The Dutch corporate governance code

Principles of good corporate governance

and

best practice provisions

DRAFT: an invitation to comment

Corporate Governance Committee

1 July 2003

Preamble

1. The Corporate Governance Committee has drawn up this corporate governance code at the request of the Confederation of Netherlands Industry and Employers (VNO-NCW), the Netherlands Centre of Executive and Supervisory Directors (NCD), the Association of Securities-Issuing Companies (VEUO), the Association of Stockholders (VEB), the Foundation for Corporate Governance Research for Pension Funds (SCGOP), and Euronext Amsterdam and at the invitation of the Minister of Finance and the Minister for Economic Affairs. The code is intended primarily for all companies which have their registered office in the Netherlands and whose shares or depositary receipts for shares are officially listed on a government-recognised stock exchange (referred to below as 'listed companies').

2. In formulating the code, the Committee has based itself on the existing legislation governing the external and internal relations of listed companies, including the legislation governing the mandatory application of the statutory two-tier rules (structuurregime) and the case law on corporate governance. Below is a list of the relevant legislation passed since the publication of the 40 recommendations of the Peters Committee:
   - the Act to regulate the possibility of setting a registration date for the exercise of the right to attend and vote at the general meeting of shareholders (article 2:119 of the Civil Code (BW), as of 15 December 1999);
   - the Act to regulate the inclusion in the Securities Markets (Supervision) Act 1995 (WTE 1995) of provisions concerning public offers for securities (article 6a et seq. WTE 1995, as of 5 September 2001);
   - the Act to regulate the separation of the resolution to adopt or approve the annual accounts and the resolution to discharge the members of the management board and supervisory board from liability (article 2:101 (3) Civil Code, as of 1 December 2001);
   - the Act to regulate the abolition of the statutory age limit for supervisory directors (paragraph 4 of article 2:142 Civil Code has been repealed, as of 23 April 2002);
   - the Act to regulate publication of the remuneration and shareholdings of the members of the management board and supervisory board (articles 2:383b-e Civil Code and article 2a et seq. of the Disclosure of Major Holdings in Listed Companies Act 1996, as of 1 September 2002).

   In its deliberations, the Committee has also taken account of recent case law on the subject of corporate governance and the regulation of anti-takeover devices, in particular:
   - Gucci/LVMH (OK 27 May 1999, JOR 1999, 121; HR 27 September 2000, JOR 2000, 217 and OK 8 March 2001, JOR 2001, 55)[1];
   - HBG/Ballast Nedam/Heijmans/Boskalis (OK 4 July 2001, JOR 2001, 149, OK 19 September 2001, JOR 2001, 224, OK 21 January 2002, JOR 2002, 28 and HR 21 February 2003, JOR 2003, 57);

[1] *Translator's note on the abbreviations: (1) OK = the Enterprises Division of Amsterdam Court of Appeal; (2) HR = the Supreme Court of the Netherlands; (3) JOR = Business Case Law.*

- Rodamco North America/Westfield (OK 16 October 2001, JOR 2001, 251, OK 15 November 2001, JOR 2001, 252, OK 22 February 2002, JOR 2002, 63, OK 22 March 2002, JOR 2002, 82 and HR 18 April 2003, JOR 2003, 110).

The Committee has also taken account of the bill to implement the EU directive on electronic commerce (Parliamentary Papers II 2001/02, 28 197, nos. 1-11), which includes a proposal to add a new paragraph 5 to article 2:117 Civil Code to the effect that a voting proxy may be granted electronically. The right of remote voting by electronic means, as provided for in this new paragraph 5, is a major step towards ensuring that shareholders are more closely involved in corporate decision-making.

The Committee also included in its deliberations the bill to amend the statutory two-tier rules (structuurregime; Parliamentary Papers II 2001/02, 28 179, nos. 1-19). The main points in the bill are as follows:

- the works council is to be given what is in principle the binding right to nominate a maximum of one third of the supervisory board members in the case of companies having statutory two-tier status;
- the general meeting of shareholders is to have the last word on the appointment and dismissal of the members of the supervisory board of companies having statutory two-tier status; shareholders can prevent the appointment of a supervisory board member by a resolution passed by a two thirds majority, representing at least a third of the issued capital, and may also dismiss the entire supervisory board by a resolution passed by the same majority;
- the shareholders of *all* public (and private) companies who represent a given proportion of the capital (one percent of the capital or a shareholding having a market value of € 50 m) are to have the right to table items for the agenda of the general meeting of shareholders;
- the general meeting of shareholders of *all* public companies is to have the right to approve major management decisions, such as taking and disposing of major equity participations and entering into and ending joint ventures which alter the profile of the company;
- the general meeting of shareholders of *all* public (and private) companies is to have the right to determine the annual accounts;
- the holders of depositary receipts of *all* listed companies are to have the right to vote in the general meeting of shareholders by means of proxies. However, in the event of a takeover or impending takeover, they may be deprived of their voting right.

The Committee has also taken note of the government's intention to introduce independent public supervision of auditors (Parliamentary Papers II 2002/03, 28 090, no. 5) and of the external financial reporting of listed companies (Parliamentary Papers II 2001/02, 28 386, no. 1).

Finally, the Committee included in its deliberations the proposal for a directive of the European Parliament and Council on takeover bids (COM (2002) 534 final; 2002/0240 (COD)), and the progress in the negotiations on this directive (Parliamentary Papers II 2002/03, 28 600 IXB, no. 21).

3. The code is based on the principle, which is broadly accepted in the Netherlands, that a company is a long-term form of collaboration between the various parties involved. The stakeholders are the groups and individuals who directly or indirectly influence (or are influenced by) the achievement of the aims of the company. In other words employees, shareholders, suppliers and customers, but also government and civil society. The management board and the supervisory board have overall responsibility for weighing up the interests, generally with a view to ensuring the continuity of the enterprise. For this purpose, the company endeavours to achieve the greatest possible long-term return on invested capital. The management board and supervisory board should take account of the interests of the different stakeholders. The confidence of the stakeholders that their interests are represented is essential if they are to cooperate effectively within and with the company. Good entrepreneurship, including integrity and transparency of decision-making by the management board, and proper supervision thereof, including accountability for such supervision, are essential if the stakeholders are to have confidence in the management board and the supervision. These are the two pillars on which good corporate governance rests and on which this code is based.

4. The code contains the principles and concrete provisions which the persons involved in a company (including management board members and supervisory board members) and stakeholders (including institutional investors) should observe in relation to one another in 2003. The principles may be regarded as reflecting the latest general views on good corporate governance, which now enjoy wide support. The principles may serve as a guide in describing the corporate governance structure of the company in the annual report.

5. The principles have also been elaborated in the form of provisions, which are often of a concrete nature. These provisions create a set of standards governing the conduct of management board and supervisory board members (for example in relation to the external auditor) and shareholders. They indicate the national and international 'best practice' and may be regarded as an elaboration of the general principles of good corporate governance. Listed companies may depart from the principles. Non-compliance is not in itself objectionable and indeed may even be justified in certain circumstances. Whether all the provisions can be applied is in fact dependent on the specific circumstances of the company and its shareholders. Not all companies are the same: they operate in different markets, the (geographic) diversification of share ownership differs, their growth perspectives are different, and so forth. In addition, the circumstances in which a company finds itself change with some regularity. Shareholders, the media and businesses that specialise in rating the corporate governance structure of listed companies should not therefore automatically

treat instances of non-compliance as negative, but should instead assess the reason for the non-compliance.

6. Unconditional freedom to decide whether or not to comply with the code is not desirable. In international legislation and codes, the flexibility is limited by the obligation of listed companies to explain whether, and if so why and to what extent, they do not comply with the corporate governance code (known as the 'comply or explain' principle). This was also recommended by the Peters Committee. As is evident from the collection of articles entitled 'Corporate Government in the Netherlands 2002: the present position', less than half of the listed companies complied with this recommendation in 2001. The present Corporate Governance Committee therefore recommends to the legislator that the 'comply or explain' principle for listed companies should be given a statutory basis in Book 2 of the Civil Code. In doing so, the Committee has taken into account the communication of the European Commission entitled 'Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward', which was published on 21 May 2003. In this plan of action, the European Commission has announced that it will shortly produce a proposal for a framework directive on an annual corporate governance statement, under which listed companies would be obliged, among other things, to include a reference in their annual report to their compliance with the national corporate governance code.

7. A statutory obligation of this kind to indicate to what extent the corporate governance code has been observed presupposes the existence of some kind of procedure for updating the code to take account of societal developments. An obligation to continue explaining why a company does not comply with a seriously outdated code would be pointless. The Corporate Governance Committee therefore recommends to the responsible Ministers that a small panel be established to examine, on an ongoing basis, whether certain principles or best practice provisions should be modified or interpreted more closely. Where necessary, this panel could also request one or more experts to prepare new provisions in respect of certain aspects. Finally, a new committee should be established, on the recommendation of this panel, at least every three years to evaluate and, where necessary, update the code. Public consultation should form part of the procedure in all cases.

8. The code is divided into five chapters: (I) management board; (II) supervisory board; (III) shareholders/general meeting of shareholders; (IV) auditor of the financial reports and the position of the external auditor; (V) disclosure, compliance and enforcement. The code also has an annex containing recommendations for the legislator and the drafters of the reporting standards (annex 1). Annex 2 sets out the terms of reference of the committee and annex 3 the composition of the committee.

9. All these chapters contain principles and provisions for listed companies. Chapter III contains a number of provisions for the shareholders. Chapter IV includes a number of provisions for the

external auditors. Annex 1 to the code is intended for the legislator and the drafters of the reporting standards.

10. The code is based on the system in which a separate supervisory board exists alongside the management board, whether under the statutory two-tier rules (structuurregime) or otherwise. In the Netherlands, companies which are not bound by law to apply the statutory two-tier rules may opt for the so-called one-tier management structure in which a single board contains both executive and non-executive directors. A few listed companies in the Netherlands have a one-tier structure. In view of the introduction in 2004 of a statutory scheme governing the European Company, under which it will be expressly possible to choose between a one-tier and a two-tier structure, the possibility is by no means excluded that other companies may follow suit in due course. In order to ensure that the code takes account of future developments and scenarios, the provisions regarding the supervisory board are also applicable to the non-executive directors of companies which have a one-tier structure (without prejudice to the management obligations of these non-executive directors). The provisions governing the management board are also applicable to the executive directors of such companies, with the exception of management duties that are not susceptible of delegation. The provisions regarding the chairman of the supervisory board also apply to the chairman of the board of companies which have a one-tier structure. Chapter II.8 contains a number of specific provisions for companies that have a one-tier structure.

11. For the purposes of the code, the holders of depositary receipts for shares issued with the cooperation of the company are equated with the holders of shares. Chapter III.2 contains a number of specific provisions for companies which have issued depositary receipts for their shares and for the trust offices which administer the shares of these companies.

12. As stated in section 1 above, the code is intended for listed companies. However, the majority of the principles may also be applied to the corporate governance of other large legal entities.

13. The corporate governance code will come into force on 1 January 2004. From this date onwards, listed companies will therefore be expected to report (a) their observance of the corporate governance code and (b) any instances of non-compliance with the best practice provisions. Reporting will take place annually, in the company’s annual report. The above obligation will start with the annual report drawn up in 2004 for the 2003 financial year.

CORPORATE GOVERNANCE CODE

Principles and best practice provisions

I. Management board

I.1 Function and procedure

Principle **The function of the management board is to manage the company, which means, among other things, that it is responsible for achieving the company's aims, strategy and policy, and results. The management board is accountable for this to the general meeting of shareholders. In discharging its function, the management board shall be guided by the interests of the company and its business, taking into consideration the interests of the company's stakeholders. The management board shall provide the supervisory board in good time with all information necessary for the exercise of the duties of the supervisory board.**

The management board is responsible for managing the risks associated with the company activities and for financing the company. The management board shall report related developments to the supervisory board and its audit committee, with which it shall also discuss the internal risk management and control systems.

__Best practice provisions__

I.1.1 A management board member is appointed for a maximum period of four years. The term of office may be renewed for a maximum of four years at a time[2].

I.1.2 The management board shall submit to the supervisory board for approval:
a) the operational and financial aims of the company;
b) the strategy designed to achieve the aims;
c) the parameters to be applied in relation to the strategy, for example in respect of the financial ratios.
The main elements shall be mentioned in the annual report.

I.1.3 The company shall have a good internal risk management and control system. It shall, in any event, employ as instruments of the internal risk management and control system: (a) risk analyses of the operational and financial aims of the company; (b) a code of conduct (which should, in any event, be published on the company's website); (c) guides for the layout of the financial reports and the procedures to be followed in drawing up the reports; and (d) a system of monitoring and reporting.

[2] To facilitate the operation of this provision, we recommend to the legislator that the application of employment law to the members of the management board of listed companies be reviewed (see section 2 of annex 1).

I.1.4 The management board shall declare in the annual report that the internal risk management and control systems are adequate and effective and shall provide clear substantiation of this declaration.

I.1.5 In the annual report, the management board shall report on the operation of the internal risk management and control system during the year under review. In doing so, it shall describe any significant changes that have been made and any major improvements that are planned, and shall confirm that they have been discussed with the audit committee and the supervisory board.

I.1.6 The management board shall, in the annual report, set out the sensitivity of the results of the company to external factors and variables.

I.1.7 The management board shall ensure that internal 'whistleblowers' have the possibility of reporting irregularities of a general, operational nature to the chairman of the management board or an official designated by him, without jeopardising their legal position.

I.1.8 A management board member may not be a member of the supervisory board of more than two listed companies or other large legal entities. Nor may a management board member be the chairman of the supervisory board of another listed company or other large legal entity. Membership of the supervisory board of subsidiaries of the company itself does not count for this purpose. The decision of a management board member to stand as a candidate for membership of the supervisory board of another listed company or other large legal entity requires the approval of the supervisory board.

I.2 Remuneration

Amount and composition of the remuneration

Principle **The amount and structure of the remuneration which the management board members receive from the company for their work shall be such that qualified and expert managers can be recruited and retained. If the remuneration consists of a fixed and a variable part, the variable part shall be linked to previously-determined, measurable and influenceable goals, which must be achieved partly in the short term and partly in the long term, in order to strengthen the board members' ties with the company. The remuneration structure should be such that it promotes the interests of the company in the medium and long term and does not encourage board members to act in their own interests and neglect those of the company. The amount and structure of remuneration shall be determined in the light of the results, the company share price and internal developments. The shares held by a board member in the company on whose board he sits are long-term investments. The amount of compensation which a board member may receive on termination of his employment may not exceed one year’s salary.**

Best practice provisions

I.2.1 Options to acquire shares are a conditional remuneration component, and become unconditional only when the management board members have fulfilled predetermined performance criteria after a period of at least three years from the date on which the options are granted.

I.2.2 If the company, notwithstanding best practice provision I.2.1, grants unconditional options to management board members, it shall apply performance criteria when doing so and the options should, in any event, not be exercised in the first three years after they have been granted.

I.2.3 Shares acquired by management board members under a share plan shall at least be held by them until the termination of their employment[3].

I.2.4 The number of options and/or shares to be exercised or granted shall depend on the achievement of predetermined, clearly-quantifiable and challenging aims.

I.2.5 The term of options shall be limited to a maximum of seven years and shall not be extended.

I.2.6 The exercise price of options shall not be fixed at lower than a verifiable price or a verifiable price average in accordance with the official listing on one or more predetermined days during a period of not more than five trading days prior to and including the day on which the option is granted.

I.2.7 The exercise price or the other conditions regarding the granted options shall not be modified during the term of the options.

I.2.8 In so far as a management board member wishes to invest in listed shares, he shall invest only in listed investment funds or transfer the free management of his securities portfolio to an independent third party by means of a written mandate agreement.

I.2.9 The economic value of the variable remuneration components shall not exceed 50 percent of the total remuneration.

I.2.10 The maximum remuneration in the event of dismissal is one year's salary (the 'fixed' part of the remuneration), irrespective of duration of the contract of employment[4].

I.2.11 The company shall not grant its management board members any personal loans or guarantees, unless this is in the normal course of its business and on terms applicable to the personnel as a whole, and after approval of the supervisory board.

Disclosure of remuneration

Principle **The annual accounts shall include, under 'particulars to be added to the annual accounts and the annual report', the principal points of the remuneration report of the supervisory board concerning the remuneration policy of the company, as drawn up by the remuneration committee. The notes to the annual accounts**

[3] Management board members must be given the opportunity to sell part of their shares in order to pay the tax on the shares they have acquired.
[4] To facilitate the operation of this provision, we recommend to the legislator that the application of employment law to the members of the management board of listed companies be reviewed (see section 2 of annex 1).

shall contain complete and detailed information on the amount and structure of the remuneration of the individual members of the management board. The amount of compensation previously agreed in respect of the termination of a management board member's contract of employment shall also be stated in the notes to the annual accounts.

Best practice provisions

I.2.12 The remuneration report of the supervisory board shall contain an overview of the remuneration policy planned for the next financial year and subsequent years.

I.2.13 The remuneration report shall, in any event, contain the following information:

a) a description of the performance criteria on which any right of the management board members to options, shares or other variable remuneration components is dependent;

b) an explanation of the chosen performance criteria;

c) a summary of the methods that will be applied in order to determine whether the performance criteria have been fulfilled and an explanation of the choice of these methods;

d) if performance criteria are based on a comparison with external factors, a summary should be given of the factors that will be used to make the comparison; if one of the factors relates to the performance of one or more companies (peer group) or of an index, it should be stated which companies or which index has been chosen as the yardstick for comparison;

e) a description and explanation of each proposed change to the conditions on which a management board member can acquire rights to options, shares or other variable remuneration components;

f) if any right of a management board member to options, shares or other variable remuneration components is not performance-related, an explanation of why this is the case;

g) an explanation of the relative importance of the variable and non-variable part of the remuneration;

h) a summary and explanation of the policy of the company relating to the term of the contracts with the management board members, the periods of notice under these contracts, and a statement of the extent to which the company endorses best practice provision I.2.10;

i) current pension and early retirement schemes for management board members;

j) a description of the content of any change-of-control clauses in contracts with management board members and golden parachute clauses;

k) the names and relevant particulars of the group of companies by reference to which the amount and composition of the remuneration of the management board members is partly determined.

I.2.14 If a management board member or former management board member is paid special remuneration during a given financial year, an explanation of this remuneration shall be included in the remuneration report.

I.2.15 The remuneration report of the supervisory board shall, in any event, be put on the company's website.

I.2.16 The remuneration policy of the company shall be submitted to the general meeting of shareholders for approval.

I.2.17 The notes to the annual accounts shall contain a statement of the different remuneration components of each management board member or former management board member, including the value of any options granted in respect of shares by reference to best practice provision I.2.18[5].

Determination of the remuneration

Principle **The remuneration committee of the supervisory board shall submit a proposal to the supervisory board for the remuneration of the individual members of the management board, and the supervisory board shall make a decision on the basis of this proposal. Schemes granting management board members remuneration in the form of shares or options for shares, and major changes to such schemes, shall require the prior approval of the general meeting of shareholders.**

Best practice provisions

I.2.18 The company shall state, in the notes to the annual accounts, the value of the options granted to the company's management board and staff. It will also indicate how this value has been determined.

I.3 Conflicts of interest

Principle **Any conflict of interest or apparent conflict of interest between the company and management board members shall be avoided.**

Best practice provisions

I.3.1 A management board member shall (a) not enter into competition with the company; (b) not demand or accept (material) gifts for himself or for his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree (*translator's note: as defined in Dutch law*); c) not provide unjustified advantages to third parties; and (d) not take advantage of business opportunities to which the company is entitled for himself or for his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.

[5] The Committee urges that a uniform manner of reporting and a uniform system of calculation be adopted and recommends the development of a reporting standard for this purpose.

I.3.2 A management board member shall immediately report any conflict of interest or potential conflict of interest to the chairman of the supervisory board and to the other members of the management board. A management board member who is involved in a conflict of interest situation shall provide all information about this to the chairman of the supervisory board and to the other members of the management board, including information concerning his wife, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree that is relevant to the situation. The supervisory board shall decide, other than in the presence of the management board member concerned, whether there is a conflict of interest. A potential conflict of interests exists, in any event, if the company intends to enter into a transaction with a legal entity (i) in which a management board member has a personal financial interest; (ii) which has a management board member who has a relationship under family law with a management board member of the company, or (iii) in which a management board member of the company has a management or supervisory position.

I.3.3 A management board member shall not take part in any discussion and/or decision-making process that involves a subject or transaction in relation to which he has a conflict of interest or potential conflict of interest with the company.

I.3.4 All transactions in which there are conflicts of interest or potential conflicts of interest with management board members shall be agreed on terms that are customary in the sector concerned. Transactions in which there are conflicts of interest with management board members require the approval of the supervisory board. Such transactions shall be published in the annual report.

II. Supervisory Board

II.1 Function and procedure

Principle **The function of the supervisory board is to supervise the management board and the general affairs of the company and its business. In discharging its function, the supervisory board shall be guided by the interests of the company and its business, and shall take into account the relevant interests of the company's stakeholders. The supervisory board is responsible for the quality of its own performance.**

Best practice provisions

II.1.1 The division of duties within the supervisory board and the procedure of the supervisory board and its chairman shall be laid down in a set of regulations. The supervisory board shall include in the regulations a passage dealing with its relations with the management board, the works council and the general meeting of shareholders. The regulations shall, in any event, be put on the company’s website.

II.1.2 The following information about each supervisory board member shall, in any event, be published on the company's website: (a) gender; (b) age; (c) profession; (d) principal position; (e) nationality; (f) other important positions, in so far as this information is relevant to the performance of the duties of the supervisory board member; (g) date of initial appointment; and (h) the current term of office.

II.1.3 A supervisory board member shall retire early in the event of inadequate performance, structural disagreement, incompatibility of interests, and in other instances in which retirement is deemed necessary in the opinion of the supervisory board.

II.1.4 The supervisory board shall arrange for the receipt, recording and handling of complaints received by the company in respect of the financial reporting, the internal risk management and control systems, and the audit. Internal 'whistleblowers' shall have the opportunity, without jeopardising their legal position, to report on irregularities in the above-mentioned matters and to report complaints about members of the management board to the chairman of the supervisory board.

II.1.5 The supervisory board shall meet in accordance with a fixed schedule. Supervisory board members who are frequently absent shall be asked to explain their non-attendance. The company shall indicate in its annual report which supervisory board members have been frequently absent from meetings of the supervisory board.

II.1.6 The general duties of the supervisory board may be deemed to include supervision of the following: (i) achievement of the company's objectives; (ii) corporate strategy and the risks inherent to the business activities; (iii) the structure and operation of the internal risk management and control systems; (iv) the financial reporting process; and (v) observance of the legislation and regulations.

II.1.7 The supervisory board shall discuss, at least once a year, and other than in the presence of the management board, both its own functioning and that of the individual members, and the conclusions that must be drawn on the basis thereof. The desired profile, composition and competence of the supervisory board shall be discussed. The supervisory board shall also discuss, at least once a year, and other than in the presence of the management board, both the functioning of the management board as an organ of the company and the performance of the individual members, and the conclusions that must be drawn on the basis thereof. To these discussions shall be referred in the annual report.

II.1.8 The supervisory board shall discuss, in any event at least once a year, the corporate strategy and the risks of the business, and the result of the assessment by the management board of the structure and operation of the internal risk management and control systems, as well as any significant changes thereto. To these discussions shall be referred in the report of the supervisory board.

II.1.9 The supervisory board and the individual members of the supervisory board shall each have their own responsibility for gathering all information which is necessary in order

to be able to function as a supervisory organ of the company. The company shall provide the necessary means for this purpose.

II.2 Expertise and composition

Principle **Each supervisory board member shall be capable of assessing the broad outline of the overall policy. Each supervisory board member shall have the specific expertise required for the fulfilment of the duties assigned to the role designated to him within the framework of the supervisory board profile. The composition of the supervisory board shall be such that it is able to carry out its duties properly. A supervisory board member shall be reappointed only after careful consideration. The profile criteria referred to above shall also be fulfilled in the case of a reappointment.**

<u>**Best practice provisions**</u>

II.2.1 The supervisory board shall prepare a profile of its scope and composition, taking account of the nature of the business, its activities and the desired expertise and background of the supervisory board members. The profile shall be made generally available and shall, in any event, be put on the company's website.

II.2.2 At least one member of the supervisory board shall be a financial expert, in the sense that he has relevant knowledge and experience of financial administration and accounting for listed companies or other large legal entities.

II.2.3 After their appointment, all supervisory board members shall follow an induction programme, which, in any event, covers general financial and legal affairs, financial reporting by the company, any specific aspects that are unique to the company and its business activities, and the responsibilities of a supervisory board member. The supervisory board shall conduct an annual review to identify any aspects with regard to which the supervisory board members require further training or education during their period of appointment. The company shall play a facilitating role in this respect.

II.2.4 The number of supervisory boards of listed companies or other large legal entities of which an individual may be a member shall be limited to such an extent that the proper performance of his duties is assured; the maximum number is five, for which purpose the chairmanship of a supervisory board counts double.

II.2.5 A person may be appointed to the supervisory board for a maximum of three 4-year terms.

II.2.6 The supervisory board shall draw up a retirement rota in order to avoid, as far as possible, a situation in which many reappointments occur simultaneously. The retirement rota shall be made generally available and shall, in any event, be put on the company's website.

II.3 Role of the chairman of the supervisory board and the company secretary

Principle **The chairman of the supervisory board determines the agenda, presides over the meetings, is responsible for the proper functioning of the supervisory board and its committees, guarantees the adequate provision of information to the members, ensures that there is sufficient time for making decisions, arranges for the induction and training programme for the members, acts on behalf of the supervisory board as the main contact for the management board and initiates the evaluation of the functioning of the supervisory board and the management board. He is assisted by the company secretary.**

Best practice provisions

II.3.1 The chairman of the supervisory board shall ensure that:

a) the members of the supervisory board follow their induction and education or training programme;
b) the members of the supervisory board receive in good time all information which is necessary for the proper performance of their duties;
c) there is sufficient time for consultation and decision-making by the supervisory board;
d) the committees of the supervisory board function adequately;
e) the performance of the management board members and supervisory board members is assessed at least once a year;
f) the supervisory board elects a vice-chairman.

II.3.2 The supervisory board shall be assisted by the company secretary. The company secretary shall ensure that the correct procedures are followed and that the board acts in accordance with its statutory obligations and its obligations under the articles of association. He shall assist the chairman of the supervisory board in the actual organisation of the affairs of the supervisory board (information, agenda, evaluation, training programme, etc.). The company secretary shall be appointed and dismissed by the supervisory board, on the recommendation of the management board[6].

II.4 Composition and role of three key committees of the supervisory board

Principle **The supervisory board shall, in any event, appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. The supervisory board shall remain responsible for decisions, even if they are prepared by committees appointed from among its members.**

Best practice provisions

II.4.1 Each committee shall consist of at least three members. A maximum of one member may not be independent within the meaning of best practice provision II.5.2. However,

[6] The Committee recommends that the legislator regulate the position of the company secretary by law (see section 5 of annex 1).

such a member may not chair the committee. The remuneration committee and the selection and appointment committee may consist of the same members.

II.4.2 A set of regulations shall be drawn up for each committee. The regulations shall indicate the role and responsibility of the committee, its composition and the manner in which it discharges its duties. The regulations and the composition of the committees shall, in any event, be published on the company's website.

II.4.3 The composition of the individual committees, the number of committee meetings and the main items discussed shall be mentioned by the company in its annual report.

II.4.4 The supervisory board shall receive from each of the committees a report of its deliberations and findings.

II.4.5 If the supervisory board does not institute any committees, best practice provisions II.4.6, II.4.10 and II.4.13 shall apply to the entire supervisory board.

Audit committee

II.4.6 The audit committee shall, in any event, have the following duties:

a) supervising the effect of internal risk management and control systems, including supervision of the enforcement of the relevant legislation and regulations, and supervising the effect of codes of conduct;
b) supervising the provision of financial information by the company (choice of accounting policies, application and assessment of the effects of new rules, information about the handling of estimated items in the annual accounts, forecasts, etc.);
c) supervising compliance with recommendations and with the observations of internal and external auditors;
d) supervising the functioning of the internal audit department;
e) supervising the policy of the company on tax planning;
f) supervising relations with the external auditor, including, in particular, his independence, remuneration and any non-auditing work for the company;
g) advising the supervisory board of the recommendation to the general meeting of shareholders for the appointment of an external auditor.

II.4.7 The audit committee shall not be chaired by the chairman of the supervisory board or by a former member of the management board of the company.

II.4.8 The audit committee shall decide whether and, if so, when the chairman of the management board (i.e. the chief executive officer), the chief financial officer and, possibly, the internal auditor, should attend its meetings.

II.4.9 The audit committee shall meet with the external auditor as often as it considers necessary, but at least once a year, and other than in the presence of management board members.

Remuneration committee

II.4.10 The remuneration committee shall, in any event, have the following duties:

a) drafting the proposal for the remuneration policies to be pursued and the annual report on remuneration policy to be adopted by the supervisory board;
b) drafting the proposal for the remuneration of the individual members of the management board, for adoption by the supervisory board; such proposal shall, in any event, deal with: (i) the remuneration structure and (ii) the amount of the fixed remuneration, the shares and/or option rights, bonuses, pension rights, severance pay and other forms of compensation to be awarded, as well as the performance criteria and their application;
c) preparing the remuneration report.

II.4.11 The remuneration committee shall not be chaired by the chairman of the supervisory board or by a former member of the management board of the company, or by a supervisory board member who is a member of the management board of another listed company.

I.4.12 No more than one member of the remuneration committee shall be a member of the management board of another listed company.

Selection and appointment committee

II.4.13 The selection and appointment committee shall, in any event, have the following duties:

a) drawing up selection criteria and appointment procedures for supervisory board members, management board members and senior management;
b) periodically assessing the scope and composition of the supervisory board and the management board, and making a proposal for a composition profile of the supervisory board;
c) periodically assessing the functioning of individual supervisory board members and management board members, and reporting on this to the supervisory board;
d) making proposals for appointments and reappointments.

II.5 Independence

Principle **The composition of the supervisory board shall be such that the members are able to act critically and independently of one another and of the management board and any sectional interest.**

<u>Best practice provisions</u>

II.5.1 All members of the supervisory board, with the exception of not more than one person, shall be independent in the sense that the definition of a lack of independence referred to in best practice provision II.5.2 are not applicable to them.

II.5.2 A supervisory board member cannot be regarded as independent if he or his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:

a) has been an employee or member of the management board of the company (including associated companies as referred to in section 1 of the Disclosure of Major Holdings in Listed Companies Act (WMZ) 1996) in the five years prior to the appointment;
b) receives personal financial compensation from the company 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;
c) has had an important business relationship with the company in the three years prior to the appointment;
d) 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 (cross-ties);
e) holds at least ten percent of the shares in the company (including the shares held by natural persons or legal entities which cooperate with him under a legal, tacit, oral or written agreement);
f) is a member of the management board or supervisory board of a legal entity which holds at least ten percent of the shares in the company;
g) has temporarily managed the company during the previous twelve months where the management board members are absent or unable to discharge their duties.

II.5.3 The supervisory board shall declare, in the annual report or in the report of the supervisory board, that best practice provision II.5.1 has, in its view, been fulfilled. It shall also indicate which supervisory board members it regards as independent.

II.6 Conflicts of interest

Principle **The supervisory board is responsible for deciding on how to resolve conflicts of interest between management board members, supervisory board members and the external auditor on the one hand and the company on the other.**

<u>Best practice provisions</u>

II.6.1 A supervisory board member shall immediately report any conflict of interest or potential conflict of interest to the chairman of the supervisory board and to the other members of the management board. A supervisory board member who is involved in a conflict of interest situation shall provide all information about this to the chairman of the supervisory board, including information relating to wife, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The relevant supervisory board member shall not take part in the assessment conducted by the supervisory board. A conflict of interests exists, in any event, if the

company intends to enter into a transaction with a legal entity (i) in which a management board member has a personal financial interest; (ii) which has a management board member who has a relationship under family law with a supervisory board member of the company, or (iii) in which a member of the supervisory board of the company has a management or supervisory position.

II.6.2 A supervisory board member shall not take part in a discussion and/or decision-making process on a subject or transaction in relation to which he has a conflict of interest or potential conflict of interest with the company.

II.6.3 All transactions in which there are conflicts of interest or potential conflicts of interest with supervisory board members shall be agreed on terms that are customary in the sector concerned. Transactions in which there are conflicts of interest with supervisory board members require the approval of the supervisory board. Such transactions shall be published in the annual report.

II.6.4 All transactions between the company and legal or natural persons who hold at least ten percent of the shares in the company shall be agreed on terms that are customary in the sector concerned. Transactions with such persons require the approval of the supervisory board. Such transactions shall be published in the annual report.

II.6.5 The regulations of the supervisory board shall contain rules on dealing with conflicts of interest and potential conflicts of interest between management board members, supervisory board members and the external auditor on the one hand and the company on the other. The regulations shall additionally stipulate which transactions require the approval of the supervisory board.

II.6.6 A delegated supervisory board member is a supervisory board member who has a special duty. The delegation may not extend beyond the duties possessed by the supervisory board member himself and may not therefore include the management of the company. It may entail more intensive supervision and advice and more regular consultation with the management board. The delegation shall be of a temporary nature only. The delegation may not detract from the function and power of the supervisory board. The delegated supervisory board member remains a member of the supervisory board.

II.6.7 A supervisory board member who temporarily takes on the management of the company, where the management board members are absent or unable to discharge their duties, shall resign from the supervisory board in order to do so.

II.7 Remuneration

Principle **The general meeting of shareholders shall determine the remuneration of the supervisory board members. The remuneration of a supervisory board member is not dependent on the results of the company. The notes to the annual accounts shall contain full and detailed information on the amount and structure of the remuneration of individual supervisory board members.**

<u>Best practice provisions</u>

II.7.1 At the moment of his appointment, a supervisory director shall not possess listed options on shares in the company of which he becomes a supervisory board member, and shall not be granted shares or options on shares during his term of office.

II.7.2 Any shares held by a supervisory board member in the company on whose board he sits are long-term investments.

II.7.3 A supervisory board member shall invest only in listed investment funds or shall transfer the discretionary management of his securities portfolio to an independent third party by means of a written mandate.

II.7.4 The company shall not grant its supervisory board members any personal loans or guarantees, unless this is in the normal course of its business, in which case approval of the supervisory board is required.

II.8 One-tier management structure

Principle The composition and functioning of a management board - comprising both members having responsibility for the day-to-day running of the company and members not having such responsibility - shall be such that proper and independent supervision is assured.

<u>Best practice provisions</u>

II.8.1 The chairman of the board shall not also be responsible for the day-to-day running of the company.

II.8.2 The chairman of the board shall be responsible for the proper composition and functioning of the entire board.

II.8.3 For the purpose of this responsibility, the board shall, in any event, establish the committees referred to in best practice provision II.5.2. Only board members who do not have responsibility for the day-to-day running of the company shall be members of these committees.

II.8.4 The majority of the members of the board shall not be responsible for the day-to-day running of the company. All of these members, save for a maximum of one, shall be independent in the sense that the definitions of a lack of independence referred to in best practice provision II.5.2 are not applicable to them.

III. The shareholders and general meeting of shareholders

III.1. Powers

Principle The general meeting of shareholders should be able to exert such influence on the policy 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. The general meeting of shareholders of companies not having statutory two-tier status (structuurregime) shall appoint and dismiss the members of the management board and the supervisory board.

Best practice provisions

Influence of the general meeting of shareholders

III.1.1 The articles of association of a company not having statutory two-tier status (structuurregime) may provide that the validity of a resolution to cancel the binding nature of a nomination for the appointment of a member of the supervisory board or of the management board and/or a resolution to dismiss a member of the supervisory board or the management board is dependent on the proportion of the capital represented at the meeting. If this proportion of the capital is not represented at the meeting, but a resolution to deprive a nomination of its binding nature, or to dismiss a board member, is passed by a simple majority of the votes, a new meeting shall be convened at which the resolution may be passed regardless of the proportion of the capital represented at the meeting[7].

III.1.2 The voting right on financing preference shares shall be based on the real value of the capital contribution[8].

Important management decisions

III.1.3 Decisions of the management board that are so far-reaching that they would greatly change the identity of the company or the business shall require the approval of the general meeting of shareholders. This, in any event, concerns resolutions to take or dispose of a holding in the capital of a company, which holding is worth at least a quarter of the market value of the outstanding share capital of the company, plus the nominal value of the gross interest-bearing liabilities, or, if the nominal value of the gross interest-bearing liabilities exceeds the market value of the outstanding share capital of the company, a third of the market value of the outstanding share capital of the company. The reference price shall be the closing price prior to the date on which the management board decision is announced, or the most recently published nominal value of the gross interest-bearing liabilities[9].

III.1.4 If a private bid has been announced for a business unit or a holding, and the value of the bid exceeds the limit referred to in best practice provision III.1.3, the management board of the company shall make public, at its earliest convenience, its position on the bid and the reasons for this position.

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[7] To facilitate this provision, it is recommended that the legislator amend article 2:133 of the Civil Code (see section 6 of annex 1).

[8] To facilitate this provision, it is recommended that the legislator make it possible in the case of preference shares for the voting right to be linked no longer to the nominal value but instead to the real value of the capital contribution (see section 7 of annex 1).

[9] To facilitate this provision, it is recommended that the legislator amend article 2:107a, paragraph 1, part c, Civil Code (Bill to amend the statutory two-tier scheme; Parliamentary Papers 28 179, see section 8 of annex 1).

III.1.5 The policy of the company on additions to reserves and on dividends (the amount and purpose of the addition to reserves and the amount of the dividend and the type of dividend) shall be dealt with as a separate item on the agenda of the general meeting of shareholders. Each change in the policy on additions to reserves and on dividends shall be submitted to the general meeting of shareholders for approval.

III.1.6 A resolution to pay a dividend shall be dealt with as a separate item on the agenda of the general meeting of shareholders.

III.1.7 The agenda of the general meeting of shareholders shall deal separately with the approval of the policy of the management board (discharge of management board members from liability) and the approval of the supervision exercised by the supervisory board (discharge of supervisory board members from liability).

III.2 Depositary receipts for shares

Principle **The issue of depositary receipts for shares is a means of preventing a (chance) minority of shareholders from controlling the decision-making process as a result of absenteeism at a general meeting of shareholders. The issuing of depositary receipts for shares shall not be used as an anti-takeover measure. The management of the trust office shall issue proxies in all circumstances and without limitation to the holders of depositary receipts who so request. The management of the trust office should have the confidence of the holders of depositary receipts. Depositary receipt holders shall have the possibility of recommending candidates for the management of the trust office.**

<u>Best practice provisions</u>

III.2.1 The management of the trust office should enjoy the confidence of the depositary receipt holders and operate independently of the company which has issued the depositary receipts. These matters shall be discussed explicitly during a meeting of holders of depositary receipts after this code enters into effect.

III.2.2 The managers of the trust office shall be appointed by the management of the trust office. The meeting of holders of depositary receipts may make recommendations to the management of the trust office for the appointment of persons to the position of manager. 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 part of the management of the trust office.

III.2.3 A person may be appointed to the management of the trust office for a maximum of three 4-year terms.

III.2.4 In exercising its voting rights, the trust office shall be guided primarily by the interests of the depositary receipt holders, taking the interests of the company and its business into account.

III.2.5 The company shall not disclose to the trust office information which has not been made public.

III.2.6 The trust office shall report periodically, but at least once a year, on its activities. The report shall, in any event, be placed on the company's website.

III.2.7 The report referred to in best practice provision III.2.6. shall, in any event, deal with:

a) the number of shares for which depositary receipts have been issued and an explanation of changes in this number;
b) the work carried out in the year under review;
c) the voting behaviour in the general meetings of shareholders held in the year under review;
d) the percentage of votes represented by the trust office during the meetings referred to at (c);
e) the remuneration of the members of the management of the trust office;
f) the number of meetings held by the management board and the main items dealt with in them;
g) the costs of the activities of the trust office;
h) any external advisory reports obtained by the trust office.

III.2.8 The trust office shall, without limitation and in all circumstances, issue proxies[10] to depositary receipt holders who so request. Each depositary receipt holder may issue binding voting instructions to the trust office in respect of the shares which the trust office holds on his behalf.

III.3 Voting in absentia

Principle **Good corporate governance requires meaningful participation by shareholders in the decision-making process during the general meeting of shareholders. In order to achieve this, there must be a system that allows efficient communication between the company and its shareholders, and among the shareholders themselves, regarding matters raised in the general meeting of shareholders.**

<u>Best practice provisions</u>

III.3.1 After the legislator has made provisions for remote voting and the obtainment of proxies and instructions, the company shall offer its shareholders the possibility of remote voting and of obtaining proxies and instructions, and communicating with other shareholders about matters raised during the general meeting of shareholders[11].

III.3.2 After the legislator has made possible by law the use of electronic facilities for participation in the general meeting of shareholders, the company shall offer its

[10] To facilitate this provision, it is recommended that the legislator repeal paragraphs 2, 3 and 4 of draft article 2:118a Civil Code (Bill to amend the statutory two-tier scheme; Parliamentary Papers 28 179) (see section 9 of annex 1).

[11] To facilitate this provision it is recommended that the legislator amend the Securities Giro Act (Wet giraal effectenverkeer) and Book 2 of the Civil Code (see section 10 of annex 1).

shareholders electronic facilities for remote voting on its website through websites maintained for this purpose by third parties. The company shall also offer its shareholders electronic access (for example through webcasting) to the general meeting of shareholders. Shareholders who wish, however, to continue using paper voting forms shall be given the opportunity to do so[12].

III.4 Provision of information to shareholders

Principle **The management board or, where appropriate, the supervisory board shall provide all shareholders and other parties in the financial markets with equal and simultaneous information about matters that may influence the price of the share. The contacts between the management board on the one hand and press and analysts on the other shall be carefully handled and structured in such a way that equality of information and the independence of analysts in relation to the company and vice versa are guaranteed.**

<u>Best practice provisions</u>

Dealings with analysts, the financial press and institutional and other investors

III.4.1 Meetings of analysts, presentations to analysts, presentations to investors and institutional investors and press conferences shall be announced in advance on the company's website and by means of press releases. Provision shall be made for all shareholders to follow these meetings and presentations in real time, for example by means of webcasting. After the meetings, the presentations shall be placed on the company's website.

III.4.2 No information of a price-sensitive nature shall be made available to analysts and/or the financial press in so far as such information is not already in the public domain or made public at the same time.

III.4.3 Analysts' reports and valuations shall not be assessed, commented upon or corrected, other than factually, by the company in advance.

III.4.4 The company shall not pay any fee(s) to parties for the carrying out of research for analysts' reports or for the production or publication of analysts' reports.

III.4.5 No information of a price-sensitive nature shall be supplied to institutional or other investors in so far as such information is not already in the public domain or made public at the same time.

III.4.6 Analysts meetings, presentations to institutional or other investors and direct discussions with the investors shall not take place shortly before the publication of the regular financial information (quarterly, half-yearly or annual figures).

[12] To facilitate this provision it is recommended that the legislator amend Book 2 of the Civil Code in various places (see section 12 of annex 1).

Logistics of the general meeting of shareholders/provision of information

Principle **The management board and the supervisory board shall provide the general meeting of shareholders with all information which it requires for the exercise of its powers.**

Best practice provisions

III.4.7 The management board and the supervisory board shall provide the general meeting of shareholders with all requested information, unless this would be contrary to an important interest of the company. If the management board and the supervisory board invoke an important interest, they must give explicit reasons.

III.4.8 The company shall place and update all information which it is required to publish or deposit pursuant to the provisions of company law and securities law applicable to it on a separate part of the company's website (i.e. separate from the commercial information of the company) which is recognisable as such. It is sufficient for the company to establish a hyperlink to the website of the institutions which publish the relevant information electronically pursuant to statutory provisions or the stock exchange regulations.

III.4.9 If a right of approval is granted to the general meeting of shareholders by law or under the articles of association of the company (e.g. in the case of option schemes, far-reaching decisions as referred to in draft article 2:107a Civil Code), or the management board or the supervisory board requests a delegation of powers (e.g. issue of shares or authorisation for the purchase of shares), the management board and the supervisory board shall inform the general meeting of shareholders by means of a 'shareholders circular' of all facts and circumstances relevant to the approval, delegation or authorisation to be granted. The shareholders circular shall, in any event, be put on the company’s website.

III.4.10 The minutes of the general meeting of shareholders shall be made available to all shareholders no later than three months after the end of the meeting, and shall be adopted at the next general meeting of shareholders.

III.4.11 If price-sensitive information is provided during a general meeting of shareholders, or the answering of shareholders' questions will result in the disclosure of price-sensitive information, this information shall be made public without delay.

III.4.12 The management board shall provide a survey of all existing or potential anti-takeover measures in the annual report and shall also indicate in what circumstances it is expected that these measures may be used.

III.5 Responsibility of institutional investors

Principle **Institutional investors have a responsibility to their own clients, investors and companies in which they invest, to decide, in a careful and transparent way, whether they wish to exercise their rights as shareholder of listed companies.**

Best practice provisions

III.5.1 Institutional investors (pension funds, insurers and investment institutions) shall publish annually, in any event on their website, their policy with regard to the exercise of the voting rights in respect of shares which they hold in listed companies.

III.5.2 Institutional investors shall, at least once a year, report to their own clients or investors on how they have implemented their policy on the exercise of the voting rights in the year under review and shall give reasons.

III.5.3 At the request of a client or investor, an institutional investor shall explain how it has voted in a specific case.

IV. Audit of the financial reporting and the position of the external auditor

IV.1 Financial reporting

Principle **The management board is responsible for the quality and completeness of publicly disclosed financial statements. The supervisory board shall ensure that the management board fulfils this responsibility.**

Best practice provisions

IV.1.1 The preparation and publication of the annual report, the annual accounts, the quarterly and half-yearly figures and ad hoc financial information require careful internal procedures. The supervisory board shall supervise compliance with these procedures in the preparation and publication of all financial statements.

IV.1.2 The audit committee shall determine how the external auditor should be involved in the content and publication of financial statements.

IV.1.3 If the external auditor discovers irregularities in the content of financial statements, he shall report this to the audit committee.

IV.1.4 The management board is responsible for establishing and maintaining internal procedures which ensure that all major financial information is known to the management board, so that the timeliness, completeness and correctness of the external financial reporting is assured. For this purpose, the management board ensures that the financial information from business divisions and subsidiaries is reported directly to it and that the integrity of the information is not jeopardised. The supervisory board shall ensure that the internal procedures are followed and applied.

IV.2 Role, appointment, remuneration and assessment of the function of the external auditor

Principle **The external auditor is appointed by the general meeting of shareholders on the recommendation of the supervisory board, for which purpose both the audit committee and the management board advise the supervisory board. The remuneration of the external auditor, and the issuing of instructions to the external auditor to carry out non-auditing work, shall be approved by the supervisory board on the recommendation of the audit committee and after consultation with the management board**.

Best practice provisions

IV.2.1 The external auditor may be questioned by the general meeting of shareholders in relation his fairness opinion, and shall therefore attend this meeting and be entitled to address the meeting[13].

IV.2.2 The management board and the audit committee shall report their dealings with the external auditor to the supervisory board on an annual basis, including his independence in particular (for example, the desirability of rotating the responsible partners of auditors involved in both auditing and non-auditing work for the same company). The supervisory board shall take this into account when deciding its nomination for the appointment of an external auditor, which nominations shall be submitted to the general meeting shareholders.

IV.2.3 Once every four years, the supervisory board and the audit committee shall conduct a thorough assessment of the functioning of the external auditor within the various legal entities and in the different capacities in which the external auditor acts. The main conclusions of this assessment shall be communicated to the general meeting of shareholders for the purposes of assessing the nomination for the appointment of the external auditor.

IV.3 Position of the internal auditors

Principle **The internal auditor shall operate under the responsibility of the management board.**

Best practice provision

IV.3.1 The external auditor and the audit committee shall be involved in drawing up the tasks of the internal auditor. They shall also take cognizance of the findings of the internal auditor.

IV.4 Relationship and communication of the external auditor with the organs of the company

Principle **The external auditor shall attend the meetings of the audit committee and the supervisory board, at which decisions are taken regarding the periodic external financial reporting. The external auditor shall report his findings in relation to**

[13] It is recommended that the legislator establish this provision by law (see section 14 of annex 1).

the audit of the annual accounts to the management board and the supervisory board simultaneously.

Best practice provisions

IV.4.1 The external auditor shall attend the meeting of the supervisory board, at which the report of the external auditor with respect to the audit of the annual accounts is discussed, and at which the approval or adoption of the annual accounts is determined. The external auditor shall also attend the meeting of the supervisory board at which the quarterly and/or half-yearly figures and other interim financial statements are adopted.

IV.4.2 The external auditor shall also attend the meeting of the audit committee, at which the periodic external financial reports are discussed. The findings of the external auditor, the audit approach and the risk analysis shall also be discussed at these meetings.

IV.4.3 The report of the external auditor pursuant to article 2:393, paragraph 4, Civil Code shall contain the matters which the external auditor wishes to bring to the attention of the management board and the supervisory board in relation to the annual accounts, the annual report and the other particulars. The following examples can be given:

A. with regard to the financial figures:
- analyses of changes in the shareholders' equity and financial results, which do not appear in the particulars to be published, and which, in view of the external auditor, contribute to an understanding of the financial position and results of the company;
- comments regarding the processing of one-off items, the effects of estimates and the manner in which they have been arrived at, the choice of accounting policies, when other choices were possible, and special effects of such policies;
- comments on the quality of forecasts and budgets.

B. with regard to the operation of the internal risk management and control systems (including the reliability and continuity of automated data processing) and the quality of the internal provision of information:
- points for improvement, gaps and quality assessments;
- comments about threats and risks to the company and the manner in which they should be reported in the particulars to be published;
- compliance with articles of association, instructions, regulations, loan covenants, requirements of external regulatory agencies, etc;

C. with regard to the audit:
- information about matters of importance to assessment of the independence of the external auditor;

- information about the course of events during the audit and cooperation with internal auditors and/or any other external auditors, matters for discussion with the management board, a list of corrections that have not been made, etc.

V. Disclosure, compliance and enforcement

Principle **The management board and the supervisory board are responsible for the corporate governance structure of the company and compliance with this code.**

<u>Best practice provisions</u>

V.1 The broad outline of the corporate governance structure of the company shall be explained in a separate chapter of the annual report, partly by reference to the principles mentioned in this code.

V.2 In this chapter, the company shall indicate expressly to what extent it complies with this corporate governance code and, in the event of non-compliance, why, and to what extent, it does not comply.

V.3 The supervision of this chapter of the annual report, which will be exercised under the terms of the system of supervision of financial reporting of listed companies that will shortly be introduced, shall be confined to the finding that a chapter has been included in the annual report describing the broad outline of the corporate governance, that a statement has been included concerning compliance with this code and that the description and the statements are mutually consistent. It is up to the shareholders of the company, if they so wish, to call the management board and the supervisory board to account in respect of the contents of this chapter and the statement.

Annex 1: Recommendations for the legislator and the 'accounting standards setters'

1. To facilitate compliance with this code, the Committee recommends that the 'comply or explain' rule for listed companies should be given a statutory basis in Book 2 of the Civil Code.

2. To facilitate best practice provisions I.2.1 and I.2.10, the Committee recommends that the legislator reviews the position of management board members in general under employment law, especially that of members of management boards of listed companies, in the event of termination of employment, particularly in order to ensure that, upon termination of employment, the compensation does not exceed one year's salary, regardless of the length of service of the board member concerned, in the light of the structure and scope of the remuneration. The Committee also considers that a member of the management board of a listed company should no longer be regarded as an employee. The Committee recommends for this purpose, among other things, an amendment to article 2:131 Civil Code. It may be argued that the position of a member of a management board already differs from that of an 'ordinary' employee. The general meeting of shareholders or the supervisory board may dismiss a management board member at any time, and the management board member concerned cannot claim reinstatement (article 2:134 Civil Code). Dismissal by the general meeting or the supervisory board also, in principle, entails termination of the contract of employment.

3. To facilitate best practice provision I.2.17, the Committee urges the 'accounting standards setter' to develop a reporting standard which provides for a uniform manner of reporting on the remuneration of management board members and a uniform system for calculating the different remuneration components.

4. To facilitate best practice provision I.2.18, the Committee supports the International Financial Reporting Standard Share-based Payment currently being prepared by the International Accounting Standards Board concerning the processing of the costs of option schemes in the annual accounts of the company. The Committee endorses the proposal to include the costs of option schemes in the annual accounts of the company.

5. To facilitate best practice provision II.3.2, the Committee recommends that the legislator regulate by law the position of the company secretary in Book 2 of the Civil Code.

6. To facilitate best practice provision III.1.1, the Committee recommends that the legislator amend article 2:133, paragraph 1, of the Civil Code in such a way that when a management board member or supervisory board member is appointed, no more than one person need be nominated. If the general meeting of shareholders resolves that this nomination is not binding (article 2:133, paragraph 2, Civil Code), it may request the person having the right of nomination to make a new

nomination. Within this context, the general meeting may itself recommend a person for appointment.

7. To facilitate best practice provision II.1.2, the Committee recommends that the legislator amend Book 2 of the Civil Code, thus rendering it possible for the voting right on preference shares to be linked not to the nominal value, as at present, but to the real value of the capital contribution.

8. To facilitate best practice provision III.1.3, the Committee recommends that the legislator reformulate draft article 2:107a, paragraph 1 (c), of the Civil Code (Bill to amend the statutory two-tier rules (structuurregime), Parliamentary Papers 28 179) by reference to this provision.

9. To facilitate best practice provision III.2.8, the Committee recommends that the legislator deletes paragraphs 2, 3 and 4 of draft article 2:118a of the Civil Code (Bill to amend the statutory two-tier rules (structuurregime), Parliamentary Papers 28 179).

10. To facilitate best practice provision III.3.1, the Committee recommends that the Stock Clearing Act and Book 2 of the Civil Code be amended in such a way as to facilitate remote voting and the obtainment of proxies and voting instructions, including, in particular, the possibility for the company to communicate with its shareholders, and the ability for shareholders to communicate among each other, about matters raised in the general meeting of shareholders. The Committee therefore supports the proposal of the Minister of Finance and the Minister of Justice to make provision by law for proxy voting and proxy solicitation in the near future.

11. To facilitate best practice provision III.3.1, the Committee considers that the cross-border legal barriers to the exercise by shareholders of their rights, should be resolved as quickly as possible at a European level, on the basis of a number of concrete recommendations made by a sub-group of the High Level Group of Company Law Experts. The European Commission announced in its communication published on 21 May 2003, entitled 'Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward’, that it would produce a proposal for a directive on this subject in the near future. The Committee fully endorses this proposal and recommends that the Dutch government does everything in its power to finalise negotiations on such a draft directive during its term of presidency at the latest (i.e. in the second half of 2004).

12. To facilitate best practice provision III.3.2, the Committee recommends that Book 2 of the Civil Code be amended in such a way that:
    a) shareholders can take part in a general meeting of shareholders and cast their vote at such a meeting by means of webcasting, videoconferencing or other means of telecommunication;
    b) shareholders have the possibility of casting their vote on resolutions at a general meeting of shareholders by means of e-voting;
    c) votes which are cast electronically at a general meeting of shareholders are treated as votes cast at the meeting;
    d) companies have the possibility of calling a general meeting of shareholders electronically (by e-mail or announcements on websites);

    Within this context, the Committee has noted with interest the consultation document entitled 'Modern means of communication and the general meeting of shareholders' of the Ministry of Justice. The Committee endorses the proposal formulated in this document, which stipulates that the use of electronic facilities for participation in the general meeting of shareholders should be regulated by law in the near future.

13. To facilitate best practice provision III.5.1, III.5.2 and III.5.3, the Committee recommends that the legislator regulates these provisions by law, in so far as the institutional investors are not themselves listed companies, and are therefore not subject to this code.

14. To facilitate best practice provision IV.2.1, the Committee recommends that the legislator amends Book 2 of the Civil Code in order to give the external auditor the power to attend and address the general meeting of shareholders.

15. The Committee urges the legislator to regulate by law the use of anti-takeover arrangements and the possibility of setting aside such arrangements after a given time.

16. The EU High Level Group of Company Law Experts recommended in its report entitled 'A Modern Regulatory Framework for Company Law in Europe', published on 4 November 2002, that management board and supervisory board members who publish misleading financial information should be barred from holding positions with European enterprises. In its communication entitled 'Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward', which was published on 21 May 2003, the European Commission expressed the intention of implementing this recommendation in a European directive in the medium term (2006-2008). The Committee recommends that the Dutch legislator investigates whether such a provision can be included in the bill already being prepared for the supervision of external financial reporting of institutions that issue securities. One possibility would be for the Enterprise Chamber of the Court of Appeal in Amsterdam to have the power – where misleading financial reporting has been encountered within the context of an annual account procedure - to

dismiss the responsible management board and supervisory board members, and to bar them from holding office as a management board or supervisory board member for a given period of time.

Annex 2: Terms of reference of the new Corporate Governance Committee

Aim

A good system of corporate governance contributes to a well-functioning economy. Since the Corporate Governance Committee (the Peters Committee) issued its 40 recommendations, there have been national and international developments which necessitate a review of this code of best practice. For example, the Dutch Corporate Governance Foundation evaluated compliance with the 40 recommendations in 2002. In essence, the Foundation found that progress had been made in the field of corporate governance in the Netherlands in the last five years, but that further improvement was still possible and desirable. In addition, a High Level Group of Company Law Experts recommended to the European Commission in its report entitled 'A Modern Regulatory Framework for Company Law in Europe' that each Member State should draw up a national code of corporate governance with which listed companies should comply. The group also recommended that such companies should be transparent about the parts of this code with which they do not comply. Furthermore, there have recently been scandals, particularly accounting scandals, involving companies in both the United States and Europe. These scandals have, to some extent, undermined confidence in the management and supervision of companies that operate in the financial markets. A sound and transparent system of checks and balances in companies would be an important means of boosting confidence in companies that operate in the capital markets.

Following the developments described above, the Confederation of Netherlands Industry and Employers (VNO-NCW), the Netherlands Centre of Executive and Supervisory Directors (NCD), the Association of Securities-Issuing Companies (VEUO), the Association of Stockholders (VEB), Euronext and the Foundation for Corporate Governance Research for Pension Funds (SCGOP) requested a number of people to sit on a new Corporate Governance Committee, at the invitation of the Minister of Finance and the Minister for Economic Affairs. This Committee was asked to draw up a revised code of best practice for corporate governance.

The purpose of this code is to provide a guide for listed companies in improving their governance. Compliance is intended to boost confidence in the good and responsible management of companies. The perspective of the capital markets is therefore central; in other words, the relationship between listed companies and providers of capital, without detracting from the position of other stakeholders such as employees. This perspective also means that the subject of socially-responsible entrepreneurship does not form part of the renewed code. After all, this subject is not tied to a national corporate structure and extends way beyond the development of a new code for the functioning of Dutch companies in the capital market.

The new code should contain principles, rules of conduct and recommendations which can be applied in the private domain by means of self-regulation.

It is logical that in developing the new code, the Committee should take account of the existing statutory framework of Dutch company law and treat the legislation currently under development as a given. This is subject to the proviso that the Committee may encounter specific problems, for example involving facilitation of parts of the code, which can be solved only by legislation. The Committee is free to make recommendations in this respect.

Parameters for a renewed code of best practice for corporate governance

The organisations referred to above have identified the following parameters that a code of best practice for corporate governance must fulfil:

- a new code should be principle-based and not rule-based: it is the spirit and not the letter of a code which is important; compliance with the code should assist companies when they tap the capital markets; the effectiveness of companies can be enhanced in this way;
- the code must be in line with international developments;
- the code should focus primarily on listed companies, in particular on management board members, supervisory board members, shareholders and the general meeting of shareholders, and on the conduct of these groups;
- when drafting the code, one should nevertheless be acutely aware of its effect on non-listed companies and possible impact on case law;
- the code should not include rules specifically intended for the practice of a particular profession (merchant bankers, analysts and accountants) or other codes and recommendations intended for companies. Separate internal or external codes are, however, being developed for the accountancy profession, and for the conduct of the business of bankers and investment institutions. It would not be logical to include rules intended for these professional groups in a code of conduct that applies to management boards, supervisory boards, shareholders and the general meeting of shareholders. As regards socially-responsible entrepreneurship various codes of conduct have been or are being developed internationally for this purpose (Global Reporting Initiative (GRI), OECD, etc);
- for the purposes of compliance, the code should be designed in such a way that adequate supervision of compliance is possible.

Subjects covered by the new committee's terms of reference

The 40 recommendations of the Peters Committee, as contained in the ‘Corporate Governance in the Netherlands’ report, form the point of departure for the activities of the Committee. These recommendations will be updated, clarified, tightened up and possibly supplemented, partly in the light of the present practice - and the legislation and regulations already in existence or shortly to be introduced - and partly in the light of international developments.

The following subjects must in any event be covered:

- the position of the individual supervisory board member and the functioning of the supervisory board (independence, expertise, procedure, recruitment, term of office, multiple supervisory directorships, remuneration, committees, and the provision of internal and external information);
- the actual exercise of the rights of shareholders and the functioning of the general meeting of shareholders (provision of information, rules governing the general meeting of shareholders, treatment of minority and majority shareholders, conflicts of interest, role and functioning of institutional investors, the manner and frequency of the provision of information to investors, remote voting and electronic voting);
- the functioning of the management board (relationship with the supervisory board, transparency and remuneration);
- the relationship of the company and its organs (management board, supervisory board, audit committee, appointment of the external auditor) with the external auditor, including the role of the external auditor;
- transparency about corporate governance rules in practice;
- monitoring the functioning of a code in practice (e.g. transparency in terms of compliance and reasons for non-compliance, organisation of the monitoring).

Timing

The Committee is obliged to complete its work by the end of 2003. Moreover, the Committee should allow time for public consultation on the basis of its draft code.

The Hague, 10 March 2003

Annex 3: Composition of the Corporate Governance Committee

Chairman

Morris Tabaksblat

Chairman of the Board of Reed Elsevier

Chairman of the Supervisory Board of Aegon NV

Chairman of the Supervisory Board of TPG NV

Former CEO of Unilever NV

Board member of the Dutch Corporate Governance Foundation

Secretary

Rients Abma

Financial Markets Directorate, Ministry of Finance

Assistant secretary

Marco Knubben

Enterprise Directorate, Ministry of Economic Affairs

Members

Frederik van Beuningen

Director of Teslin Capital Management BV

Director of Darlin NV

Director of Todlin NV

Professor Jaap Glasz

Professor of Corporate Governance - University of Amsterdam

Chairman of the Board of Directors of Fortis NV

Deputy member of the Enterprise Chamber of the Court of Appeal in Amsterdam

Gilles Izeboud RA CPA

Former partner of PricewaterhouseCoopers

Deputy member of the Enterprise Chamber of the Court of Appeal in Amsterdam

Chairman of the Board of Governors of the postgraduate accountancy course, Vrije University

Jan Kalff

Chairman of the Supervisory Board of Hagemeyer NV

Vice-chairman of the Supervisory Board of Stork NV

Member of the Supervisory Board of ABN AMRO Holding NV

Member of the Supervisory Board of Volker Wessels Stevin NV

Chairman of the Supervisory Board of NV Luchthaven Schiphol (Schiphol Airport)

Member of the Board of Directors of Aon Corporation
Former CEO of ABN AMRO Holding NV

Peter de Koning
Chairman of the Foundation for Corporate Governance Research for Pension Funds
Member of the Board of Governors of International Corporate Governance Network
Board member of the Dutch Corporate Governance Foundation
Former Managing Director of SPF Beheer BV

George Möller
Chief Operating Officer of Euronext NV

Rob Pieterse
CEO of Wolters Kluwer NV (until 1 September 2003)
Board member of the Association of Securities-Issuing Companies (VEUO)
Member of the Supervisory Board of Koninklijke Grolsch NV
Member of the Supervisory Board of Essent NV

Peter Paul de Vries
Director of the Association of Stockholders (VEB)
Vice-chairman of Euroshareholders
Member of the committee of shareholders of Nedlloyd NV
Member of the committee of shareholders of Stork NV

Arie Westerlaken
Chief Legal Officer, Koninklijke Philips Electronics NV
Member of the Executive Board of the Confederation of Netherlands Industry and Employers (VNO-NCW)

Professor Jaap Winter
Professor of International Business Law - Erasmus University, Rotterdam
Chairman of the EU High Level Group of Company Law Experts
Partner of De Brauw Blackstone Westbroek