretary**

The supervisory board should be supported by the company secretary. The secretary:

- i. should ensure that the proper procedures are followed and that the statutory obligations and obligations under the articles of association are complied with;
- ii. should facilitate the provision of information of the management board and the supervisory board; and
- iii. should support the ~~chairman~~chair of the supervisory board in the organisation of the affairs of the supervisory board, including the provision of information, meeting agendas, evaluations and training programmes.

The company secretary should, either on the motion of the supervisory board or otherwise, be appointed and dismissed by the management board, after the approval of the supervisory board has been obtained.

If the secretary also undertakes work for the management board and notes that the interests of the management board and the supervisory board diverge, as a result of which it is unclear which interests the secretary should represent, the secretary should report this to the ~~chairman~~ [chair](#) of the supervisory board.

Indien de secretaris ook werkzaamheden verricht voor het bestuur en signaleert dat de belangen van het bestuur en de raad van commissarissen uiteenlopen, waardoor onduidelijk is welke belangen de secretaris dient te behartigen, meldt hij dit bij de voorzitter van de raad van commissarissen.

2.3.11 Report of the supervisory board

The annual statements of the company include a report by the supervisory board. In this report, the supervisory board should render account of the supervision conducted in the past financial year, reporting in any event on the items referred to in best practice provisions 1.1.3, 2.1.2, 2.1.10, 2.2.8, 2.3.5 and 2.4.4 and, if applicable, the items referred to in best practice provisions 1.3.6 and 2.2.2.

Principle 2.4 Decision-making and functioning

The management board and the supervisory board should ensure that decisions are made in a balanced and effective manner whilst 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 spend sufficient time on their duties and responsibilities. They should ensure that, in performing their duties, they have the information that is required for effective decision-making.

2.4.1 Stimulating openness and accountability

The management board and the supervisory board are each responsible for stimulating openness and accountability within the organ of which they form part, and between the different organs within the company.

2.4.2 Other positions

Management board members and supervisory board members should report any other positions they may have to the supervisory board in advance and, at least annually, the other positions should be discussed at the supervisory board meeting. The acceptance of membership of a supervisory board by a management board member requires the approval of the supervisory board.

2.4.3 Point of contact for the functioning of supervisory board and management board members

The ~~chairman~~ [chair](#) of the supervisory board should act on behalf of the supervisory board as the main contact for the management board, supervisory board members and shareholders regarding the functioning of management board members and supervisory board members. The ~~vice-chairman~~ [vice-chair](#) should act as contact for individual supervisory board members and management board members regarding the functioning of the ~~chairman~~ [chair](#).

2.4.4 Attendance at supervisory board meetings

Supervisory board members should attend supervisory board meetings and the meetings of the committees of which they are a part. If supervisory board members are frequently absent from these meetings, they should be held to account on this. The report of the supervisory board should state the absenteeism rate from supervisory board and committee meetings of each supervisory board member.

2.4.5 Induction programme for supervisory board members

All supervisory board members should follow an induction programme geared to their role. The induction

programme should in any event cover general financial, social and legal affairs, financial reporting by the company, any specific aspects that are unique to the relevant company and its business activities, the company culture and the relationship with the employee participation body (if any), and the responsibilities of a supervisory board member.

2.4.6 Development

The management board and the supervisory board should each conduct an annual review for their own organ to identify any aspects with regard to which the supervisory board members and management board members require training or education.

2.4.7 Information safeguards

The management board should ensure that internal procedures are established and maintained which safeguard that all relevant information is known to the management board and the supervisory board in a timely fashion. The supervisory board should supervise the establishment and implementation of these procedures.

2.4.8 Supervisory board members' responsibility for obtaining information

The supervisory board and each individual supervisory board member have their own responsibility for obtaining the information from the management board, the internal audit function, the external auditor and the employee participation body (if any) that the supervisory board needs in order to be able to carry out its duties as a supervisory organ properly.

2.4.9 Obtaining information from officers and external parties

If the supervisory board considers it necessary, it may obtain information from officers and external advisers of the company. The company should provide the necessary means to this end. The supervisory board may require that certain officers and external advisers attend its meetings.

Principle 2.5 Culture

The management board is responsible for creating a culture aimed at long-term value creation for the company and its affiliated enterprise. The supervisory board should supervise the activities of the management board in this regard.

2.5.1 Management board's responsibility for culture

The management board should adopt values for the company and its affiliated enterprise that contribute to a culture focused on long-term value creation, and discuss these with the supervisory board. The management board is responsible for the incorporation and maintenance of ~~the~~[these](#) values within the company and its affiliated enterprise. [The management board should encourage behaviour that is in keeping with the values and propagate these values through leading by example.](#)

Attention must be paid to the following, ~~among~~[amongst](#) other things:

- i. the strategy and ~~the~~ business model;
- ii. the environment in which the ~~enterprise~~[company](#) operates; and
- iii. the existing culture within the ~~enterprise~~[company](#) and whether it is desirable to ~~implement~~[make](#) any changes ~~in this~~[to it](#).

~~The management board encourages behaviour that is in keeping with the values, and propagates these values through leading by example.~~

2.5.2 Code of Conduct

The management board should draw up a code of conduct and monitor its effectiveness and compliance with this code, both on the part of itself and of the employees of the company. The management board

should inform the supervisory board of its findings and observations relating to the effectiveness of, and compliance with, the code. The code of conduct will be published on the company's website.

2.5.3 Employee participation

If the company has established an employee participation body, the conduct and culture in the company and its affiliated enterprise should also be discussed in the consultations between the management board, the supervisory board and such employee participation body.

2.5.5 Accountability regarding **2.5.4 Reporting on culture**

In the management report, the management board should explain:

- i. ~~the values and the way in which they are incorporated in~~ culture within the company and ~~its affiliate enterprise~~ whether it is desirable to make changes to it; and
- ii. how the company's culture and underlying values and encouraged behaviour contribute to long-term value creation; and
- iii. ~~the effectiveness of, and compliance with, the code of conduct.~~

Principle 2.6 Misconduct and irregularities

The management board and the supervisory board should be alert to indications of actual or suspected misconduct or irregularities. The management board should establish a procedure for reporting actual or suspicion of misconduct or irregularities, and take appropriate follow-up action on the basis of these reports. The supervisory board monitors the management board in this.

2.6.1 Procedure for reporting actual or suspicion of misconduct or irregularities

The management board should establish a procedure for reporting actual or suspected irregularities within the company and its affiliated enterprise. The procedure will be published on the company's homepage. The management board should ensure that employees have the opportunity to file a report without jeopardising their legal position.

2.6.2 Informing the ~~chairman~~ chair of the supervisory board

The management board should inform the ~~chairman~~ chair of the supervisory board without delay of any signs of actual or suspected material misconduct or irregularities within the company and its affiliated enterprise. If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, employees can report this directly to the ~~chairman~~ chair of the supervisory board.

2.6.3 Notification by the external auditor

The external auditor should inform the ~~chairman~~ chair of the audit committee without delay if, during the performance of his duties, he discovers or suspect an instance of misconduct or irregularity. If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, the external auditor should report this directly to the ~~chairman~~ chair of the supervisory board.

2.6.4 Notification by the internal audit function

The internal audit function should inform the management board and the chair of the audit committee if, during the performance of his or her duties, material misconduct or irregularities are discovered or suspected. If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, the internal audit function should report this directly to the chair of the supervisory board.

2.6.4 2.6.5 Oversight by the supervisory board

The supervisory board monitors the operation of the procedure for reporting actual or suspected misconduct or irregularities, appropriate and independent investigations into signs of misconduct or irregularities, and, if an instance of misconduct or irregularity has been discovered, an adequate follow-up of any recommendations for remedial actions.

In order to safeguard the independence of the investigation in cases where the management board itself is involved, the supervisory board should have the option of initiating its own investigation into any irregularities that have been discovered and to coordinate this investigation.

Principle 2.7 Preventing conflicts of interest

Any form of conflict of interest between the company and the members of its management board or supervisory board should be prevented. To avoid conflicts of interest, adequate measures should be taken. The supervisory board is responsible for the decision-making on dealing with conflicts of interest regarding management board members, supervisory board members and majority shareholders in relation to the company.

2.7.1 Preventing conflicts of interest

Management board members and supervisory board members are alert to conflicts of interest and should in any case refrain from the following:

- i. competing with the company;
- ii. demanding or accepting substantial gifts from the company for themselves or their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
- iii. providing unjustified advantages to third parties at the company's expense;
- iv. taking advantage of business opportunities to which the company is entitled for themselves or for their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.

2.7.2 Terms of reference

The terms of reference of the supervisory board should contain rules on dealing with conflicts of interest, including conflicting interests between management board members and supervisory board members on the one hand and the company on the other. The terms of reference should also stipulate which transactions require the approval of the supervisory board. The company should draw up regulations governing ownership of, and transactions in, securities by management or supervisory board members, other than securities issued, by the company.

2.7.3 Reporting

A conflict of interest may exist if the company intends to enter into a transaction with a legal entity:

- i. in which a member of the management board or the supervisory board personally has a material financial interest; or
- ii. which has a member of the management board or the supervisory board who is related under family law to a member of the management board or the supervisory board of the company.

A management board member should report any potential conflict of interest in a transaction that is of material significance to the company and/or to such management board member to the ~~chairman~~ [chair](#) of the supervisory board and to the other members of the management board without delay. The management board member should provide all relevant information in that regard, including the information relevant to the situation concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree.

A supervisory board member should report any conflict of interest or potential conflict of interest in a transac-

tion that is of material significance to the company and/or to such supervisory board member to the ~~chairman~~ [chair](#) of the supervisory board without delay and should provide all relevant information in that regard, including

the relevant information pertaining to his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. If the ~~chairman~~ [chair](#) of the supervisory board has a conflict of interest or potential conflict of interest, he should report this to the ~~vice-chairman~~ [vice-chair](#) of the supervisory board without delay.

The supervisory board should decide, outside the presence of the management board member or supervisory board member concerned, whether there is a conflict of interest.

2.7.4 Accountability regarding transactions: management board and supervisory board members

All transactions in which there are conflicts of interest with management board members or supervisory board members should be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with management board members or supervisory board members that are of material significance to the company and/or to the relevant management board members or supervisory board members should require the approval of the supervisory board. Such transactions should be published in the management report, together with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3 and 2.7.4 have been complied with.

2.7.5 Accountability regarding transactions: majority shareholders

All transactions between the company and legal or natural persons who hold at least ten percent of the shares in the company should be agreed on terms that are customary in the market. Decisions to enter into transactions with such persons that are of material significance to the company and/or to such persons should require the approval of the supervisory board. Such transactions should be published in the management report, together with a declaration that best practice provision 2.7.5 has been complied with.

2.7.6 Personal loans

The company should not grant its management board members and supervisory board members any personal loans, guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the supervisory board. No remission of loans should be granted.

Principle 2.8 Takeover situations

In the event of a takeover bid for the company's shares or for the depositary receipts for the company's shares, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in [Section Article 2:107a\(1\)\(c\)](#) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, both the management board and the supervisory board should ensure that the stakeholder interests concerned are carefully weighed and any conflict of interest for supervisory board members or management board members is avoided. The management board and the supervisory board should be guided in their actions by the interests of the company and its affiliated enterprise.

2.8.1 Supervisory board involvement

When a takeover bid for the company's shares or for the depositary receipts for the company's shares is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in [Section Article 2:107a\(1\)\(c\)](#) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, the management board should ensure that the supervisory board is involved in the takeover process and/or the change in the structure closely and in a timely fashion.

2.8.2 Informing the supervisory board about request for inspection by competing bidder

If a takeover bid has been announced for the shares, or depositary receipts for shares, in the company, and the management board receives a request from a competing bidder to inspect the company's records, the management board should discuss this request with the supervisory board without delay.

2.8.3 Management board's position on a private bid

If a private bid for a business unit or a participating interest has been made public, where the value of the bid exceeds the threshold referred to in ~~Section~~ [Article 2:107a\(1\)\(c\)](#) of the Dutch Civil Code, the management board of the company should as soon as possible make public its position on the bid and the reasons for this position.

CHAPTER 3. REMUNERATION

Principle 3.1 Remuneration policy – management board

The remuneration policy applicable to management board members should be clear and understandable, 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 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.

3.1.1 Remuneration policy proposal

The remuneration committee should submit a clear and understandable proposal to the supervisory board concerning the remuneration policy to be pursued with regard to the management board. The supervisory board should present the policy to the general meeting for adoption.

3.1.2 Remuneration policy

The following aspects should in any event be taken into consideration when formulating the remuneration policy:

- i. the objectives for the strategy for the implementation of long-term value creation within the meaning of best practice provision 1.1.1;
- ii. the scenario analyses carried out in advance;
- iii. the pay ratios within the company and its affiliated enterprise;
- iv. the development of the market price of the shares;
- v. an appropriate ratio between the variable and fixed remuneration components. The variable remuneration component is linked to measurable performance criteria determined in advance, which are predominantly long-term in character;
- vi. if shares are being awarded, the terms and conditions governing this. Shares should be held for at least five years after they are awarded; and
- vii. if share options are being awarded, the terms and conditions governing this and the terms and conditions subject to which the share options can be exercised. Share options cannot be exercised during the first three years after they are awarded.

3.1.3 Remuneration – executive committee

If the management board works with 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.

Principle 3.2 Determination of management board remuneration

The supervisory board should determine the remuneration of the individual members of the management board, within the limits of the remuneration policy adopted by the general meeting. The remuneration committee should prepare the supervisory board's decision-making regarding the determination of remuneration. The inadequate performance of duties should not be rewarded.

3.2.1 Remuneration committee's proposal

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration of individual members of the management board. The proposal is drawn up in accordance with the remuneration policy that has been established and will, in any event, cover the remuneration structure, the amount of the fixed and variable remuneration components, the performance criteria used, the scenario analyses that are carried out and the pay ratios within the company and its affiliated enterprise.

3.2.2 Management board members' views on their own remuneration

When drafting the proposal for the remuneration of management board members, the remuneration committee should take note of individual management board members' views with regard to the amount and structure of their own remuneration. The remuneration committee should ask the members of the management board to pay attention to the aspects referred to in best practice provision 3.1.2.

3.2.3 Severance payments

The remuneration in the event of dismissal should not exceed one year's salary (the 'fixed' remuneration component). Severance pay will not be awarded if the agreement is terminated early at the initiative of the management board member, or in the event of seriously culpable or negligent behaviour on the part of the management board member.

Principle 3.3 Remuneration – supervisory board

The supervisory board should submit a clear and understandable proposal for its own appropriate remuneration to the general meeting. The remuneration of supervisory board members should promote an adequate performance of their role and should not be dependent on the results of the company.

3.3.1 Time spent and responsibility

The remuneration of the supervisory board members should reflect the time spent and the responsibilities of their role.

3.3.2 Remuneration of supervisory board members

Supervisory board members may not be awarded remuneration in the form of shares and/or rights to shares.

3.3.3 Share ownership

Shares held by a supervisory board member in the company on whose supervisory board they serve should be long-term investments.

Principle 3.4 Accountability for Reporting on implementation of remuneration policy

In the remuneration report, the supervisory board should render account of the implementation of the remuneration policy in a transparent manner. The report should be posted on the company's website.

3.4.1 Remuneration report

The remuneration committee should prepare the remuneration report. This report should in any event describe, in a transparent manner, in addition to ~~the~~those matters required by law:

- i. how the remuneration policy has been implemented in the past financial year;
- ii. how ~~the~~ implementation of the remuneration policy contributes to long-term value creation;
- iii. ~~that~~how scenario analyses have been taken into consideration;
- iv. the pay ratios within the company and its affiliated enterprise and, if applicable, any changes in these ratios ~~in comparison with~~compared to the previous financial year;
- v. in the event ~~that~~ a management board member receives variable remuneration, how this remuneration

- ration contributes to long-term value creation, the measurable performance criteria determined in advance upon which the variable remuneration depends, and the relationship between the remuneration and performance; and
- vi. in the event that a current or former management board member receives a severance payment, the reason for this payment.

3.4.2 Agreement of management board member

The main elements of the agreement of a management board member with the company should be published on the company's website in a transparent overview after the agreement has been concluded, and in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed.

CHAPTER 4.

THE GENERAL MEETING

Principle 4.1 The general meeting

The general meeting should be able to exert such influence on the policies of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances in the company. Good corporate governance requires the fully-fledged participation of shareholders in the decision-making in the general meeting.

4.1.1 Supervisory board supervision

The supervisory board's supervision of the management board should include the supervision of relations with shareholders.

4.1.2 Proper conduct of business at meetings

The [chairman-chair](#) of the general meeting is responsible for ensuring the proper conduct of business at meetings in order to promote a meaningful discussion at the meeting.

4.1.3 Agenda

The agenda of the general meeting should list which items are up for discussion and which items are to be voted on. The following items should be dealt with as separate agenda items:

- i. material changes to the articles of association;
- ii. proposals relating to the appointment of management board and supervisory board members;
- iii. the policy of the company on additions to reserves and on dividends (the level and purpose of the addition to reserves, the amount of the dividend and the type of dividend);
- iv. any proposal to pay out dividend;
- v. resolutions to approve the management conducted by the management board (discharge of management board members from liability);
- vi. resolutions to approve the supervision exercised by the supervisory board (discharge of supervisory board members from liability);
- vii. each substantial change in the corporate governance structure of the company and in the compliance with this Code; and
- viii. the appointment of the external auditor.

4.1.4 Proposal for approval or authorisation

A proposal for approval or authorisation by the general meeting should be explained in writing. In its explanation the management board should deal with all facts and circumstances relevant to the approval or authorisation to be granted. The notes to the agenda should be posted on the company's website.

4.1.5 Shareholder's explanation when exercising the right to put items on the agenda

If a shareholder has arranged for an item to be put on the agenda, he should explain this at the meeting and, if necessary, answer questions about it.

4.1.6 Placing of items on the agenda by shareholders

A shareholder should only exercise the right to put items on the agenda after they have consulted with the management board on this. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, for example as a result of the dismissal of one or several management board or supervisory board members, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). The opportunity to stipulate the

response time should also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to [Section Article 2:110](#) of the Dutch Civil Code. The relevant shareholder should respect the response time stipulated by the management board, within the meaning of best practice provision 4.1.7.

4.1.7 Stipulation of the response time

If the management board stipulates a response time, ~~this~~^{it} should be a reasonable period that does not exceed 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting at which the item is to be dealt with. The management board should use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and should explore the alternatives. At the end of the response time, the management board should report on this consultation and the exploration to the general meeting. This should be monitored by the supervisory board.

The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which the response time had been previously stipulated; [or a statutory reflection period as referred to in Article 114b of Book 2 of the Dutch Civil Code was used](#) or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

4.1.8 Attendance of members nominated for the management board or supervisory board

Management board and supervisory board members nominated for appointment should attend the general meeting at which votes will be cast on their nomination.

4.1.9 External auditor's attendance

The external auditor may be questioned by the general meeting in relation to his report on the fairness of the financial statements. The external auditor should for this purpose attend and be entitled to address this meeting.

4.1.10 General meeting's report

The report of the general meeting should be made available, on request, to the shareholders no later than three months after the end of the meeting, after which shareholders should have the opportunity to react to the report in the following three months. The report should then be adopted in the manner provided for in the articles of association.

Principle 4.2 Provision of information

The management board and the supervisory board should ensure that the general meeting is adequately provided with information.

4.2.1 Substantiation of invocation of overriding interest

If the management board and the supervisory board decide not to provide the general meeting with all information desired with the invocation of an overriding interest on the part of the company, they must give reasons for this.

4.2.2 Policy on bilateral contacts [Contact and dialogue with shareholders](#)

The company should formulate an outline policy on bilateral contacts with the shareholders and should post this policy on its website. [Shareholders and the company are prepared to enter into a dialogue, where appropriate and at their own discretion. The company is expected to facilitate such dialogue unless, in the opinion of the management board, this is not in the interest of the company and its affiliated enterprise. In the event a shareholder enters into dialogue with the company outside the context of a general meeting, the shareholder shall disclose its full equity holding \(long and short\) at the request of the company.](#)

4.2.3 Meetings and presentations

Analyst meetings, analyst presentations, presentations to institutional or other investors and press conferences should be announced in advance on the company's website and by means of press releases. Analysts' meetings and presentations to investors should not take place shortly before the publication of the regular financial information. All shareholders should be able to follow these meetings and presentations in real time, by means of webcasting, telephone or otherwise. After the meetings, the presentations should be posted on the company's website.

4.2.4 Posting information in a separate section of the website

The company should post and update information which is relevant to the shareholders and which it is required to publish or submit pursuant to the provisions of company law and securities law applicable to it in a separate section of the company's website.

4.2.5 Management board contacts with press and analysts

The contacts between the management board on the one hand and the press and financial analysts on the other should be handled and structured carefully and with due observance of the applicable laws and regulations. The company should not do anything that might compromise the independence of analysts in relation to the company and vice versa.

4.2.6 Outline of anti-takeover measures

The management board should outline all existing or potential anti-takeover measures in the management report and should also indicate in what circumstances and by whom these measures may likely be used.

Principle 4.3 Casting votes

Participation of as many shareholders as possible in the general meeting's decision-making is in the interest of the company's checks and balances. The company should, in so far as possible, give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.

4.3.1 Voting as deemed fit

~~A shareholder should vote as he sees fit. A shareholder who makes use of the voting advice of a third party is expected to form his own judgment on the voting policy or the voting advice provided by this adviser.~~

Shareholders, including institutional investors, should exercise their voting rights on an informed basis and as they see fit. Institutional investors who use the services of voting advisers (i) should encourage their voting advisers to be prepared to enter into a dialogue with the company regarding their voting policy and guidelines and (ii) ensure that their votes are cast in line with their own voting policy.

4.3.2 Providing voting proxies or voting instructions

The company should give shareholders and other persons entitled to vote the possibility of issuing voting proxies or voting instructions, respectively, to an independent third party prior to the general meeting.

4.3.3 Cancelling the binding nature of a nomination or dismissal

The general meeting of shareholders of a company not having statutory two-tier status (structuurregime) may pass a resolution to cancel the binding nature of a nomination for the appointment of a member of the management board or of the supervisory board and/or a resolution to dismiss a member of the management board or of the supervisory board by an absolute majority of the votes cast. It may be provided that this majority should represent a given proportion of the issued capital, which proportion may not exceed 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 passed by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

4.3.4 Voting right on financing preference shares

The voting right attaching to financing preference shares should be based on the fair value of the capital contribution.

4.3.5 Publication of [engagement policy by institutional investors](#)' voting policy

Institutional investors (~~pension funds, insurers, investment institutions and asset managers~~) [should implement best practice provision 1.1.5 when drawing up their engagement policy](#). Institutional investors should post ~~annually, in any event~~ [their engagement policy](#) on their website, ~~their policy on the exercise of the voting rights for shares they hold in listed companies~~.

4.3.6 Report on the implementation of [Reporting by institutional investors](#)' voting on implementation of their engagement policy

Institutional investors should report [at least](#) annually, on their website ~~and/or in their management report~~, on how they implemented ~~their policy on the exercise of the voting rights in the relevant financial year~~. [engagement policy](#). ~~The report should in any event provide a general description of their voting behaviour and an explanation of the most significant votes and the use of the services of voting advisers.~~

In addition, ~~the~~ [institutional investors](#) should report on their website at least once per quarter on whether and, if so, how they have voted as shareholders at general meetings. ~~This report will be posted on the website of the institutional investor for each company and each voting item.~~

[In the event an institutional investor votes against or refrains from voting on a management proposal, it should explain the reasons for this voting behaviour to the company's board either pro-actively or at the company's request.](#)

4.3.7 Abstention in the event of a larger short than long position

[Shareholders shall abstain from voting if their short position in the company is larger than their long position.](#)

4.3.8 Lent shares

[Shareholders should recall their lent shares before the record date for a general meeting of the company if the agenda for the meeting contains one or more significant items.](#)

Principle 4.4 Issuing depositary receipts for shares

Depositary receipts for shares can be a means of preventing a majority (including a chance majority) of shareholders from controlling the decision-making process as a result of absenteeism at a general meeting. Depositary receipts for shares should not be issued as an anti-takeover protective measure. The board of the trust office should issue voting proxies under all circumstances and without limitations to all depositary receipt holders who request this. The holders of depositary receipts so authorised can exercise the voting right at their discretion. The board of the trust office should have the confidence of the holders of depositary receipts. Depositary receipt holders should have the possibility of recommending candidates for the board of the trust office. The company should not disclose to the trust office information which has not been made public.

4.4.1 Trust office board

The board of the trust office should have the confidence of the holders of depositary receipts and operate independently of the company that has issued the depositary receipts. The trust conditions should specify in what cases and subject to what conditions holders of depositary receipts may request the trust office to call a meeting of holders of depositary receipts.

4.4.2 Appointment of board members

The board members of the trust office should be appointed by the board of the trust office, after the job opening has been announced on the website of the trust office. The meeting of holders of depositary receipts may make recommendations to the board of the trust office for the appointment of persons to the position of board member. No management board members or former management board members, supervisory board members or former supervisory board members, employees or permanent advisers of the company should be a member of the board of the trust office.

4.4.3 Board appointment period

A person may be appointed to the board of the trust office for a maximum of two four-year terms, followed by a maximum of two two-year terms. In the event of a reappointment after an eight-year period, reasons should be given in the report of the board of the trust office.

4.4.4 Attendance of the general meeting

The board of the trust office should attend the general meeting and should, if desired, make a statement about how it proposes to vote at the meeting.

4.4.5 Exercise of voting rights

In exercising its voting rights, the trust office should be guided primarily by the interests of the depositary receipt holders, taking the interests of the company and the enterprise affiliated with it into account.

4.4.6 Periodic reports

The trust office should report periodically, but at least once per year, on its activities. The report should be posted on the company's website.

4.4.7 Contents of the reports

The report referred to in best practice provision 4.4.6 should, in any event, set out:

- i. the number of shares for which depositary receipts have been issued and an explanation of changes to this number;
- ii. the work carried out in the financial year;
- iii. the voting behaviour in the general meetings held in the financial year;
- iv. the percentage of votes represented by the trust office during the meetings referred to under iii.;
- v. the remuneration of the members of the board of the trust office;
- vi. the number of meetings held by the management and the main items dealt with in them;
- vii. the costs of the activities of the trust office;
- viii. any external advice obtained by the trust office;
- ix. the (other) positions held by the board members of the trust office; and
- x. the contact details of the trust office.

4.4.8 Voting proxies

The board of the trust office should issue voting proxies under all circumstances and without limitations to all depositary receipt holders who request this. Each depositary receipt holder may also issue binding voting instructions to the trust office in respect of the shares which the trust office holds on his behalf.

CHAPTER 5. ONE-TIER GOVERNANCE STRUCTURE

Principle 5.1 One-tier governance structure

The composition and functioning of a management board comprised of both executive and non-executive directors must be such that the supervision by non-executive directors is properly carried out, and independent supervision can be assured.

5.1.1 Composition of the management board

The majority of the management board is made up of non-executive directors. The requirements for independence stipulated in best practice provisions 2.1.7 and 2.1.8 apply to the non-executive directors.

5.1.2 Chairman ~~Chair~~ of the management board

The ~~chairman~~ chair of the management board chairs the meetings of the management board. The ~~chairman~~ chair of the management board should ensure that the management board as a collective, as well as the management board's committees, have a balanced composition and function properly.

5.1.3 Independence of the ~~chairman~~ chair of the management board

The ~~chairman~~ chair of the management board should not be an executive director or former executive director of the company, and should be independent within the meaning of best practice provision 2.1.8.

5.1.4 Composition of committees

The committees referred to in best practice 2.3.2 should be comprised exclusively of non-executive directors. Neither the audit committee nor the remuneration committee can be chaired by the ~~chairman~~ chair of the management board or by a former executive director of the company.

5.1.5 ~~Accountability for~~ Reporting on supervision by non-executive directors

The non-executive directors render account of the supervision exercised in the past financial year. They should, as a minimum, report on the items referred to in best practice provisions 1.1.3, 2.1.2, 2.1.10, 2.2.8, 2.3.5 and 2.4.4 and, if applicable, the items referred to in best practice provisions 1.3.6 and 2.2.2.

ENTRY INTO FORCE

1. This Code will come into force as of the financial year starting on or after 1 January ~~2017~~2023. The Committee recommends that companies submit to the general meeting, as a separate agenda item in ~~2018~~2024, a chapter in the report of the management board broadly outlining the corporate governance structure and compliance with this Code.

2. Where principles or best practice provisions in this Code, compared with the Code adopted in ~~2008~~2016, require changes to rules, regulations, procedures or other written records, a company will be deemed to be compliant with this Code if such changes have been implemented no later than 31 December ~~2017~~2023.

3. ~~The term of appointment for supervisory board members stipulated in best practice provision 2.2.2 has changed compared with the Code adopted in 2008. Best practice provision 2.2.2 does not apply:~~
i. ~~to supervisory board members who, as of the date of the entry into force of this Code, have already held office for more than eight years, provided that best practice provision III.3.5 of the Code adopted in 2008 is being complied with; and~~
ii. ~~to supervisory board members who are to be nominated for reappointment for a third four-year term at a general meeting in 2017, provided that best practice provision III.3.5 of the Code adopted in 2008 is being complied with.~~

EXPLANATORY NOTES TO THE CODE

Preamble – Scope of the Code

The Code does not apply to investment institutions or undertakings for collective investment in transferable securities (UCITS) which are members of a group under central management, where this central management falls within the scope of the Code.

1.1 Long-term value creation

Management board members and supervisory board members are expected to act in a sustainable manner by focusing on long-term value creation in the performance of their work. Long-term sustainability is the key consideration when determining strategy and making decisions, ~~and~~. Management board members and supervisory board members are aware of the impact the actions of the company and its affiliated enterprise have on the production and value chain and take stakeholder interests ~~are taken~~ into careful consideration. Stakeholders are groups and individuals that, directly or indirectly, influence – or are influenced by – the attainment of the company’s objectives: employees, shareholders, lenders, suppliers, customers, etc. Long-term value creation also requires awareness and anticipation of new developments in technology and changes to business models. Maintaining a sufficient level of awareness of the ~~wider~~ broader context in which the enterprise affiliated with the company operates, contributes to continuing success, ~~and is therefore in line with~~ the company’s ~~interests~~ interest.

There may be situations in which a focus on the long term is no longer relevant for a company – for example in the event of a bankruptcy or takeover – and the company’s reason for existing ceases. In these ~~situations~~ cases, the company should comply with the Code by explaining why long-term value creation is not, or is no longer, a priority to be pursued.

1.1.1 Strategy for long-term value creation

~~The examples of relevant aspects of doing business specified in best practice provision 1.1.1, section vi reflect the topics listed in the EU Directive on disclosure of non-financial and diversity information.¹ In addition to the topics listed in the Directive, section vi includes ‘the chain within which the enterprise operates’. The OECD Guidelines for Multinational Enterprises provide guidance for companies with international operations in fulfilling their supply chain responsibility.~~

ESG

ESG aspects are an important part of the strategy of a company whose focus is on long-term value creation. ESG is a broad subject, which is in a transition phase worldwide. The same is true of the formulation of ESG standards to be applied in the future. It is important that companies provide information showing how they implement the ESG aspects of running a business. This can be achieved through use of the following framework set out in the Code.

As part of their strategy for long-term value creation, companies should formulate a clear ESG strategy, with specific objectives (best practice provision 1.1.1). Furthermore, companies should enter into dialogue with relevant stakeholders about their ESG strategy (best practice provision 1.1.6). The ESG strategy, the actions taken and the results pursued and achieved, including the impact on the production and value chain (where possible quantified and monetised) should be accounted for in the management report (best practice provision 1.1.4).

¹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJEU 2014, L 330).

If they wish, companies may formulate a ‘purpose’, possibly in their articles of association or as part of their strategy. The purpose can indicate, for example, what the company and its affiliated enterprise aim to achieve in society and the principles and values that guide them.

As stated above, ESG regulations are in a transition phase. The European Union, for instance, is working on an ESG accountability and reporting framework. The following draft or final provisions, or parts of them, can serve as a basis for interpretation of the term ESG as used in best practice provision 1.1.1, part vii:

- › the subjects for sustainability reporting (Ecological, Social and Governance factors) as defined in Articles 19b, 19c and 19d of the Proposal of the European Commission of 21 April 2021 for an amendment of Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (the ‘CSRD’); the draft CRSD was adopted by the European Commission on 21 April 2021 and is currently under consideration by the European Parliament and the Council of the European Union [1].
- › the OECD Due Diligence Guidance for Responsible Business Conduct adopted in 2018 [2], which provides guidance for companies with international operations in fulfilling their supply chain responsibility.

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189&from=EN>

[2] [OECD: Due Diligence – Organisation for Economic Co-operation and Development \(oecd.org\)](https://www.oecd.org/due-diligence/)

1.1.2 Involvement of the supervisory board

‘Formulating the strategy’ also encompasses making material changes to the strategy.

1.2 Risk management

The risks to be identified and managed under Principle 1.2 comprise both internal and external risks, including the remuneration structure for management board members and employees.

The internal risk management and control systems must be tailored to the company in question. This makes it possible for smaller listed companies to use less extensive procedures.

1.3.5 Reports of findings

The internal audit function should report hierarchically to a member of the management board, preferably the CEO.

1.3.6 Absence of an internal audit department

The basic principle is that companies should establish their own internal audit department to undertake the internal audit function. In the event of a departure from this principle, for example if the size of the company is not suited to this, outsourcing may be an appropriate alternative. In case of outsourcing, the supervisory board and the audit committee will remain involved in the execution of the internal audit function, as stipulated in best practice provisions 1.3.1 to 1.3.5, inclusive.

1.4.2 Accountability in the Reporting on risk management report

Pursuant to best practice provision 1.4.2, the management board describes, in the management report, the design and operation of the internal risk management and control systems. Pursuant to section i, the company’s annual report must include a description of the main risks it encounters in carrying out its tasks. Rather than providing an exhaustive list of all possible risks, the company should identify the main risks it faces. The description of the main risks in section i is in keeping with the risk section prescribed in ~~Section Article~~ [Article 2:391](#) of the Dutch Civil Code and the description of essential risks under ~~Section Article~~ [Article 5:25c](#) of the Financial Supervision Act (Wet op het financieel toezicht/Wft).

As regards best practice provision 1.4.2, section ii, it would be logical for the management board to indicate in the description of the design and operation of the internal risk management and control systems what framework or criteria (e.g. the COSO framework for internal control) were used in assessing the internal risk management and control system.

1.4.3 Statement by the management board

Pursuant to best practice provision 1.4.3, the management board should make a statement confirming that it has provided sufficient insight into the risks, including risks that are foreseen in the future that will be relevant to the continuity of the company. This includes both material shortcomings that have been identified and material risks and uncertainties that can reasonably be foreseen at the time at which the statement is being issued.

1.5.1 Duties and responsibilities of the audit committee

The majority of the audit committee's duties already arise out of the relevant legislation, and are not repeated in the Code. Specific reference is made to Article 39 of the EU Statutory Audits Directive (Directive 2006/43/EC).² This article will be implemented in Dutch legislation: Article 2:2 of the Decree of 26 July 2008.³ The requirements for the composition and available expertise in relation to the preparation and auditing of the financial statements will also be included in Article 2 of this decree.

In some cases, especially for companies operating in the financial sector, a risk committee is established in addition to the audit committee. Article 39, paragraph 4 of the above-mentioned Directive 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.

2.1 Composition and size

[A diverse composition of the management board, supervisory board and executive committee \(if applicable\) contribute to effective management and supervision. Diversity of opinion, opposition, teamwork and cohesion are essential to a valuable discussion. Diversity of expertise, experience, competencies, personal qualities, age, gender identity, nationality and background, including cultural background, result in different perspectives which in turn can help to prevent group think. However, where there is a significant degree of diversity, additional care will have to be taken to ensure cohesion within the body.](#)

² Directive 2006/43/EC of the European Parliament and of the Council of the European Union of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJEU L 157 of 9 June 2006, p. 87). Directive 2006/43/EC was last amended by Directive 2014/56/EU of 16 April 2014 (OJEU 2014, L 158).

³ Decree of 26 July 2008 implementing Article 41 of Directive 2006/43/EC of the European Parliament and of the Council of the European Union of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Bulletin of Acts and Decrees 2008, 323).

2.1.3 Executive committee

The term ‘executive committee’ refers to a committee which is closely involved in the decision-making of the management board, and which, in addition to members of the management board, may also include members of senior management.

Best practice provision 2.1.3 and those other provisions that mention the term executive committee also apply in cases where a term other than ‘executive committee’ is being used, but the function is essentially the same.

2.1.4 Expertise

It is important that sufficient expertise is available within the management board and the supervisory board to identify opportunities and risks that may be associated with innovations in business models and technologies in a timely manner.

The requirement for financial expertise within the supervisory board is provided for in law. Pursuant to the EU Statutory Audits Directive (Directive 2006/43/EC)⁴, at least one member of the audit committee must have competence in the preparation and auditing of the financial statements. This article will be implemented in Dutch legislation: [Section Article 2:3 of the Decree of 26 July 2008](#).⁵

2.1.5 Diversity ~~D&I policy~~ & 2.1.6 Accountability about diversity ~~Reporting on the D&I policy~~

~~Diversity is also addressed in the EU Directive on disclosure of non-financial and diversity information.⁶ This Directive will be implemented in Dutch legislation. However, the Code goes further than the Directive. Best practice provision 2.1.5 stipulates that companies must explain what measures have been and will be taken in the event that the diversity policy’s objectives are not achieved. In addition, the scope of the Directive is limited to large companies, while the Code is applicable to all companies. The legal target figure of at least 30% male/female diversity in the management board and the supervisory board lapsed as of 1 January 2016. Legislation is currently pending to once again establish the legal target figure in Section 2:166 of the Dutch Civil Code until 2020.⁷~~

[Article 166 of Book 2 of the Dutch Civil Code obliges large companies to formulate appropriate and ambitious targets for the gender ratio on the management board and the supervisory board as well as for senior level management. They must report this information to the Social and Economic Council of the Netherlands \(Sociaal-Economische Raad/SER\) and include it in the management report. Moreover, a statutory quota of at least one-third men and one-third women \(Article 142b of Book 2 of the Dutch Civil Code\) applies to companies whose shares, or depositary receipts, are admitted to trading on a regulated market as defined in Article 1:1 of the Financial Supervision Act \(Wet op het financieel toezicht/Wft\) in the Netherlands. It stands to reason that this male-female ratio – which by definition is a minimum – should also serve as a guideline for the targets to be set for the management board, the executive committee \(if applicable\) and senior management.](#)

[Best practice provisions 2.1.5 and 2.1.6 go further than the statutory requirements, since it is expected that companies will aspire to gender diversity not only for the management board, the supervisory board, the executive committee \(if applicable\) and senior management but for the organisation as a whole. Diversity concerns all aspects and personal characteristics in which people can differ, including visible characteristics such as gender identity, age and ethnicity, as well as less visible characteristics such as occupational disabilities and sexual orientation. Inclusion refers to an organisation’s capacity to create a culture in which every employee feels valued and respected, so that, regardless of their identity, employees are given the same opportunities and the progression of diverse talent to the top is facilitated.](#)

4 Ibid. footnote 2.

5 Ibid. footnote 3.

6 ~~Ibid. footnote 4.~~

7 ~~Parliamentary Papers II 2015–2016, 34 435, No. 2.~~

The management board and the supervisory board are expected to reflect on the company's societal role when it comes to D&I, its relevance to the culture of the company and how it can be implemented in leadership development. A D&I policy starts with awareness and objectives, even if it is still too early to set specific targets. Awareness entails gaining insight – where relevant and possible – into inflow, progression and retention of diverse talent within the organisation.

In this context, companies can examine the most recent findings regarding the promotion of diversity provided by the SER (including through the Diversity and Inclusion Programme).

Furthermore, the annual publication of aggregated information on the diversity of the management board and the supervisory board, based on self-identification (diversity matrix), is recommended. Self-identification is voluntary, and the number of members who do not make a declaration should be reported in the diversity matrix for each category (e.g. gender identity, cultural background and LGBTQ+).

2.1.7 Independence of the supervisory board

Best practice provision 2.1.7, section ii, stipulates that a majority of the supervisory board members should be independent. This requirement may not be undermined by voting ratios within the supervisory board if an arrangement is being used that allows for multiple voting rights under ~~Section~~ Article 2:140(4) of the Dutch Civil Code.

2.2.2 Appointment and reappointment periods – supervisory board members

The effectiveness of the supervisory board is determined by its composition, with the size, expertise, diversity and independence of the supervisory board being decisive factors. When reappointing supervisory board members, a critical assessment will be made as to whether the relevant supervisory member maintains an appropriate distance in undertaking their supervisory activities, and whether the required knowledge and expertise are represented within the supervisory board. The basic principle is that supervisory members are appointed for two four-year periods. Any subsequent reappointment must be accounted for in the report of the supervisory board.

2.2.3 Early retirement

This provision does not change the fact that, in the case of companies not having statutory two-tier status (structuurregime), the general meeting may suspend or dismiss supervisory board members at any time. Under the provisions on companies having statutory two-tier status, the general meeting of such companies may pass a resolution of no confidence in the entire supervisory board. The adoption of such a resolution implies the immediate dismissal of all the members of the board.

2.2.6 Evaluation of ~~by~~ the supervisory board & 2.2.7 Evaluation of the management board

The aim of the reviews is to assess the functioning of the members of the supervisory board and the management board. ~~A periodic~~ An annual review can enhance the quality of the functioning of the supervisory board and the management board, and help to ensure that the right choices are made when preparing appointments or reappointments of supervisory and management board members, for example where the appropriate composition of the boards, or the appropriate levels of diversity in their composition, are concerned. The manner in which the review is carried out is ~~a matter for~~ determined by the company and may therefore differ from one company to another. The review can take place collectively, on an individual basis between the ~~chairman~~ chair and each member separately, or through ~~the input of~~ an external adviser expert. Each supervisory board ~~member~~ and management board member should be able to confidentially express their views during the review. It is recommended that an external expert be hired periodically to oversee the annual evaluation process. In keeping with provision 2.2.8, the report of the supervisory board should contain a summary of the evaluation process and the actions resulting from it.

2.3.5 Committee reports

These reports provide the content on the main items discussed at the committee meetings.

2.4 Decision-making and functioning

Management board members are required to actively provide information to the supervisory board. By the same token, supervisory board members are required to actively gather the information they need in order to be able to perform their supervisory role effectively.

2.5 Culture

‘Culture’ can be defined as the values that implicitly and explicitly inform employees’ actions and the resulting behaviour. Culture is a frame of reference on the basis of which one’s own actions and those of others are reviewed. A healthy culture helps to prevent misconduct and irregularities.

The Code addresses culture, but is not prescriptive as to exactly what the culture is or should be. It is up to the management board to create the company’s culture. When doing so, the existence of different subcultures within the enterprise should be taken into account.

2.6 Misconduct and irregularities

Principle 2.6 and the associated best practice provisions deal with the reporting of suspicion of misconduct or irregularities. Pursuant to the House for Whistleblowers Act (*Wet huis voor klokkenluiders*), an employer who usually employs at least fifty people is obliged to establish a procedure for dealing with reports of suspected misconduct within their organisation. This act is applicable to suspected misconduct that jeopardises a social interest.⁸ The scope of the principle and the best practice provisions in the Code is wider, as these also deal with the reporting of irregularities.

The opportunity to file reports applies to all parts of the enterprise affiliated with the company, regardless of whether the enterprise’s activities take place in the Netherlands or abroad.

2.7 Preventing conflicts of interest

Book 2 of the Dutch Civil Code⁹ defines a conflict of interest as being a situation in which, in a process of consultation and decision-making, the direct or indirect personal interests of a management board member or supervisory board member conflict with the interests of the company. The term ‘conflict of interest’ in the Code is aimed at preventing conflicts of interest in general, regardless of whether consultation or decision-making is being undertaken. In addition, the legal provisions on conflicts of interest have been developed in greater detail in the Code.

2.8.3 Management board’s position on a private bid

A private bid is not deemed to be ‘serious’ if it is clear that the bidder does not have sufficient financial resources to finance the bid or if no right-thinking and sensible shareholder would wish the management board to accept the bid, for example because the bid price does not reflect the true value or the market value of the business unit or the participating interest.

3.1.2 Remuneration policy & ~~3.2.1 Remuneration committee’s proposal~~

[Article 135a of Book 2 of the Dutch Civil Code entered into force on 1 December 2019. This article contains detailed provisions on the remuneration policy for companies whose shares, or depositary receipts, are admitted to trading on a regulated market as defined in Article 1:1 of the Financial Supervision Act. Article 135a of Book 2 of the Dutch Civil Code and best practice provision 3.1.2 of the Code overlap. Since the scope of the Code is broader than that of the Dutch Civil Code, best practice provision 3.1.2 can nevertheless be retained. For companies to which both the Dutch Civil Code and the Code apply, the Code supplements the](#)

⁸ ~~Section~~ [Article 1\(d\)](#), House for Whistleblowers Act.

⁹ Article 2:129, paragraph 6 of the Dutch Civil Code and Article 2:140, paragraph 5 of the Dutch Civil Code.

provisions of the Dutch Civil Code. For companies that are not subject to the amended legislation, nothing will change, and best practice provision 3.1.2 will remain the main guideline for the remuneration policy.

As far as the objectives for the strategy to achieve long-term value creation (best practice provision 3.1.2.i) are concerned, attention will be paid, in particular, to integrating ESG objectives into the remuneration policy and the relevant criteria to achieve those objectives.

‘Scenario analyses’ are defined as analyses, conducted by the supervisory board when formulating the remuneration policy and before determining the remuneration of individual management board members, of the possible results of the variable remuneration components and the way in which ~~this affects~~ these affect the remuneration of ~~the~~ management board members. The supervisory board will establish whether the scenario analyses result in appropriate levels of remuneration, ~~and whether measures~~ to limit remuneration are required ~~to limit the remuneration~~.

3.2.2 Management board members’ views on their own remuneration

The management board members’ views on their own remuneration are intended for the remuneration committee, and should not form part of the account given of the implementation of the remuneration policy.

3.4.1 Remuneration report

The legal requirements for the remuneration report are stipulated in ~~Section~~ Article 2:135b and Article 2:383c to Section Article 2:383e, inclusive of the Dutch Civil Code. Best practice provision 3.1.4, ~~section iv~~ 3.4.1.ii stipulates that ~~information about the pay ratios within the company and its affiliated enterprise should form part of it~~ should be explained in the remuneration report. ~~The ratio between the~~ how implementation of the remuneration policy contributes to long-term value creation. An explanation should be provided showing, amongst other things, how consistent the total remuneration of ~~the~~ management board members ~~and that of a representative reference group determined by the company must be stated, along with whether there have been any changes in~~ is with the remuneration policy, how these ratios compared to the previous financial year. account is taken of ESG objectives when implementing the remuneration policy and how this contributes to long-term value creation.

~~Material benefits awarded in exceptional cases should also be included in the remuneration report.~~

The term ‘pay ratios’ as referred to in best practice provision 3.4.1.iv is defined as the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and of those group companies whose financial data are consolidated with the company, where:

- i. the total annual remuneration of the CEO includes all remuneration components, such as fixed remuneration, variable cash remuneration (bonus), share-based remuneration, social security contributions, pension payments, expense allowance, etc., included in the consolidated financial statements on an IFRS basis;
- ii. the average annual remuneration of the employees is determined by dividing the total wage cost for the financial year (as recorded in the consolidated financial statements on an IFRS basis) by the average number of FTEs during the financial year. External employees should be taken into account to the extent they were hired for at least three months during the financial year; and
- iii. the value of share-based remuneration is determined at the time of assignment, in accordance with the applicable IFRS rules.

It should also be explained whether there have been any changes in the pay ratios compared to previous financial years. As well as the minimum information that can be expected based on the aforementioned definition of the term pay ratios as referred to in best practice provision 3.4.1.iv, 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.

[Companies may also use the Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive \(EU\) 2017/828, even if they have not yet been published in final form, when preparing the remuneration report.](#)

4.1.7 Stipulation of the response time

[The statutory reflection period, which was introduced into the Dutch Civil Code on 1 May 2021 \(Article 114b of Book 2 of the Dutch Civil Code\), can be regarded as a partial codification of the response time provided for by the Code. However, there are sufficient differences between the two provisions to retain the response time. For instance, the response time can often be raised at an earlier stage and for more subjects than the reflection period, and the consequences of doing so are different. The starting point of the legislation is that the two provisions can co-exist. The legislation leaves it to the courts to rule on any undesirable overlap of the statutory reflection period and other protective measures.](#)

[The starting point of the Code is that, where the same matter is involved, overlapping or successive application of the response time and the statutory reflection period is undesirable. For that reason, a provision has been added to the Code to the effect that the response time may not be invoked if the statutory reflection period has previously been raised for the same matter. Where the response time is raised first, it would seem logical for the response time to be deducted from the statutory reflection period.](#)

4.1.9 External auditor's attendance

The ~~chairman~~ chair of the general meeting should ensure that there is an opportunity to question the external auditor. The presence of the external auditor at the general meeting does not detract from the general duty of the management board and the supervisory board to render account to the general meeting or their duty to provide all requested information to the general meeting (unless there is an important reason for not doing so). The external auditor can be questioned only in respect of his audit and audit report. Primary responsibility for the content of the financial statements rests with the management board. It follows that the external auditor should participate in the preparation of the general meeting. Reference is made to NBA (Royal Netherlands Institute of Chartered Accountants) Practice Note 1118 on the position of the external auditor in the general meeting.

4.2.1 Substantiation of invocation of overriding interest

~~Section~~Article 2:107(2) of the Dutch Civil Code stipulates that the management board and the supervisory board must provide the general meeting with all the information desired, unless this is contrary to an overriding interest on the part of the company. In addition to this, best practice provision 4.2.1 stipulates that reasons for the invocation of an overriding interest must be given.

4.2.2 Contact and dialogue with shareholders

[Under Dutch company law, companies and shareholders must behave towards one another in accordance with standards of reasonableness and fairness. In this context, shareholders are expected to be prepared to enter into a constructive dialogue with companies.](#)

4.3.1 Voting as deemed fit

In so far as a shareholder uses the services of a voting adviser before exercising his voting right, it is logical that he should check that the adviser provides balanced advice based on fair consideration of all the issues.

4.3.4 Voting right on financing preference shares

Best practice provision 4.3.4 is intended to apply to future issues of financing preference shares. However, the management board and supervisory board may agree with the holders of the existing financing preference shares to adjust the present control of the financing preference shares.

4.3.6 Reporting by institutional investors on implementation of their engagement policy

The term 'most significant votes' as referred to in best practice provision 4.3.6 should in any event be understood to mean:

- i. votes on matters that have received substantial media attention or votes on items that are regarded by the institutional investor as a priority in the run-up to the general meeting season;
- ii. votes on an item on the agenda of a general meeting (a) that is of economic or strategic importance, (b) where the outcome of the vote is expected to be uncertain or controversial or (c) where the institutional investor disagrees with the recommendation of the company's management board;
- iii. votes at general meetings of companies where the institutional investor has a large holding compared to the institutional investor's holdings in other investee companies.

4.3.8 Lent shares

Shareholders shall determine what they consider to be a significant matter, but this definition should include at least a proposal on the agenda of a general meeting:

- i. that is of economic or strategic importance;
- ii. whose voting outcome is anticipated to be uncertain or controversial;
- iii. where the shareholder disagrees with the recommendation of the company's management board.

5.1 One-tier governance structure

The Code is focused on companies with a two-tier governance structure, but also applies to companies with a one-tier governance structure. In addition to Chapters 1 to 4 inclusive, Chapter 5 contains one principle and five best practice provisions which apply specifically to companies with a one-tier governance structure.

Those provisions in the Code which pertain to supervisory board members also apply to non-executive directors, without prejudice to the other responsibilities these non-executive directors may have. Where this is not possible, the 'comply or explain' principle applies.

5.1.1 Composition of the management board

The independence requirements for supervisory board members apply in full to non-executive directors. Best practice provision ~~2.1.8, section 2.1.8i~~ stipulates that a supervisory board member is not independent if, in the five years prior to the appointment, they have been an employee or member of the management board. For companies with a one-tier management structure, 'management board member' means 'executive director'.

5.1.2 Chairman ~~Chair~~ of the management board

Those duties which in Chapters 1 to 4 inclusive of the Code were specifically allocated to the ~~chairman~~ chair of the supervisory board, in a company with a one-tier governance structure fall within the remit of the ~~chairman~~ chair of the management board.

5.1.4 Composition of committees

It is important that a well-considered choice is made with regard to the reporting lines of the committees.

5.1.5 ~~Accountability for~~ Reporting on supervision by non-executive directors

The account rendered by non-executive directors can form part of the management report, or be included in a separate report. The report is published as an appendix to, or at the same time as, the financial statements.

COMPOSITION

MONITORING

COMMITTEE CORPORATE

GOVERNANCE CODE

Chairman

Ms P.F.M. van der Meer Mohr

Chairman, Supervisory Board, EY Nederland LLP
Non-executive director, HSBC Holdings plc
Non-executive director, Viatrix
Member, Supervisory Board, ASM Internationaal
Chairman, Supervisory Board, Nederlands Dans Theater
Member, AFM Capital Market Committee
Member, selection committee of the Supreme Court of the Netherlands
Member, evaluation committee, Conservatrix

Observers

Ms N. ten Kate

Ministry of Justice and Security, Legislation and Legal Affairs Department

Mr L.D. Brouwer

Ministry of Finance, Financial Markets Department

Secreteriat

Ms R.J.G. Kitaman

Ministry of Economic Affairs and Climate Policy,
Enterprise Directorate

Ms S.M. de Mik

Ministry of Economic Affairs and Climate Policy,
Enterprise Directorate

External legal advice

Mr O.M. Buma

NautaDutilh

Committee Members

Prof. dr. B.E. Baarsma

CEO, Rabo Carbon Bank
Professor of Applied Economics, University of Amsterdam
Bank Council Chairman, De Nederlandsche Bank
Member, Dutch Committee for Entrepreneurship and Financing (Nederlands Comité voor Ondernemerschap en Financiering)

Mr P.J. Gortzak

Executive Director Policy, APG
Member, Supervisory Board, CFK
Member, Supervisory Board, Nationaal Register
Member, Netspar Foundation Board
Member, Management Board, NL Sporter

Mr S. Hepkema

Chairman, Supervisory Board, Wavin NV
Member, Supervisory Board, SBM Offshore NV
Member, Management Board, VEVO
Senior Advisor, Bain Capital Private Equity

Mr D.R. Hooft Graafland

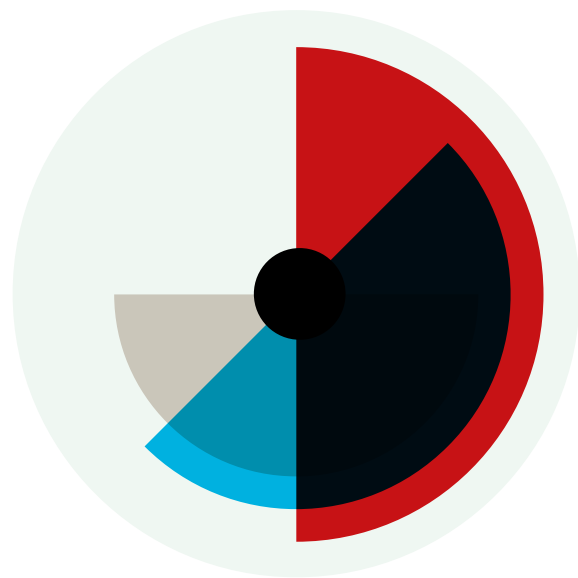
Member, Supervisory Board, Koninklijke Ahold Delhaize NV
Member, Supervisory Board, Koninklijke FrieslandCampina NV
Chairman, Supervisory Board, Wavin NV
Board Chairman, Stichting African Parks Foundation
Board Chairman, Carré Fonds

Prof E.M.L. Moerel

Professor, Global ICT Law, Tilburg University
Senior of Counsel, Morrison & Foerster (Brussels)
Member, Cyber Security Council
Chairman, Supervisory Board, Mauritshuis
Member, Supervisory Board, SIDN
Non-executive director, Topicus.com coop

Mr R.M.S.M. Munsters MiF

Member, Supervisory Board, UnibailRodamcoWestfield SE
Non-executive director, Moody's Europe
Non-executive board member, BNY Mellon European Bank
Member, Supervisory Board, PGGM Vermogensbeheer
Chairman, Supervisory Board, Athora Netherlands
Senior Advisor Rothschild & Co



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