



The Dutch

# **CORPORATE GOVERNANCE CODE**

## **Proposal for revision**

**AN INVITATION TO COMMENT**

**UNOFFICIAL TRANSLATION**

**11 February 2016**

Secretariat: PO Box 20401, 2500 EK

The Hague, The Netherlands

**[www.mccg.nl](http://www.mccg.nl)**



# PROPOSALS FOR REVISION CORPORATE GOVERNANCE CODE

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

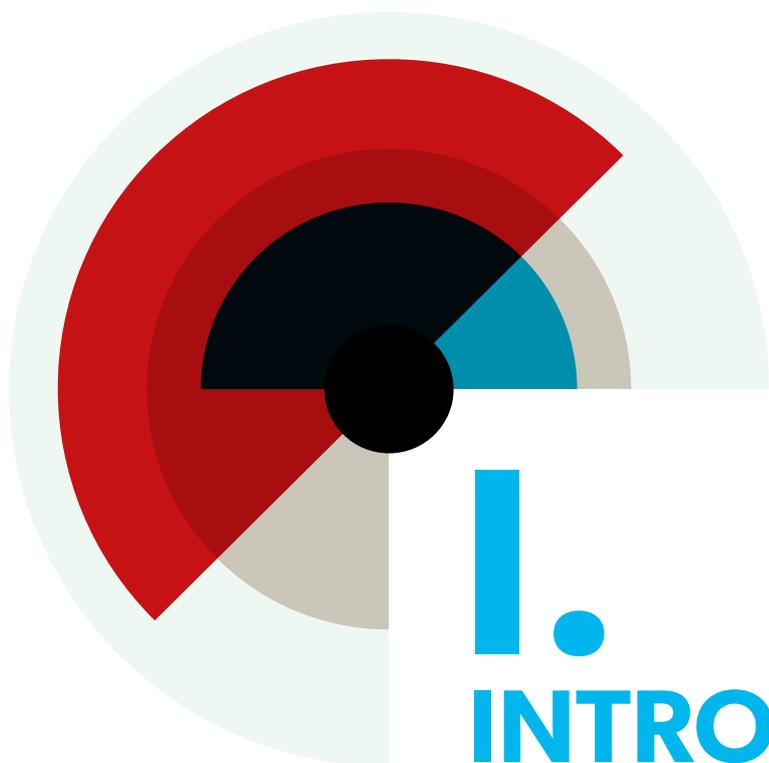
All stakeholders and interested parties, also including non-supporting parties, are invited to respond to this consultation document and take part in the public debate on the revision of the Code. The purpose is to use the input and findings obtained during the consultation phase to arrive at a revision of the Code.

The consultation period lasts eight weeks, running from 11 February to 6 April 2016, inclusive. Please send your comments to [secretariaat@mccg.nl](mailto:secretariaat@mccg.nl) by 6 April 2016 at the latest.

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

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# I. INTRODUCTION

The Code has proven its worth since its creation in 2003. Applicable to Dutch listed companies, the Code contains principles and best practice provisions for the governance of listed companies and the account to be rendered to shareholders in that regard. Every year, Dutch listed companies check their governance against the Code's principles and best practice provisions and render account of their compliance. Compliance figures are nearing 100% and the Code has become an important guide for shareholders as well as management board and supervisory board members of Dutch listed companies.

The Code is a form of self-regulation; it is a document created by the 'market'. The parties targeted by the Code are management board members, supervisory board members and shareholders of Dutch listed companies. Where the law gives them such leeway, they themselves determine the values and standards of good corporate governance. These parties are represented by Eumedion, Euronext, the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). Together with the employee representatives CNV and FNV, they are referred to as the Code's supportive parties.

Corporate governance is in constant flux. It is important for the Code to remain relevant and up to date, moving in tandem with the spirit of the times. Maintenance is crucial in that respect. The Code was adopted by the Tabaksblat Committee in December 2003 and was most recently amended by the Frijns Committee in December 2008. By letter of 11 May 2015, the supportive parties asked the Committee to make proposals to update the Code. The Committee was pleased to meet this request and in this consultation document now presents proposals for a revision of the Code.

## Notions underlying the revision

The objective that the Committee has set itself in the Code's revision is to incorporate developments of topical corporate governance issues in the principles and best practices of the Code. Good corporate governance requires that themes such as long-term value creation, risk control, culture, effective management and supervision, remuneration and the relationship with shareholders are not just words on paper but themes that are truly embraced in the boardrooms. They concern responsibility and accountability. To stress the themes' importance, the Committee has chosen to change the structure of the Code and to shift its design from a functional to a thematic structure. The Committee feels that this can also contribute to the Code's accessibility.

When formulating the proposals, the Committee duly considered all desires expressed by the supportive parties and other stakeholders as well as current national and international developments. Where there were overlaps or conflicts with laws and regulations, principles and best practice provisions have been deleted either in whole or in part. As regards the deletion and amendment of other provisions, the Committee has been both ambitious and careful. Since 2003, the current Code has played an important part in the corporate governance of companies, gaining a firm footing in corporate governance regulation. Together with domestic and European legislation and case law, the Code forms a structure that must be viewed in its entirety. As a result, what might look like the simple deletion of a provision may have consequences that cannot always be anticipated. That is why this structure has not been tampered with unnecessarily.

With this revision, the Committee is looking to the future. It has set the bar high. The 'comply or explain' principle offers companies, as before, room to comply with the Code by either applying the principles and best practice provisions or giving a qualitatively sound explanation for any departures from a provision.

The proposals for revision presented in this consultation document are aimed at the substance of the Code. An often-heard advantage of self-regulation as compared to legislation is that self-regulation is more flexible. Creation periods are shorter, allowing parties to respond to developments more quickly. This advantage will be realised in particular if the Code is revised on a regular basis. The Committee is therefore advising the supportive parties to introduce regular revisions. The need for a revision of the Code should be reviewed every three years. The degree of revision can then vary, with due regard to the impact that the changes will have on companies. The introduction of regular revisions may lead to changes in the manner in which compliance monitoring and the focus of the investigations are given shape. Also, more continuity in monitoring could be achieved by appointing a permanent Committee with rotating membership. The Committee will consult with the supportive parties to further flesh out the ideas on regular revisions and on shaping the monitoring process.

## Proposals for revision

The proposals for revision can be summarised in seven themes:

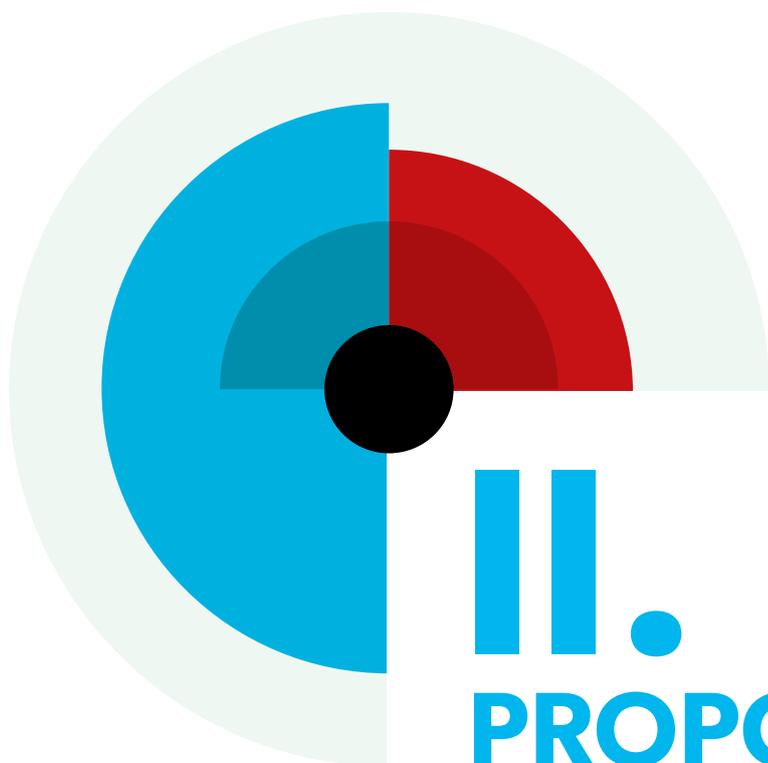
- i. more focus on long-term value creation;
- ii. risk management reinforcement;
- iii. new accents in effective management and supervision;
- iv. the introduction of culture as an explicit element of corporate governance;
- v. remuneration: cleaned up and simplified;
- vi. relationship with shareholders; and
- vii. clarification of requirements regarding the quality of the explanation.

In chapter II of this consultation document the proposals for revision are explained based on these themes. These proposals have been incorporated in the full draft text of the revised Code, as included in chapter III. Chapter IV includes a list of elements from the current Code that the Committee proposes to delete or technically amend.

To avoid confusion in respect of the current Code, the revised Code uses different numbering. In the current Code the principles and best practices start with Roman numerals, whereas in the revised Code the first number has been replaced with Arabic numerals.

## Further steps

The consultation period for the proposals for revision of the Code lasts eight weeks, running from 11 February to 6 April 2016, inclusive. The Committee aims to adopt an amended Code, subject to the responses it receives, before the end of this year and send it to the Cabinet with the request to embed the amended Code in law. The Code could then enter into force as from the financial year beginning on or after 1 January 2017.



# II. PROPOSALS FOR REVISION

## 1. MORE FOCUS ON LONG-TERM VALUE CREATION

Recent misconduct at companies, such as accounting fraud, corruption and cartel activity, can in many cases be traced to a business model that focused too much on achieving short-term gains. In those cases, companies had often lost sight of their long-term objectives. In the Monitoring Report on the 2013 Financial Year, the Committee observed that the current Code pays too little regard to the sustainability of companies' strategies in the long term and the implementation and effectiveness of internal risk management and control systems. The Code now confines itself to a paragraph in the preamble with a description of the underlying notion that a company is a long-term alliance between the various parties involved in the company.

In the revised Code, the Committee wishes to place greater emphasis on the focus on long-term value creation for the company and the enterprise affiliated with it. That focus requires the management board and the supervisory board, in performing their respective duties, to act in a sustainable manner by aiming for long-term value creation, giving attention to opportunities and risks and, in that process, weighing the interests of all of the company's stakeholders. The Committee defines 'stakeholders' as the groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company's objectives, such as shareholders and other lenders, employees, suppliers, customers and civil society. This approach reflects some recent developments in which companies have been taking more account of the risks and opportunities concerning the non-financial aspects of the enterprise, including developments in the area of integrated reporting<sup>1</sup> and the obligations ensuing from European Directive 2014/95/EU on disclosure of non-financial and diversity information<sup>2</sup>, soon to be implemented in Dutch legislation.

Some companies have already integrated long-term value creation in their business models, which is laudable. The Committee is introducing one principle and several best practice provisions with the aim of encouraging companies across the board to take responsibility and set the bar higher. The view on long-term value creation to be adopted creates a dot on the horizon and then requires companies to formulate and implement strategy to achieve this view. The Committee emphasises that the long-term focus does not mean that the 'here and now' can be disregarded; depending on the dynamics of the market in which the company operates, the strategy may continually require short-term adjustment. The Committee proposes to introduce one new principle and three best practice provisions in the revised Code that put the emphasis on creating long-term value for the company and the enterprise affiliated with it. This principle and the best practice provisions also clarify what is expected of the management board and the supervisory board and how they should render account.

### **Long-term value creation strategy**

The Committee proposes to flesh out the aspects playing a role in the company's strategy in a best practice provision. This will contribute to the most detailed strategy formulation possible. The Committee also recommends that the interests of all of the company's stakeholders be carefully weighed when formulating the strategy. The Committee therefore proposes that, when doing so, various aspects be weighed in, namely:

- › the strategy's implementation and feasibility;
- › the business model applied by the company and the market in which the company operates;
- › opportunities and risks for the company;
- › the company's operational and financial goals and their impact on its future position in relevant markets;
- › non-financial corporate issues relevant to the company, such as the environment, social and employee-related matters, respect for human rights, and fighting corruption and bribery; and
- › weighing the interests of all stakeholders.

The list given at the fifth bullet above reflects the text included in paragraph 7 of the preamble of European Directive 2014/95/EU on disclosure of non-financial and diversity information.

Attention to 'relevant corporate social responsibility issues' is stated as a separate element of a list in the current Code. Principles II.1 and III.1 provide that, in discharging their roles, the management board and the supervisory board shall have due regard for corporate social responsibility issues that are relevant to the enterprise. These issues are not presented as elements of the strategy. In the Committee's opinion, corporate social responsibility is not a goal to be pursued in itself but, rather, an integral part of the day-to-day operations of a company that focuses on long-term value creation. This can be expressed better in the Code. The Committee

<sup>1</sup> The International Integrated Reporting Council, 'The International <IR> Framework', December 2013, available at [www.integratedreporting.org](http://www.integratedreporting.org)

<sup>2</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ EU 2014, L 330).

therefore proposes to omit the term ‘relevant corporate social responsibility issues’ in the Code and instead advocate an integrated approach by referring to the focus on long-term value creation. This focus entails that due regard should also be given to the non-financial aspects of doing business and to a careful weighing of the interests of all of the company’s stakeholders. These aspects should be considered when formulating the strategy. The emphasis on an integrated approach is also reflected in the ‘in control’ statement, as this statement covers more than financial reporting risks (see also Chapter 2, Risk management reinforcement).

### **Responsibilities**

Part of the compliance study conducted for the purposes of the Monitoring Report on the 2014 Financial Year was the question of how strategic perspectives on risks and opportunities had been embedded within the company’s affiliated enterprise and how responsibilities had been allocated. No clear image emerged from the answers. This outcome has encouraged the Committee to make a proposal to address, in the Code, the allocation of responsibilities and the embedding of long-term value creation in the company’s governance.

The management board has primary responsibility for the continuity of the company and its affiliated enterprise. In this connection, the Committee views long-term value creation for the company as guidance for the way in which the management board should act. The management board is expected to adopt a view on long-term value creation for the company. This view will have to be translated into strategy, with the management board stating specifically how the view may be achieved. This strategy is not static. The Committee emphasises that the strategy – if necessary – should be adjusted in response to developments in both the short run and the long run.

The supervisory board has a derivative responsibility in this connection, as the supervisory board should supervise the management board’s prioritisation of long-term value creation in its actions. The Committee proposes that the supervisory board be assigned a clear role in the company’s long-term value creation. The supervisory board should be involved in the formation of the management board’s view and the formulation of the strategy. Both the view and the strategy should be submitted to the supervisory board for approval. In addition, the Committee proposes that a best practice provision be included stating that the supervisory board should supervise the management board’s execution of the strategy that is to result in long-term value creation for the company. In this connection, the supervisory board should discuss the company’s strategy, the implementation of the strategy in the business model of the enterprise affiliated with the company and the principal risks associated with it at least once per year. The supervisory board should render account of this discussion in the report of the supervisory board.

### **Accountability**

A good operation of the checks and balances within the company presumes that account is rendered of how long-term value creation is being pursued in practice. The Committee proposes that a substantive description on this point be included in the management report. The description should, in any event, set out the management board’s view on long-term value creation, the strategy for its realisation and how the management board contributed to long-term value creation in the past financial year, reporting on short-term as well as long-term developments.

Following the legislative consultations in the Dutch House of Representatives on 14 December 2015 regarding the bill to implement Directive 2013/50/EU amending Directive 2004/109/EC on transparency<sup>3</sup>, Finance Minister Dijsselbloem asked the Committee to consider paying regard to countering the voluntary publication of quarterly figures by issuers when revising the Code.<sup>4</sup> Quarterly figures could put too much

<sup>3</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ EU 2013, L 294).

<sup>4</sup> Annex to *parliamentary documents II* 2015/16, 34232, 9.

focus on the short term. With the present revision the Committee intends to place the importance of long-term value creation at the top of the corporate agenda. Short-term activities should serve long-term value creation. In the Committee's opinion, the use and necessity of publishing quarterly reports depend on the activities of the enterprise affiliated with the company and the market in which it operates. The Committee therefore believes it would be going too far to advise against the voluntary publication of quarterly reports altogether. However, the Committee does stress the importance of making a clear link with the long term in the quarterly reports.

## **Principle 1.1 Long-term value creation**

The management board is responsible for the continuity of the company and its affiliated enterprise, focusing on long-term value creation for the company and its affiliated enterprise. The management board formulates and implements a strategy focus on long-term value creation that may, depending on market dynamics, continually require short-term adjustment. The supervisory board supervises this.

### **1.1.1 Long-term value creation strategy**

The management board should have a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy to realise this view, paying attention to:

- i. the strategy's implementation and feasibility;
- ii. the business model applied by the company and the market in which the company operates;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in relevant markets;
- v. non-financial corporate issues relevant to the company, such as the environment, social and employee-related matters, respect for human rights, and fighting corruption and bribery; and
- vi. weighing the interests of all stakeholders.

### **1.1.2 Role of the supervisory board**

The management board should engage the supervisory board at a timely stage in formulating the view on long-term value creation and the strategy for its realisation. The management board should submit the strategy, and the explanatory notes to that strategy, to the supervisory board for approval.

The supervisory board should supervise the manner in which the management board realises the long-term value creation strategy. The supervisory board should in any event once per year discuss the strategy aimed at long-term value creation, the implementation of the strategy and the principal risks associated with it. This discussion should be mentioned in the report of the supervisory board.

### **1.1.3 Accountability**

In the management report, the management board should give a substantive description of the view on long-term value creation, the strategy for its realisation and which contributions were made to the long-term value creation in the past financial year. The management board should report on both the short-term and long-term developments.

## 2. RISK MANAGEMENT REINFORCEMENT

An adequate risk control system is indispensable for creating long-term value. Only too often does one-sided attention to short-term gains come at the expense of long-term results. Today's profits may lead to future losses. Besides financial losses, it can lead to loss of reputation or the need to radically change the earnings model. A good system for weighing opportunities and risks should make it possible to deliver results today without harming value creation tomorrow. The Committee therefore proposes that risk control be given more attention in the revised Code. The revised Code can clarify what adequate risk control entails and who should bear responsibility for this within the corporate relationships. Good interaction between the management board, the supervisory board and the audit committee along with good communication with the internal audit function and the external auditor are important. For shareholders, it is important to gain a reasonable degree of insight into the design and operation of the internal risk management and control systems.

When drawing up the proposals for the principle and best practice provisions on risk control, the Committee sought alignment with certain aspects of the corporate governance codes introduced in other European countries, including the codes applicable in the United Kingdom and Italy, and of the South African King Report on Corporate Governance. Furthermore, in certain respects the Committee was inspired by the Financial Reporting Council's Guidance on Risk Management, Internal Control and Related Financial and Business Reporting.<sup>5</sup>

### Risk management by the management board

The current Code broadly describes how a company is expected to give form and substance to its internal risk management and control systems. The phases of risk assessment, implementation and evaluation are currently described in the notes to the current Code. The Committee proposes to stress the importance of the various phases by further detailing them in best practice provisions.

The management board should monitor the design, the operation and the evaluation of the internal risk management and control systems. These systems should be adequate and be adaptable to respond to signs and incidents. It is important for the management board to take stock of the opportunities and analyse the risks of the company's strategy and the activities of the enterprise affiliated with the company. In this respect, the management board should determine which risks it is willing to take to realise the objectives formulated in the company's strategy. This willingness to take risks is referred to as the company's risk appetite. Next, the company's internal risk management and control systems should be adequately designed, implemented and maintained so that they may contribute to creating long-term value for the company. The systems should be integrated in the work processes within the company and, to the extent relevant, should be known at all levels within the enterprise affiliated with the company. Signs or incidents may give cause to make changes.

Finally, the Committee proposes to include in a best practice provision that the management board should regularly monitor the internal risk management and control systems and assess the effectiveness of the systems' design and operation. The outcomes should be used to make improvements to the systems where necessary. It is common for companies to base their assessment of the internal risk management and control systems on an internationally recognised framework. The COSO internal control framework is often used for that purpose.

<sup>5</sup> See Financial Reporting Council, 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting', September 2014, available at [www.frc.org.uk](http://www.frc.org.uk).

## Principle 1.2 Risk management

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

### 1.2.1 Risk assessment

The management board should identify and analyse the risks associated with the company's strategy and activities. It should establish the risk appetite within which the company may accept risks and the control measures to counter those risks. The context for this analysis should be determined by aspects such as the company's continuity, reputation, financial reporting, funding, operating activities and long-term value creation.

### 1.2.2 Implementation

Based on the risk assessment, the management board should design, implement and maintain adequate internal risk management and control systems. As much as possible, these systems should form part of the work processes within the company and – to the extent relevant – should be known at all levels within the enterprise affiliated with the company. The internal risk management and control systems should be adjusted in response to incidents in a timely fashion.

### 1.2.3 Evaluation

The management board should monitor the operation of the internal risk management and control systems and, at least annually, carry out a systematic review of the effectiveness of the systems' design and operation. Such monitoring should cover all material control measures, including the financial, operational and compliance aspects, and take account of weaknesses observed and lessons learned, signals from whistleblowers and findings from the internal audit function and the external auditor. Where necessary, improvements should be made to internal risk management and control systems.

## Internal audit function

The internal audit function plays a key role in the company's risk management. It is expected to objectively assess the implementation and effectiveness of the internal risk management and control systems. The Committee proposes to expand the principle and best practice provisions from the current Code pertaining to the internal audit function for the purposes of solidifying the latter's position. Corporate governance codes introduced in other countries also address the organisation of an effective internal audit function.

The Committee believes such solidification might be achieved by:

- › further detailing the allocation of responsibilities within the corporate relationships;
- › intensifying the audit committee's involvement in the functioning of the internal audit function;
- › embedding safeguards for the effective performance of its duties;
- › clarifying what the internal audit function's reports should cover; and
- › absent an internal audit function, setting additional requirements on how the supervisory board should gauge whether there is a need for such a function.

### **Allocation of responsibilities between the management board and the audit committee**

In other countries, for example in Germany, France and the United Kingdom, the internal audit function comes under the responsibility of the audit committee. In the Committee's opinion, this line of responsibility creates the risk of disconnecting the internal audit function's duties from the company's internal risk management and control systems too much. The Committee believes that the management board bears primary responsibility for adequately controlling the risks associated with the company's strategy and the activities of the company's affiliated enterprise. The internal audit function is an important instrument to support this. The Committee therefore maintains its opinion that the internal audit function should operate under the management board's responsibility.

The Committee does propose, however, that the audit committee's involvement in the functioning of the internal audit function be increased and that safeguards be embedded for the objective performance of duties. This can be achieved by more explicitly involving the audit committee in the functioning of the internal audit function. The Committee proposes that both the appointment and the dismissal of the senior internal auditor be subject to the approval of the chairman of the audit committee. In addition, the audit committee's opinion should be considered in the assessment of the internal audit function's functioning.

### **Internal audit function's work plan**

The Committee proposes to clarify in a best practice provision who should be involved in drawing up the internal audit function's work plan, and how. After coordination with the external auditor, the work plan should be submitted for approval to the management board and then the audit committee. The Committee proposes to add that the internal audit function's work plan should address the interaction with the external auditor. The Committee wishes to emphasise in that respect that the performance of the duties of the internal audit function and those of the external auditor are complementary.

### **Performance of work**

In the Committee's opinion, the proposed solidification of the internal audit function in the Code means, among other things, that the internal audit function should have sufficient resources to adequately perform the duties assigned to it and have access to information that is important for the performance of its work. The Committee believes that the internal audit function should be subject to minimum restraint in how it performs its duties. It should also be safeguarded that relevant information should be known at the proper levels. For that purpose, too, the Committee also proposes to include that the internal audit function should have direct access to the external auditor and the audit committee as a whole. The audit committee should record how it is informed by the internal audit function. This proposal aims to facilitate that the internal audit function is able to form an opinion about the design and effectiveness of the internal risk management and control systems in a adequate and sufficiently objective manner and that it can discuss these aspects with the audit committee and the external auditor. In the consultations by the management board and the audit committee with the internal audit function, there should also be room to address issues pertaining to the culture and conduct within the enterprise affiliated with the company.

### **Reports of findings**

The Committee proposes that the outcomes of audits by the internal audit function be reported to the management board. In addition, the internal audit function should report the essence of the outcomes to the audit committee and inform the external auditor accordingly. The Committee proposes that the audit committee and external auditor be informed by the internal audit function of any failings in the follow-up of recommendations made by the internal audit function and external auditor. This will introduce an additional safeguard for the follow-up of recommendations.

### **Alternative measures absent an internal audit function**

The Committee applies the notion that, in principle, every company should have an internal audit function in place. However, the Monitoring Report on the 2014 Financial Year revealed that 41% of companies do not have an internal audit function in place. The majority of companies without an internal audit function (24 out of 31) said that they do not have this function because the size of their affiliated enterprise is limited and/or their business activities are not complex.

If no internal audit function exists, the company should review on the basis of the current Code whether there might be a need for such a function in the future. The Committee proposes that the audit committee also assess whether any alternative measures have been taken to adequately fulfil the role of the internal audit function. In the Committee's opinion, a purely financial argument is insufficient to justify the lack of an internal audit function. In the event that the supervisory board nevertheless reaches the conclusion that no internal audit function will be established, the supervisory board should include the arguments that led to this conclusion in its report. With this amendment, the Committee stresses the importance of an internal audit function as a vital element of the company's risk management.

### **Principle 1.3 Internal audit function**

The duty of the internal audit function is to assess the effectiveness of the design and the operation of the internal risk management and control systems. The management board is responsible for the functioning of the internal audit function. The supervisory board supervises the functioning of, and maintains regular contact with, the internal audit function.

#### **1.3.1 Appointment**

The management board should both appoint and dismiss the senior internal auditor. Both the appointment and the dismissal of the senior internal auditor should be submitted to the chairman of the audit committee for approval.

#### **1.3.2 Assessment of the internal audit function**

The management board should annually assess the functioning of the internal audit function, taking into account the audit committee's opinion.

#### **1.3.3 Internal audit plan**

The internal audit function should draw up an internal audit plan and, after coordinating with the external auditor, should submit it for approval to the management board and then to the audit committee. In this internal audit plan, attention should also be paid to the interaction with the external auditor.

#### **1.3.4 Performance of work**

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

### 1.3.5 Reports of findings

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

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

In the consultation by the management board and the audit committee with the internal audit function, issues pertaining to the culture and conduct within the enterprise affiliated with the company should also be addressed.

### 1.3.6 Absence of an internal audit function

If there is no internal audit function, the audit committee should annually consider the need for an internal audit function and assess whether adequate alternative measures have been taken. On the proposal of the audit committee, the supervisory board should include the conclusions, along with any resulting recommendations, in the report of the supervisory board.

## Risk management accountability

### Rendering account of internal risk management and control systems

An explanation is given above of the proposal to further detail in best practice provisions what the Committee means by adequate internal risk management and control systems. The Committee proposes to have the text pertaining to the account to be rendered by the management board of the effectiveness of the design and operation of these systems reflect this proposal. In addition, the Committee proposes to clarify that non-financial risk control is also part of adequate risk management. Accountability will remain unchanged on the other points.

### 'In control' statement

The Committee proposes that the 'in control' statement included in best practice provision II.1.5 of the current Code be expanded on two points. In the original text of the 2003 Code, this 'in control' statement was formulated in relatively broad terms. The best practice provision concerned read as follows at the time: "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." Subsequently, in the 2008 revision, it was decided to limit the scope of this best practice provision. The management board's 'in control' statement regarding the internal risk management and control systems was linked to financial reporting risks in the current Code. The Committee proposes to cancel this link and to recommend that the management board include an 'in control' statement in the management report stating that the internal risk management and control systems functioned properly in the year under review. This broadening reflects the explicit regard paid by the Committee to the non-financial aspects of doing business. Risks ensuing from non-financial aspects, such as the environmental impact, may also have financial consequences.

Another expansion proposed by the Committee is a statement to be made by the management board declaring that the company's continuity has been safeguarded for the next 12 months. As regards this expansion, the Committee was inspired by the text of provision C.1.3 of the UK Corporate Governance Code. With this

amendment, the Committee emphasises that the management board bears primary responsibility for the continuity of the company and its affiliated enterprise as detailed in, for example, principle 1.1 of the proposals for revision. The Committee emphasises that the management board's statement regarding the company's continuity for the next 12 months – the short term – does not detract in any way from the long-term focus that the management board should have. This is in line with the Committee's notion that the short term cannot be disregarded in order to ultimately attain long-term objectives.

### **Principle 1.4 Risk management accountability**

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

#### **1.4.1 Accountability**

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

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

- iv. the execution of the risk assessment, with a description of the principal risks facing the company and the risk appetite of the company. These risks may include strategic, operational, financial, compliance and non-financial risks;
- v. the design of the internal risk management and control systems;
- vi. the operation of the internal risk management and control systems during the past financial year and how these systems contributed to mitigating and managing the risks;
- vii. any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, and the discussion of these issues with the audit committee and the supervisory board; and
- viii. the sensitivity of the results of the company to material changes in external factors.

#### **1.4.2 'In control' statement in the management report**

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

- i. that the internal risk management and control systems worked properly in the financial year;
- ii. that the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies; and
- iii. that the expectation is that the company's continuity has been safeguarded for the next twelve months.

### **Role of the supervisory board and the audit committee**

One of the supervisory board's duties is to supervise the effectiveness of the company's internal risk management and control systems, and the integrity of the management board's financial reporting. It is the audit committee's duty to prepare the supervisory board's consultations on this subject. On some points the Committee proposes to make changes to the current Code by clarifying and, in specific respects, broadening the role of the supervisory board and that of the audit committee in particular.

## Audit committee's duties

In recent years, Directive 2014/56/EU and Regulation 537/2014 were created describing the duties of an audit committee.<sup>6</sup> The aforementioned Directive implies that a financial expert should be part of the audit committee.<sup>7</sup> The Committee proposes that the Code mention only the duties going beyond what already ensues from the Directive and Regulation implemented. This is in line with the notion applied by the Committee that overlaps with legislation must be avoided.

### 1.5.1 Duties and responsibilities of the audit committee

The audit committee's duties and responsibilities include monitoring the company's financial reporting and the risk management conducted by the management board. In addition to what is laid down in legislation<sup>8</sup>, the audit committee should in any event focus on monitoring the management board with regard to:

- i. relations with, and compliance with recommendations and following up of comments by, the internal audit function and the external auditor;
- ii. the funding of the company;
- iii. the application of information and communication technology of the company; and
- iv. the company's tax policy.

## Attendance of the internal auditor and external auditor at audit committee meetings

Under best practice provision III.5.8 of the current Code, the audit committee should decide when the (senior) internal auditor and the external auditor should attend its meetings. In practice, however, the Committee observes that attendance is natural and useful, and proposes to amend the Code to reflect this practice. It emphasises the importance of the audit committee, the internal audit function and the external auditor maintaining close ties with each other.

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

In principle, the internal auditor and the external auditor should attend the audit committee meetings. The audit committee should decide whether and, if so, when the chairman of the management board and the chief financial officer should attend its meetings.

## Audit committee's report to the supervisory board

The Committee proposes that the revised Code further clarify which issues should be covered in the audit committee's report to the supervisory board. In addition to reporting on the assessment of the effectiveness of the internal management and control systems, the audit committee should also explain how the effectiveness of the internal audit function and the external audit process was assessed. The audit committee's report should also address material financial reporting considerations and the expectation as to whether the company's continuity is safeguarded for the next 12 months. The Committee aligned with provision C.3.8 of the UK Corporate Governance Code when making this list.

<sup>6</sup> Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (OJ EU 2014, L 158) and Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ EU 2014, L 158).

<sup>7</sup> Article 39(1) of Directive 2014/56/EU.

<sup>8</sup> Decree of 26 July 2008 implementing Article 41 of Directive No 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts, amending Directives No 78/660/EEC and No 83/253/EEC of the Council of the European Communities (Bulletin of Acts and Decrees 2008, 323) and Regulation 537/214.

### 1.5.3 Audit committee report

The audit committee should report to the supervisory board on its deliberations and findings. In this report attention should in any event be paid to:

- i. an assessment of the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3, inclusive;
- ii. the methods used to assess the effectiveness of the internal and external audit processes;
- iii. material considerations concerning the financial reporting; and
- iv. the expectation as to whether the company's continuity has been safeguarded for the next twelve months.

### Supervision of irregularities

The Committee believes that the Code can clarify the supervisory board's role when irregularities are observed within the enterprise affiliated with the company. In the current Code, the role of the supervisory board – and that of the audit committee in particular – was limited in best practice III.5.5 to being the contact for the external auditor if they observe irregularities in the content of financial reports. In the Committee's view, it is important that material irregularities in general should be reported to the audit committee and that the scope of this provision should not be limited to the content of financial reports. The management board, too, has a responsibility to report such irregularities to the supervisory board without delay.

After having received the report, the supervisory board plays a key role in supervising the investigation into the irregularities observed and the adequate follow-up of any remedial actions ensuing from this investigation. It is not inconceivable that the management board was somehow involved in causing the irregularity observed. The Committee therefore deems it important that the supervisory board should be given the option of independently initiating and coordinating the investigation. The Committee introduced this amendment to stress the importance of an independent investigation into irregularities occurring within the company's affiliated enterprise and the role to be played by the supervisory board in that regard.

### 1.5.5 Supervision of irregularities

The supervisory board should be informed by the management board and the external auditor without delay of any material irregularities within the company, including irregularities with regard to the integrity of the financial reports. The supervisory board should supervise proportionate and independent investigations into the irregularities discovered and an adequate follow-up of any recommendations for remedial actions. In order to safeguard the independence of the investigation, the supervisory board should have the option to initiate its own investigation into any irregularities that have been discovered and to coordinate this investigation.

### Appointment and assessment of the functioning of the external auditor

The Committee proposes to emphasise the leading role that the audit committee plays in the external auditor appointment and assessment process. In this connection, the Committee proposes to give the audit committee a leading role in the assessment, selection and nomination of the external auditor, with the management board being consulted and asked to give advice. In the current Code, the responsibility for these tasks is divided between the management board and the audit committee. A leading role for the audit committee in the selection of the external auditor also ensues from Article 16(2) of Regulation 537/214. This Regulation will enter into force on 17 June 2016.

In addition, the Committee proposes to include in a best practice provision that the audit committee should report annually to the supervisory board on the functioning of, and the developments in, the relationship with the external auditor. The management board's observations should be included in this report, but are not deemed to be leading. In addition, the Committee proposes to clarify in the Code that attention should be paid to the scope, the materiality used and the remuneration of the audit when formulating the terms of engagement of the external auditor. The supervisory board has ultimate responsibility for the nomination presented to the general meeting for the appointment of the external auditor. The Committee proposes that any refusal by the supervisory board to accept the audit committee's nomination for appointment should be explained to the general meeting and mentioned in the report of the supervisory board. Finally, the Committee proposes that, in the event of the external auditor's early departure, the company issue a press release explaining the reasons for departure. With this amendment, the Committee aims to supplement Section 2:393(2) of the Dutch Civil Code, which – briefly put – provides that the management board and the external auditor must notify the Netherlands Authority for the Financial Markets (AFM) without delay of any early departure of the external auditor.

The Code will no longer address the performance of non-audit services by the external auditor. A ban on such services ensues from Section 24b of the Audit Firms (Supervision) Act (*Wet toezicht accountsorganisaties*).

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

The supervisory board should submit the nomination for the appointment of the external auditor to the general meeting of shareholders and should supervise the external auditor's functioning. The audit committee performs a leading role in preparing the supervisory board's decision-making.

### **1.6.1 Functioning and appointment**

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

### **1.6.2 Engagement**

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the financial statements. The management board should assist and facilitate. In formulating the terms of engagement, attention should be paid to the scope, materiality and remuneration of the audit. The supervisory board should resolve on the engagement.

**1.6.3 Accountability**

The main conclusions of the audit committee regarding the external auditor's nomination and the outcomes of the external auditor selection process should be communicated to the general meeting of shareholders. If the supervisory board does not accept the audit committee's advice concerning the external auditor's appointment, the arguments for this decision should be communicated to the general meeting and mentioned in the report of the supervisory board.

**1.6.4 Departure of the external auditor**

The company should publish a press release in the event of the external auditor's early departure. The press release should explain the reasons for such early departure.

**Performance of the external auditor's work**

The Committee proposes that the audit committee should not only be given a leading role in the external auditor selection and appointment process, but also be closely involved in work performed by the external auditor.

**Information provided to the external auditor**

A limited change that is being proposed is to broaden the provision of information to the external auditor. While best practice provision V.4.1 of the current Code still concerns the provision of financial information underlying the adoption of the quarterly and/or half-yearly figures and other interim financial reports, it is proposed in the revision to change this to the language that the external auditor should receive all information they need for the performance of their work in a timely fashion. In addition, the revised Code should clarify that the management board is responsible for providing this information to the external auditor.

**1.7.1 Provision of information to the external auditor**

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

**Discussions between the audit committee and external auditor regarding the performance of work**

The Committee proposes to detail in a new best practice how the audit committee and the external auditor should discuss the audit work performed by the latter. The Committee proposes that the scope of the audit plan, the materiality used in the audit plan and the principal risks of the financial statements identified by the external auditor in the audit plan should be discussed annually. In addition, the findings and outcomes of the audit work should be discussed. The Committee believes that these discussions between the audit committee and the external auditor should look beyond the financial risks only. In particular, there should also be room to discuss issues pertaining to the culture and conduct within the enterprise affiliated with the company. The Committee has proposed a similar change with regard to the discussions to be held with the internal audit function.

### **1.7.2 Audit plan and external auditor's findings**

The audit committee should annually discuss with the external auditor:

- i. the scope and materiality of the audit plan and the principal risks of the financial statements identified by the external auditor in the audit plan; and
- ii. based also on the management letter and the audit report, the findings and outcomes of the audit work on the financial statements and the management letter.

In the consultations between the audit committee and the external auditor there should also be room to address issues pertaining to the culture and conduct within the enterprise affiliated with the company.

### **Observance of irregularities**

The aforementioned change can be extended to the external auditor's observance of irregularities. In the current Code, the audit committee is the principal contact for the external auditor if they observe irregularities in the content of financial reports. The Committee proposes to broaden the provision to include the observance of irregularities during the execution of their engagement.

### **1.7.5 Observance by the external auditor of irregularities**

The audit committee should act as the principal contact for the external auditor if they observe irregularities during the execution of their engagement.

### **Changes to the draft management letter**

The Committee proposes to add that the audit committee should be permitted to examine any material changes that have been made to the draft management letter and/or the draft audit report by the external auditor at the management board's request. The purpose of this addition is to allow the audit committee to gain an understanding of any discussions that may have taken place between the external auditor and the management board on the reporting of financial results.

### **1.7.6 Provision of reports to the management board and supervisory board**

The management board and the supervisory board should simultaneously receive the management letter and the audit report from the external auditor along with their findings and outcomes relating to the audit of the financial statements and the management report and the management letter. The audit committee should be permitted to examine any material changes that have been made to the draft management letter or the draft audit report by the external auditor at the management board's request.

### **Identification of failings in Code compliance accountability**

The Committee proposes to give the external auditor an identifying role in respect of failings in Code compliance accountability. Under a new best practice provision, the management board and the supervisory board should be informed by the external auditor if, during the execution of their work, they discover misrepresentations of the company's compliance with the Code in the management report, including the corporate governance statement, and/or the report of the supervisory board. In that regard, the external auditor is not expected to verify the company's full compliance with the Code. The notion underlying this provision is that the auditor should identify failings encountered during the execution of their work. A similar provision has been included in provision 7.2.3 of the German Corporate Governance Code.

### **1.7.7 Identification of failings in Code compliance accountability**

The external auditor should inform the management board and the supervisory board if, during the execution of their work, they discover misrepresentations of the company's compliance with this Code in the management report, including the corporate governance statement, or the report of the supervisory board.

### 3. NEW ACCENTS IN EFFECTIVE MANAGEMENT AND SUPERVISION

The Committee believes that the Code should be revised in view of recent developments in the areas of management and supervision. In this context, the Committee has first of all noted that supervisory board members are being given a more prominent position within the corporate relationships and the checks and balances within the company. The Committee has observed that the position of supervisory board members is professionalising. Supervisory board members are expected to narrow their distance from the management board in order to effectively perform their supervisory role. The dualistic governance model (two-tier board) and the monistic governance model (one-tier board) have been converging for some time now – a shift possibly reinforced by another development: a growing number of companies are establishing an executive committee as a management layer where the company’s material decision-making process is prepared and conducted. Whether the transition towards a one-tier model will persist and the number of companies with an executive committee will increase or stabilise is impossible to predict at this time. The Committee does, however, consider further debate desirable on the impact of the current developments on the safeguarding of the checks and balances and the independent supervision within companies.

In addition, the Committee has observed that companies, even more than before, seem to be influenced by factors of an external nature. Public debates may affect the reputation, and sometimes also the value, of a company. This has prompted more management boards to place social issues on the agenda, which is changing the way in which they take decisions on issues such as the company’s strategy, risk management and remuneration policy. The media have become more personal, in the sense that they increasingly write and talk about individual management board and supervisory board members. As this may increase the risk of damage to the reputation of these individuals, it is important for members of the management board and supervisory board to be more aware of the social context in which they operate and the risk of reputational damage.

In the current Code, principles and best practice provisions for effective management and supervision have been included in Chapters II and III. In line with the proposal for a thematic structure of the Code, the Committee has combined these principles and best practices into one chapter so as to enhance the mutual correlation between the principles and best practice provisions and make them easier to find. The Committee also proposes to delete some best practice provisions as they overlap or conflict with legislation. Finally, while the Committee has observed that the scope of a number of specific best practice provisions only covers supervisory board members, it believes that some of these best practice provisions could also be of value to the effective performance of the duties of management board members.

The Committee proposes to structure the best practice provisions on effective management and supervision according to the following seven principles:

- i. the composition and size of the boards (principle 2.1);
- ii. appointment, succession and evaluation (principle 2.2);
- iii. the organisation and the report of the supervisory board (principle 2.3);
- iv. the decision-making and functioning of the boards (principle 2.4);
- v. the culture of the company (principle 2.5);
- vi. preventing conflicts of interest (principle 2.6); and
- vii. takeover situations (principle 2.7).

The changes proposed by the Committee with regard to the aforementioned subjects will be explained below, except for the company culture and preventing conflicts of interest. Those two subjects will be addressed elsewhere in this proposal for revision.

## Composition and size

Both the composition and the size of the management board and the supervisory board affect how a company's management and supervision are organised. The Committee stresses the importance of management boards and supervisory boards being composed in such a way that the requisite competences are present within the corporate bodies so that they can properly fulfil the duties with which they have been charged. The size of the management board and the supervisory board should be specifically geared to accommodate this.

### Executive committee

The Monitoring Report on the 2012 Financial Year observed that almost half of all companies had established an executive committee. Executive committees are generally composed of members of the senior management and members of the management board of the company. The executive committee is often responsible for supporting the decision-making or actually taking the decisions for the company. In certain specific cases, a governance model with an executive committee reflects the enterprise's business model or the environment in which the enterprise operates. In those situations, an executive committee may provide the requisite flexibility and create the short lines of communication desirable in decision-making. With this, the Committee emphasises that valid arguments are conceivable for opting for a governance model that includes an executive committee.

However, establishing an executive committee may also have consequences for the methods used to safeguard the checks and balances and supervision within the company. First, the supervisory board may feel a certain distance from the executive committee and, consequently, from the company's day-to-day management. Reporting directly to the management board, members of the executive committee in principle do not need to render account to the supervisory board. As a result, the distance between the supervisory board and the management layer where the company's decision-making is prepared and conducted might become too great to ensure effective supervision of the actual management of the company. It may also impact how information is provided to the supervisory board. The Monitoring Report on the 2012 Financial Year shows that supervisory board members hardly ever attend executive committee meetings and that information is mainly provided at times that management board members inform the supervisory board in person of the executive committee's functioning and activities. The supervisory board is not always fully involved in the actual activities of the executive committee. Lastly, the management board of a company with an executive committee is often limited in size, which may affect the segregation of duties and the diversity preferred within the management board.

The Committee has observed that no blueprint exists of how a company with an executive committee should organise its governance model. It depends on the specific characteristics of the company. The Committee therefore did not wish to include specific requirements regulating how a governance model with an executive committee should be organised. The Committee finds it important for companies with an executive committee to be aware of the risks associated with such a governance model as regards effective corporate governance. The checks and balances within the company should be safeguarded. To this end the Committee proposes to introduce a new best practice provision regarding the safeguarding of the requisite expertise and the management board's responsibilities. Due regard is also paid to adequate provision of information to the supervisory board. In addition, the supervisory board is expected to pay specific attention to the dynamics between the management board and the executive committee and the governance relationships within the company.

Companies with an executive committee are expected to render account of how the checks and balances within the company are being safeguarded. In that respect, the Committee finds it important for the management board to render account in the management report of the choice for an executive committee, the role, duty and composition of the executive committee and how the contacts between the supervisory board and the executive committee have been given shape.

### 2.1.3 Executive committee

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

In the management report, account should be rendered of:

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

### One-tier board

While Dutch company law is traditionally based on a two-tier board, increasingly more companies falling within the scope of the Code seem to be opting for a one-tier board governance model. The option of a one-tier board governance model was introduced in Dutch company law with the amendment of the Dutch Civil Code that entered into force on 1 January 2013.<sup>9</sup> At companies with a two-tier board governance model, management and supervision are divided between two corporate bodies: the management board and the supervisory board. At companies with a one-tier board, management and supervision are the responsibility of a single corporate body, with executive and non-executive directors serving on one board. The one-tier and two-tier governance models have been converging for some time now, a shift possibly reinforced by the fact that increasingly more companies are establishing an executive committee. It is not inconceivable that this convergence will continue in the years ahead. The Committee therefore finds it important that companies with a one-tier board can also properly apply the revised Code.

The current Code is geared towards a two-tier board. The current Code includes one principle and four best practice provisions for one-tier boards, aimed at safeguarding the proper and independent supervision by non-executive directors. The Committee considers it important to offer companies with a one-tier board a clearer basis for applying the Code and has commenced preparations to tailor the full text of the proposals for the revised Code to one-tier boards. An initial analysis has revealed that, in some respects, such a conversion goes beyond replacing 'supervisory board' with 'non-executive directors'. It may, for example, affect reporting lines and the allocation of responsibilities in decision-making powers. In the time ahead, the Committee will continue its work on converting the proposals for revision from two-tier boards to one-tier boards. The Committee will consult experts to this end and may possibly organise separate consultation on the text. The Committee aims to finish the two versions of the revised Code at the same time.

### Diversity

In the Committee's opinion, diversity within the management board and the supervisory board is beneficial for proper decision-making within the corporate bodies. It contributes to a constructive debate about views and decisions and, in addition, creates a more sympathetic attitude to innovative ideas of other members of the management board or supervisory board. Consequently, a mixed composition of the management board and supervisory board may lead to decisions that are more thoroughly considered and weighed. The Committee proposes to expand the best practice provision regarding diversity to include the management

<sup>9</sup> This option has been available since the entry into force of the Act of 6 June 2011 Amending Book 2 of the Civil Code in Connection with the Adjustment of Rules on Management and Supervision at Public and Private Limited Companies (*Wet van 6 juni 2011 tot wijziging van boek 2 van het Burgerlijk Wetboek in verband met de aanpassing van regels over bestuur en toezicht in naamloze en besloten vennootschappen*) on 1 January 2013 (*Bulletin of Acts and Decrees* 2011, 275).

board. The Committee stresses the importance of widening discussions on management board and supervisory board diversity beyond the gender of the members only. The Committee believes that, in addition to gender, aspects such as age, nationality, expertise, independence and experience are key in bringing about meaningful discussions within the management board and supervisory board.

The Committee has observed that a lively debate is currently taking place regarding the diversity of the management boards and supervisory boards of Dutch companies. By 6 December 2016 at the latest the Dutch legislature is to implement the provisions from Directive 2014/95/EU on disclosure of non-financial and diversity information in national legislation. That Directive prescribes that large enterprises are expected to disclose their diversity policies on aspects including gender, age and backgrounds of expertise of the company's administrative, management and supervisory bodies in the corporate governance statement. Another relevant document is the letter from Minister Bussemaker of Education, Culture and Science informing the Dutch House of Representatives of the monitoring and evaluation of the target figure for the male to female ratio at large public and private companies.<sup>10</sup> The statutory target figure of at least 30% gender diversity on the management board and the supervisory board was cancelled per 1 January 2016.<sup>11</sup> In this letter, Minister Bussemaker stated that she is reinstating this statutory rule until 2019. In addition, Minister Bussemaker's letter calls on the Committee to pay more and specific regard to the ratio between men and women in its revision of the Code.<sup>12</sup>

Germany and France have included specific targets in their codes with regard to the proportion of women serving on the supervisory board. The German code prescribes minimum targets of 30% women and 30% men for the supervisory board. The French code has adopted an indirect approach, making a distinction between the short and the medium terms. The share of women serving on the management board should be 20% within three years of the shareholders' meeting of 2010. During the subsequent three years, this share should be increased to 40%. Now that Minister Bussemaker intends to reinstate the statutory rule with effect until 2019, the Committee does not consider it necessary to repeat a target figure in the Code. The Committee does believe that the Code can play a role by requiring the supervisory board to render account of any departures from the target figure, the measures taken in that event to reach the target figure and the timeframe within which the target figure is expected to be reached. These specific accountability requirements are complementary to the requirements generally imposed in the event of non-application of the Code.

In addition, the research on the Code's international context has revealed that the diversity targets in many other corporate governance codes also apply to the company's management board. The Committee proposes to expand the best practice provision on diversity to include the management board in the Dutch Code as well. This expansion also reflects the statutory target figure and the Directive 2014/95/EU on disclosure of non-financial and diversity information.

The Committee furthermore stresses the importance of the company's transparency as regards its diversity policy. The Committee proposes to include in the Code that the corporate governance statement should explain the objectives being pursued with the diversity policy as well as how the diversity policy has been implemented and what results were achieved with the execution of the diversity policy in the past financial year. On the one hand, disclosure of the diversity policy may give stakeholders a useful understanding of the company's view on diversity. On the other, it may encourage members of the management board and supervisory board to compose the corporate bodies in a diverse manner. The Committee wished to reflect the requirements from the Directive 2014/95/EU on disclosure of non-financial and diversity information by including accountability for the diversity policy in the company's corporate governance statement.

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<sup>10</sup> *Parliamentary documents II 2015/16, 30420, 227.*

<sup>11</sup> Section 2:166 of the Dutch Civil Code.

<sup>12</sup> *Parliamentary documents II 2015/16, 30420, 227, pp. 12-13.*

The Monitoring Report on the 2014 Financial Year shows that companies show increasing awareness of the importance of diversity. The Committee emphasises that the next step will mean that the measures taken by companies to promote diversity should yield concrete results.

### 2.1.5 Diversity

The supervisory board should draw up a diversity policy with regard to the composition of the management board and the supervisory board that addresses the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background.

The diversity policy should be explained in the corporate governance statement, addressing:

- i. the policy objectives;
- ii. how the policy has been implemented; and
- iii. the results of the policy in the past financial year.

If the existing composition of the management board and the supervisory board differs from the intended situation as expressed in the company's diversity policy or as ensues from the statutory target figure of 30 percent in respect of the male/female ratio<sup>13</sup>, it should also be explained in the corporate governance statement which measures are being taken to attain the intended situation and by when this is likely to be achieved.

### Expertise

The Committee has observed that the emergence of new business models and technological innovation is affecting the role supervisory board members should play. The world is in constant flux and the pace of change is increasing. It is important for the company that its management board and supervisory board members can respond quickly to the opportunities and risks presented by technological innovations and can focus more on developing new business models. This is primarily a responsibility borne by the company's management board and part of the company's vision and strategy. However, supervisory board members also play an important part in this respect. Supervisory board members can play an important part in assessing the opportunities and risks that technological innovations might present. If so desired, they can drive or hold back innovation. It is important in this context for the supervisory board to be composed such that it has, in any event, the requisite affinity and expertise regarding technological innovation.

The Committee proposes to include the element of principle III.3 in the current Code concerning the expertise of supervisory board members in a best practice provision and to expand it to include the management board. In addition, the Committee proposes to add that at least one supervisory board member should have specific expertise in current and future technological innovations and business models.

### 2.1.4 Expertise

Each supervisory board member and each management board member should have the specific expertise required for the fulfilment of his duties. Each supervisory board member should be capable of assessing the broad outline of the overall management. At least one supervisory board member should have specific expertise in technological innovations and new business models.

<sup>13</sup> Section 2:166(1) of the Dutch Civil Code.

### **Supervisory board member independence**

The current Code contains best practice provisions regarding the independence of supervisory board members. All supervisory board members, with the exception of at most one, should be independent within the meaning of best practice provision III.2.2 of the current Code. In summary, one of the criteria of the aforementioned best practice provision is that a supervisory board member or a relative is not independent if they hold at least 10 percent of the shares in the company. The Committee proposes that supervisory boards may have multiple members who are dependent in this sense. As regards the other dependence criteria included in best practice provision III.2.2, the number of dependent supervisory board members should remain the same and be limited to, at most, one. The total number of supervisory board members meeting the dependence criterion in the sense of shareholding and the other criteria should be limited to less than half of the total number of supervisory board members. This will ensure that the majority of the supervisory board are independent members. No changes should be made to the account to be rendered of supervisory board member independence in the report of the supervisory board.

The proposal to change independence as regards shareholding ensues from the notion that long-term value creation stands to benefit from committed shareholders. The interests of supervisory board members holding more than 10 percent of the shares largely coincide with those of the company. These supervisory board members are generally involved in the company for a prolonged period of time, which fits in well with long-term value creation for the company. As regards the other criteria, such as receiving personal financial compensation from the company or having served on the company's management board in the past, the Committee believes that conflicts of interest between the company and the supervisory board members concerned are more likely. Relative to corporate governance codes applicable in other countries, the current Code is stricter. The Committee considers it advisable to change the Code on this point also because of the international interlinkage of companies.

Finally, the Committee proposes to expand best practice provision III.4.2 of the current Code by not only stating that the chairman of the supervisory board should not be a former member of the company's management board, but by providing also that the chairman should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7. The Committee is aware that the proposed distinction between the independence of supervisory board members in respect of shareholding versus independence based on the other dependence criteria creates the possibility that more members will serve on the supervisory board who are not independent based on their shareholding. The Committee aimed to safeguard the independent exercise of the supervisory board's supervision by prescribing that the chairman of the supervisory board should at least be independent in both senses.

### **2.1.6 Independence of supervisory board members**

Any one of the following dependence criteria should be applicable to at most one supervisory board member. The supervisory board member concerned or his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:

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

### **2.1.7 Independence of supervisory board members: shareholding**

A company may appoint one or more supervisory board members who, or whose spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree, has a shareholding in the company of at least ten percent, taking into account the shareholding of natural persons or legal entities cooperating with him or her on the basis of an express or tacit, verbal or written agreement. Jointly, the number of supervisory board members who satisfy said criterion and the dependence criteria referred to in best practice provision 2.1.6 should account for less than half the total number of supervisory board members.

### **2.1.8 Accountability regarding supervisory board member independence**

The report of the supervisory board should state that, in the opinion of the supervisory board, the independence requirements referred to at best practice provisions 2.1.6 and 2.1.7 have been fulfilled and, if applicable, should also state which supervisory board member(s), if any, it does not consider to be independent.

### **2.1.9 Independence of the chairman of the supervisory board**

The chairman of the supervisory board should not be a former member of the management board of the company and should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7.

## Appointment, succession and evaluation

For the purposes of effective management and supervision, the supervisory board should ensure that a formal and transparent procedure is in place for the appointment and reappointment of management board and supervisory board members as well as a sound plan for the succession of management board and supervisory board members. In that respect, the supervisory board should pay due regard to the company's strategic objectives and diversity policy. Part of this procedure and the succession plan is that both the functioning of the corporate bodies and that of individual members are assessed and evaluated on a regular basis.

### Appointment periods

Under best practice provision III.3.5 of the current Code, a person may be appointed to the supervisory board for a maximum of three four-year terms. The Monitoring Report on the 2014 Financial Year shows that this best practice provision is among the provisions of the Code that are explained the most. The same holds for best practice provision II.1.1 of the current Code, which deals with the appointment periods for management board members. In that respect companies often state that they opt to have their supervisory board members stay on for a longer period of time on account of family ties with the company or because of their many years of experience and expertise, which are hard to find in the industries in which the company operates.

In principle, the Committee considers a term of office of supervisory board members of three four-year periods to be a long time – if not too long – where supervision of the company's governance at a proper distance is concerned. A long term of office may cause the supervisory board member to become too closely entwined with the company, which detracts from the focus of the supervision exercised by that member. The Committee therefore applies a term of office of two four-year periods. Subsequent reappointment may be appropriate under specific circumstances. For example when specific specialist knowledge is relevant and no suitable successor can be found who has such knowledge. The Committee wants to attach two conditions to the reappointment of a supervisory board member after eight years. The first condition is that account should be rendered of the reasons for reappointment in the report of the supervisory board. Secondly, the appointment period should be limited to two years with one option of extension by another two years. The Committee's proposal to curtail the appointment period of supervisory board members reflects international practice, as various corporate governance codes use a maximum term of office of nine years for supervisory board members. Members should be appointed and reappointed only after careful consideration and taking into account the profile referred to in best practice provision 2.1.1 of the revised Code.

The Committee proposes that no changes be made to the appointment period of management board members. The appointment period remains limited to four years with the option of extension by periods of no more than four years at a time. The Committee does propose adding that the objectives of the diversity policy referred to in best practice provision 2.1.5 of the revised Code should be considered during appointment and reappointment.

The Committee also proposes to amend best practice provision III.1.4 of the current Code, pertaining to the early retirement of supervisory board members, on two points. Firstly, by expanding the provision to include management board members. Secondly, by prescribing that the company should issue a press release mentioning the reasons for departure in the event of the early retirement of members of the management board or the supervisory board.

**2.2.1 Appointment and reappointment periods – management board members**

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

**2.2.2 Appointment and reappointment periods – supervisory board members**

A supervisory board member should be appointed for a period of four years and may then be reappointed once for a period of four years. Only under specific circumstances may the supervisory board member be reappointed again, for a period of two years, which appointment may be extended by at most two years. The circumstances giving rise to reappointment should be explained in the report of the supervisory board. In any appointment or reappointment, the profile referred to in best practice provision 2.1.1 should be observed.

**2.2.3 Early retirement**

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

**Succession**

Effective management and supervision specifically mean that the management board and the supervisory board are composed in such a way that the requisite competences are present so that they can properly fulfil their duties. Safeguarding such effective management and supervision also in the long term is a precondition for the pursuit of long-term value creation for the company and the enterprise affiliated with it. The Committee therefore considers it the supervisory board's duty to ensure that the company has a sound plan in place for the succession of management board and supervisory board members (succession planning). The supervisory board is responsible for maintaining the long-term balance in the diversity and competences required within the corporate bodies. When giving shape to succession planning, the supervisory board should generally pay due regard to the company's strategy and diversity policy and the supervisory board profile mentioned in best practice provision 2.1.1. As part of such succession planning, the supervisory board should draw up a retirement schedule in order to avoid, as much as possible, supervisory board members retiring simultaneously. The selection and appointment committee is expected to focus on drawing up succession plans.

**2.2.4 Succession**

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

## Evaluation

The supervisory board's evaluation of the functioning of the management board and the supervisory board is already part of the current Code. The Committee proposes to supplement this best practice provision in certain respects. First, the Committee proposes to clarify that the supervisory board's self-evaluation should pay attention to the substantive aspects of its functioning, the process and interaction within the corporate bodies and events that occurred in practice from which lessons may be learned. In addition, the Committee proposes that the management board also evaluate its own functioning and that of individual management board members. The Committee believes that this may increase the management board's awareness of its responsibility for its own functioning.

The account to be rendered in the report of the supervisory board of how the evaluation was carried out already follows from the current Code. According to guidance in the Monitoring Report on the 2010 Financial Year, it would be appropriate for the supervisory board to also give a description of the process and any outcomes of the evaluation in the account to be rendered by it. The Committee proposes to include this guidance in the revised Code. In addition, the Committee proposes that the manner in which the management board evaluates its own functioning and that of individual management board members should also be discussed.

### 2.2.6 Evaluation of the supervisory board

At least once per year, outside the presence of the management board, the supervisory board should evaluate its own functioning, the functioning of the various committees of the supervisory board and that of the individual supervisory board members, and should discuss the conclusions that are attached to the evaluation. In doing so, attention should be paid to:

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

### 2.2.7 Evaluation of the management board

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

### 2.2.8 Evaluation accountability

The supervisory board's report should state:

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

## Organisation of the supervisory board and reports

The supervisory board is responsible for how it translates its responsibility for supervising the management of the company into practice. The supervisory board can establish committees to prepare the supervisory board's decision-making. The establishment of specific committees does not diminish the responsibility for good information and an independent opinion of the supervisory board as a corporate body and each of the individual supervisory board members. The chairman of the supervisory board should ensure the proper functioning of both the supervisory board as a whole and any supervisory board committees that have been established.

### Committees

The Committee finds it important that the supervisory board committees be composed in such a way that they are able to independently and effectively prepare the supervisory board's decision-making. The Committee expects that this will better safeguard the effective supervision by the supervisory board. The Committee proposes to adopt the best practice provisions concerning the committees from the current Code largely unchanged. In addition, the Committee proposes two changes. First, the Committee proposes to include in the best practice provision that the selection and appointment committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company. This provision already applies to the audit committee and the remuneration committee based on the current Code. In addition, the Committee proposes to include in the revised Code that more than half of the members of the committees should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7. The latter change is the result of the Committee's proposal to make a distinction between supervisory board member independence based on shareholding versus independence based on the other dependence criteria.

#### 2.3.4 Composition of the committees

The audit committee, the remuneration committee or the selection and appointment committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company. More than half of the members of the committees should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7.

## Decision-making and functioning

Balanced and effective decision-making by the management board and the supervisory board is crucial for the proper operation of the company's corporate governance. One important requirement in this respect is, in any event, that management board members and supervisory board members can spend sufficient time on their duties and responsibilities. It is also important that information is provided in a qualitatively sound and timely manner and that knowledge and skills of management board members and supervisory board members are kept up to date.

### Allocation of time and other positions

A precondition for the effective performance of duties by the management board and the supervisory board is that their members can in any event spend sufficient time on their work for the company. In this connection, the Committee finds it important that members of the management board and supervisory board report any additional positions, and their intention to accept such positions, to the supervisory board in advance. With this provision, the Committee intends to enable the supervisory board to verify whether individual members of the management board and supervisory board are able to spend sufficient time on their position with the company. The Committee also finds it important that the acceptance of supervisory board membership by a management board member is subject to supervisory board approval.

#### **2.4.1 Allocation of time and other positions**

Management board members and supervisory board members should have sufficient time to carry out their duties and responsibilities to the company. Management board members and supervisory board members should report any other positions they may have to the supervisory board in advance and, at least annually, the other positions should be discussed with the management board at the supervisory board meeting. The acceptance of membership of a supervisory board by a management board member requires the approval of the supervisory board.

#### **Induction programme and development**

The Committee believes that the company should facilitate the continuous development of management board and supervisory board members. In the Committee's opinion, this will contribute to keeping the know-how and expertise required within the corporate bodies up to date, thus ensuring the proper operation of corporate governance at the company. The Committee therefore believes that the company should play a driving role in that regard.

The Committee proposes to adopt the best practice provision concerning the induction programme from the current Code in the revised Code. In addition, the Committee proposes to add to this best practice provision that all supervisory board members should follow a formal induction programme geared to their role that also covers the culture of the company and its affiliated enterprise. In the Committee's opinion, this theme may not be neglected in the induction programme. With this amendment, the Committee stresses the importance of knowledge of culture and conduct at the company and the enterprise affiliated with it. In the Committee's view, such knowledge is crucial for the effective supervision of the company's management. The provision reflects the appropriate 'tone at the top' and the message that the supervisory board should propagate in this regard.

In addition, the Committee proposes to expand the provision from the current Code pertaining to the development of supervisory board members to include management board members. It is also important for management board members to keep their knowledge up to date. The chairman should verify whether the members of the management board and supervisory board follow their education and training programmes. The Committee believes that the induction programme for supervisory board members and the training and education programmes for management board and supervisory board members contribute to improved corporate governance at the company, which is why the company should play a facilitating and driving role in that regard.

#### **2.4.4 Induction programme for supervisory board members**

After their appointment, all supervisory board members should follow a formal induction programme geared to their role. The induction programme should in any event cover general financial, social and legal affairs, financial reporting by the company, any specific aspects that are unique to the relevant company and its business activities, the company culture and the responsibilities of a supervisory board member. The chairman of the supervisory board should ensure that supervisory board members follow their induction programme.

#### **2.4.5 Development**

The supervisory board should conduct an annual review to identify any aspects with regard to which the supervisory board members and management board members require further training or education during their period of appointment. The chairman of the supervisory board should ensure that supervisory board members and management board members follow their education or training programme.

### **Takeover situations**

In the Committee's view, carefully structured conduct in the event of an actual or proposed takeover bid is part of effective management and supervision. The management board and the supervisory board are responsible for carefully weighing all relevant interests of the stakeholders involved in the company in the event of an actual or proposed takeover bid for the shares in the company. The Committee considers such weighing of interests in takeover situations important because a careful weighing of interests of the stakeholders involved in the company comes under pressure precisely in such cases. In such situations, the management board should be guided by the company's interests as well as the interests of the stakeholders involved in the company. In addition, the management board is expected to closely involve the supervisory board in the takeover process. Various provisions from the current Code, including best practice provisions II.1.10, II.1.11 and IV.1.3, have been combined in the best practice provisions elaborating on principle 2.7.

#### **Special committees in takeover situations**

The Committee proposes to introduce a new best practice provision providing that, in the event of a takeover bid or proposed takeover bid for the shares or in the event of a public bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, the management board and the supervisory board should establish a special committee to prepare the decision-making concerning this bid. In addition, the Committee is using the consultation period to gauge whether it is deemed appropriate to expand the situations in which the management board and the supervisory board may establish a special committee to include not only takeover situations but also stress situations in general. In the Committee's view, the main advantage of such a committee is that decision-making can be considerably accelerated, as the management board and the supervisory board are working together more closely. This should not diminish the responsibilities of the individual management board members and supervisory board members under the articles of association.

The Committee proposes to include in a best practice provision that this special committee should consist of members of the management board and the supervisory board. The chairman of the supervisory board should chair this special committee. In the event that one or more dependent members of the supervisory board within the meaning of best practice provisions 2.1.7 and 2.1.8 of the revised Code have a seat on the supervisory board or on the special committee, the chairman should carefully weigh the involvement of these dependent supervisory board members in the decision-making concerning the bid referred to in best practice provision 2.7.4 of the revised Code.

## Principle 2.7 Takeover situations

In the event of an actual or proposed takeover bid for the shares in the company, both the management board and the supervisory board should ensure that all stakeholder interests concerned are carefully weighed and any conflict of interest for supervisory board members is avoided. The management board and the supervisory board should be guided in their actions by the interests of the company and its affiliated enterprise.

### 2.7.1 Supervisory board involvement in takeover bid

When a takeover bid for the company's shares or for the depositary receipts for the company's shares is being prepared, the management board should ensure that the supervisory board is involved in the takeover process closely and in a timely fashion.

### 2.7.2 Informing the supervisory board about request for inspection by competing bidder

If the management board of a company in respect of which a takeover bid has been announced or made receives a request from a competing bidder to inspect the company's records, the management board should discuss this request with the supervisory board without delay.

### 2.7.3 Management board's position on a public private bid

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

### 2.7.4 Establishment of special committee

In the event of a takeover bid or proposed takeover bid for the shares and in the event of a public bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, the management board and the supervisory board should establish a special committee to prepare the decision-making concerning the bid. This should not diminish the responsibilities of the management board members and supervisory board members under the articles of association.

### 2.7.5 Composition of the special committee

The special committee referred to at best practice provision 2.7.4 should consist of members of the management board and the supervisory board. The chairman of the supervisory board should chair this committee. If one or more dependent members of the supervisory board within the meaning of best practice provisions 2.1.7 and 2.1.8 have a seat on the supervisory board or on the special committee, the chairman should carefully weigh the involvement of these dependent supervisory board members in the decision-making concerning the bid referred to in best practice provision 2.7.4.

## 4. CULTURE

The Committee believes that the Code could pay attention to culture more emphatically. Culture may encourage people to take action by providing guidance in everyday choices. This makes culture one of the driving forces of an effective operation of the company's corporate governance. In the Monitoring Report on the 2013 Financial Year, the Committee observed that the current Code pays little attention to the conduct and culture at the enterprise affiliated with the company. The Code could indicate specifically how and where culture should be addressed within the triangle of management board, supervisory board and shareholders (including the general meeting). To this end, the Committee is introducing one principle and five best practice provisions in the proposals for revision.

In the Committee's opinion, culture plays an important role in the enterprise's functioning and the degree to which it contributes to creating long-term value for the company and its affiliated enterprise. The Committee therefore finds it important to implement and safeguard a healthy culture of openness and approachability within the enterprise affiliated with the company. This issue in particular requires attention and commitment from the management board and the supervisory board jointly. The culture of the enterprise affiliated with the company is made up of the entire complex of standards and values propagated and observed at all levels of the enterprise. The Committee does not consider it sufficient for the management board and the supervisory board to passively propagate the appropriate culture. The same applies as regards the mere preparation of in-house rules and the organisation of regular compliance checks. Such measures may contribute to promoting a culture aimed at long-term value creation but they are not sufficient. The management board and the supervisory board are therefore expected to be actively committed to implementing and promoting a culture of openness and approachability within the enterprise affiliated with the company.

The Code will not prescribe which standards and values a management board or supervisory board should propagate. A company should make its own appropriate decisions in that regard, in line with its view on long-term value creation. The management board should also safeguard the implementation and propagation of these standards and values at all levels of the enterprise affiliated with the company. Examples of specific measures correlated with implementing and safeguarding an appropriate culture include adopting common standards and values, setting and propagating the right 'tone at the top', drawing up and actively propagating a code of conduct and establishing a whistleblower procedure. The findings of the internal audit function and the external auditor may also be valuable. It therefore follows from the proposed best practice provisions 1.3.5 and 1.7.2 of the revised Code that they should be given the opportunity to report on this to the management board and the audit committee.

The revised Code will be at the international forefront by addressing culture in a principle and best practice provisions. The UK Corporate Governance Code does mention in the preamble that the management board is responsible for 'establishing the culture, value and ethics of the company', and the Financial Reporting Council has initiated a 'Culture Project'.<sup>14</sup> Interested parties were invited in September 2015 to join a debate on culture based on themes such as the role of effective management and the relationship with stakeholders. The publication of a report of the outcomes of this discussion has been announced for June 2016, and this report is expected to serve as a basis for amendment of the UK Guidance on Board Effectiveness.<sup>15</sup>

The Committee proposes to implement the issue of culture in this revision of the Code. A new principle provides that the management board and the supervisory board are jointly responsible for implementing and safeguarding a culture aimed at long-term value creation for the company and the enterprise affiliated with it. In that regard, the management board is specifically responsible for implementing and safeguarding that

<sup>14</sup> See Financial Reporting Council, 'Culture Project', available at [www.frc.org.uk](http://www.frc.org.uk).

<sup>15</sup> See Financial Reporting Council, 'Guidance on Board Effectiveness', March 2011, available at [www.frc.org.uk](http://www.frc.org.uk).

culture under the supervisory board's supervision. The Committee is aware that monitoring the principle and best practice provisions on the issue of culture is not an easy task. The Committee takes the position that the management board and the supervisory board should render account of how they contributed to implementing and safeguarding a culture aimed at long-term value creation for the company and its affiliated enterprise in the past financial year.

### **Promoting openness and approachability**

The Committee believes that the 'tone at the top' of a company is, to a significant degree, decisive for the culture and conduct at the enterprise affiliated with the company. The management board and the supervisory board share responsibility on this point, meaning that the management board and the supervisory board should promote a culture of openness and approachability and facilitate this at all levels of the enterprise affiliated with the company. The 'tone at the top' also concerns how members of the management board and supervisory board facilitate debate and promote a mutual dialogue. For example, the report 'Leading by Example', drawn up further to research conducted by the Dutch Central Bank (DNB) into conduct and culture at financial enterprises, shows that careful weighing and decision-making by management board and supervisory board means that the members of those boards actively ask each other questions, have constructive discussions and challenge each other.<sup>16</sup> To achieve this, it is important to ensure that there is sufficient room for critical debate and that measures encouraging such debate are taken. The management board and the supervisory board should send the message that the same is expected of others within the enterprise affiliated with the company.

### **Signs and suspicions of misconduct**

Signs and suspicions of misconduct may be indicative of the culture prevailing at the company. They indicate where things might be going wrong and where a lack of clarity exists as regards the standards and values applicable at the enterprise. The absence of such signs may give an unwarranted feeling of assurance. It is important in that respect for people to know how they can expose misconduct and to feel sufficiently comfortable to do so. Besides being alert to possible misconduct, a certain effort is required to ensure that the information concerned reaches the relevant people. The Committee sees a role for the management board to inform the chairman of the supervisory board without delay of any signs and suspicions of misconduct or actual misconduct. The Committee therefore proposes to address this in a best practice provision. The Committee believes that it is up to the management board to draw up a scheme for reporting actual or suspected misconduct. The Bill to Introduce a Whistleblower House (*Wetsvoorstel Huis voor klokkenluiders*) includes an obligation for companies with at least 50 employees to establish an internal reporting scheme.<sup>17</sup> This Act is currently pending before the Dutch Senate.

### **Management board's responsibility for culture**

Safeguarding and promoting a culture of openness and approachability is the responsibility of the management board. In that respect, the management board is expected to give shape to how that culture is actually implemented within the enterprise. It is important for the management board to be aware of culture- and conduct-determining factors, including the business model and the environment in which the company's affiliated enterprise operates. The Committee also considers this to include cultural differences between countries, where a company has branches in such countries and/or operates in other countries.

The Committee proposes to include in a new best practice provision that the management board is responsible for implementing the culture in the enterprise affiliated with the company. Specifically, the management board should adopt common values for the company that will contribute to creating long-term value for the company and its affiliated enterprise within the meaning of best practice provision 1.1.1 of the revised Code. In this connection, the management board is expected to propagate the appropriate culture by setting the right 'tone at the top' and displaying model behaviour deemed fitting in that regard. The management board

<sup>16</sup> DNB, 'Leading by example: gedrag in de bestuurskamers van financiële instellingen', March 2013, available at [www.dnb.nl](http://www.dnb.nl).

<sup>17</sup> *Parliamentary documents II* 2011/12, 33258, 2.

should ensure that the company's standards and values demonstrably prevail in its decision-making. In order to make sure that this will not be limited to the highest echelon of the company, the Committee proposes to add to this best practice provision that the management board should propagate the message that it also expects others within the company to do the same. Further, due regard should be given to the effectiveness of the measures it has taken to implement and maintain the appropriate culture. Finally, the management board should adopt a code of conduct and endeavour to ensure that this code of conduct is supported by the stakeholders involved in the company. In addition, the management board should draw up a scheme for reporting actual or suspected misconduct within the company. The code of conduct and the scheme for reporting misconduct should be posted on the company's website.

The Committee also proposes to include in a new best practice provision that the consultations between the management board and the employee participation body also address conduct and culture within the enterprise affiliated with the company.

### **Culture accountability**

In the final best practice on culture, the Committee proposes that the management board render account in the management report of how a culture aimed at long-term value creation has been implemented at the company. Companies are expected to explain the standards and values applicable at the company, how they have been implemented specifically and how employee support of the culture has been assured.

## Principle 2.5 Culture

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

### 2.5.1 Promoting openness and approachability

The management board and the supervisory board should promote a culture of openness and approachability within the company and show that they expect the same of others in the enterprise affiliated with the company. The management board and the supervisory board should take measures to facilitate debate among management board and supervisory board members and to encourage a mutual dialogue.

### 2.5.2 Signs and suspicions of misconduct

The management board should inform the chairman of the supervisory board on signs and actual or suspected material misconduct.

### 2.5.3 Management board's responsibility for culture

The management board should be responsible for embedding the culture in the enterprise. In doing so, the management board should pay attention to culture- and conduct-determining factors such as the business model and the environment in which the enterprise operates.

The management board should:

- i. adopt common values for the company that contribute to long-term value creation;
- ii. draw up a code of conduct and endeavour to ensure that all employees and other stakeholders of the company support this code. The code of conduct should be posted on the company's website;
- iii. propagate the culture by setting the right 'tone at the top' and displaying model behaviour. The management board should show that it expects the same of others in the company;
- iv. assure itself of the effect of the measures taken to embed the culture; and
- v. draw up a scheme for reporting actual or suspected misconduct within the company and post this scheme on the website.

### 2.5.4 Employee participation

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

### 2.5.5 Accountability regarding culture

In the management report, the management board should explain the manner in which a culture is shaped within the company that is aimed at long-term value creation.

## 5. REMUNERATION: CLEANED UP AND SIMPLIFIED

The Code seeks to be clearer and more comprehensive regarding remuneration accountability. The current Code extensively addresses the issue of remuneration in two principles and 18 detailed best practice provisions. The greater majority of these principles and best practice provisions has been part of the Code from the very beginning. Additions were made during the revision of the Code in 2008, aimed at ensuring greater simplicity and more uniformity in remuneration accountability. However, this goal has not been achieved. Remuneration structures are frequently complex, resulting in blurred transparency. The Monitoring Reports of the past financial years have revealed that the best practice provisions on remuneration are among those least complied with, or frequently explained.<sup>18</sup>

Based on the results of previous Monitoring Report, the Committee concludes that the introduction of new and additional requirements in the current Code during the last revision did not have the intended effect. The Committee's proposal is to abandon details in this revision and reduce the principles and best practice provisions on remuneration back to their core:

- › simple and transparent remuneration policy that promotes long-term value creation;
- › taking the right factors into consideration when determining the levels of remuneration; and
- › clear and transparent accountability.

The Committee points out that the public is increasingly less inclined to accept non-compliance with the Code, especially where remuneration is concerned. There is recurrent commotion in the media about the levels of bonuses and severance payments and divergence in internal remuneration ratios. The Committee finds it important that the management board and the supervisory board are aware of the public sensitivity of remuneration and that they take their responsibility in this regard. The supervisory board should ensure that the remuneration structure for their own company becomes simple and transparent and that clear account is rendered of the choices made.

The debate on remuneration in a broader sense is being held in the political arena. In response, legislation has been or is being developed both in the Netherlands and in Europe since the last revision. This legislation also aims to minimise perverse incentives and curtail excesses. The Act on the Adjustment and Claiming Back of Bonuses (*Wet aanpassing en terugvordering bonussen*) introduced the authority for supervisory boards in Book 2 of the Dutch Civil Code and the Financial Supervision Act (*Wet op het financieel toezicht*) to adjust and recover (or 'claw back') bonuses and profit-sharing distributions from directors and day-to-day policymakers. This authority covers bonuses that, in hindsight, were awarded on the basis of inaccurate information and the distribution of bonuses that cannot be justified for reasons of unreasonableness and unfairness. Since 1 January 2015, the Financial Undertakings (Remuneration Policy) Act (*Wet beloningsbeleid financiële ondernemingen – Wbfo*) has been in force. This Act introduced a wide range of measures to the Financial Supervision Act obliging financial undertakings to pursue a restrained remuneration policy and curtail excessive variable remuneration. One of these measures is the 20% bonus cap, which means that variable remuneration may not exceed 20% of the fixed remuneration. In addition, provisions have been introduced in respect of severance payments, loyalty payments (aimed at retaining persons who are valuable to the organisation) and variable remuneration in the event of government aid. The Wbfo only applies to financial undertakings having their registered offices in the Netherlands within the meaning of Section 1:1 of the Financial Supervision Act. The proposal for the revision of Directive 2007/36/EU on shareholders' rights also includes provisions on remuneration.

<sup>18</sup> For example, the Monitoring Report on the 2014 Financial Year shows that one of the provisions least complied with in recent years was best practice provision II.2.13 'overview of the remuneration policy'. It also shows that, as in other years, provision II.2.8 'maximum severance pay' was among the most-explained provisions in the 2014 financial year. The Monitoring Report on the 2009 Financial Year indicates that poor account is rendered of how the remuneration policy contributes to the company's long-term objectives.

neration.<sup>19</sup> Articles 9a and 9b of the European Commission's proposal pertain to, among other things, the influence of the general meeting of shareholders on the remuneration policy applicable to directors and the manner in which account is rendered of remuneration. The proposal also mentions that remuneration must be in line with the company's long-term strategy.

The aforementioned legislative developments are further delineating the leeway companies have in respect of remuneration. The Committee sees an additional argument here for taking a considerable step back in the Code's level of detail. The Committee proposes to include four principles on remuneration in the Code, elaborating them in 11 best practice provisions. These principles and provisions should govern the remuneration policies of the management board and the supervisory board, how these policies are determined and how account is subsequently rendered in the remuneration report. The Committee based this amendment on the notion that the principles and best practice provisions should encourage maximum simplicity and transparency in defining the remuneration policy.

The debate on remuneration is also being conducted in other countries and at the European level, with the subject being extensively addressed in foreign corporate governance codes. For example, virtually all codes include provisions stating that part of the remuneration should be linked to the performance of the enterprise and that taking inappropriate risks should not be rewarded. It is also common for remuneration committees to present recommendations to the board of directors or supervisory board regarding the remuneration policy and the remuneration for individual directors.

### **Remuneration policy of the management board**

The Committee proposes to include in a principle that the remuneration policy for management board members should be simple and transparent. The supervisory board is responsible for this. It is important that the remuneration policy promotes and serves long-term value creation for the company and its affiliated enterprise. In this connection, the Committee finds it important that the remuneration policy is drawn up in a such a way that it does not induce management board members to take risks that are at odds with the company's risk appetite and strategy. Other key elements of the remuneration policy are the internal remuneration ratios, the ratio between short-term and long-term bonuses relative to the fixed remuneration, the development of share prices, the achievement of pre-determined objectives and how these relate to developments in the market. As it turns out, some corporate governance codes – including those applicable in Hong Kong, Singapore, the United Kingdom and Italy, as well as relevant regulations in the United States<sup>20</sup> – state that the supervisory board, and the remuneration committee in particular, plays a role in the remuneration for senior management or key personnel, not being directors under the articles of association. The Committee believes that it is possible for the supervisory board to play a role in the remuneration for members of the executive committee. As stated, almost half of Dutch companies have established an executive committee. Whether a supervisory board's involvement in the remuneration for members of the executive committee is appropriate depends on how a company has given shape to the executive committee. The Committee leaves it up to the company to decide whether or not to assign the supervisory board a role in the remuneration for members of the executive committee. However, the Committee does find it important that the management board and the supervisory board discuss the allocation of responsibilities and lay down arrangements on this point in the remuneration committee's terms of reference.

As stated, the Act on the Adjustment and Claiming Back of Bonuses introduced a statutory provision regarding the claw back. The Committee proposes that the supervisory board should specify the parameters on the basis of which the company may, under pre-determined circumstances, reclaim or reduce any variable remuneration awarded.

<sup>19</sup> Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ EU 2007, L 184).

<sup>20</sup> See the study of the Code's international context, conducted by the University of Groningen and available on the Committee's website ([www.mccg.nl](http://www.mccg.nl)).

### **Management board members' own views on remuneration**

The Committee proposes to introduce a new best practice provision pertaining to the consideration of the management board members' views on their own remuneration. The remuneration committee should consider these views when formulating a proposal on the amount and structure of management board members' remuneration. The Committee believes that management board members are perfectly capable of forming an opinion on their own remuneration. By introducing this best practice provision, the Committee expects to see more direct involvement of management board members in their own remuneration. When presenting their views, management board members should pay heed to the aspects considered in the adoption of the remuneration policy. Ultimate responsibility for the levels of remuneration for management board members continues to rest with the supervisory board.

### **Share-based remuneration for the supervisory board**

The current Code prescribes in best practice provision III.7.1 that supervisory board members may not be paid in the form of shares or be granted rights to shares. The Code does address shareholding in the subsequent best practice provision. In other words, supervisory board member cannot be rewarded in the form of shares but may hold them, albeit on the condition that such shares are long-term investments. Hence, the Committee concludes that the supervisory board member can acquire shares in the company with the remuneration received. The Committee proposes to change these best practice provisions by setting clear conditions for share-based remuneration for supervisory board members. The provisions should prevent a situation in which share-based remuneration encourages supervisory board members to focus too much on the short term, thus losing sight of long-term value creation for the company and the enterprise affiliated with the company. In the Committee's view, the following conditions may guarantee sufficiently that supervisory board members will not be guided by the price of the shares in their actions. First, the shares and/or rights to shares are held for at least two years following the end of the supervisory board member's appointment period. In addition, the value of the shares does not exceed half of the supervisory board member's total remuneration. Lastly, the shares and/or the rights to shares continue to be held in full ownership by the supervisory board member until the period mentioned at the first condition has expired. The reason for introducing this best practice provision in the Code is the Committee's observation that there is a need in the market for the option of share-based remuneration for supervisory board members. Corporate governance codes in other countries also provide this option.

### **Remuneration for supervisory board members: time spent and responsibility**

Finally, the Committee proposes to introduce in a new best practice provision that the remuneration for supervisory board members should reflect the time spent and the responsibilities of their role. The position of supervisory board members is professionalising. Expectations are higher, as is the risk of reputational damage. The final decision on the levels of remuneration for supervisory board members should continue to rest with the general meeting of shareholders.

#### **Principle 3.1 Remuneration policy – management board**

The remuneration policy applicable to management board members should be simple and transparent and should promote long-term value creation for the company and its affiliated enterprise. The remuneration policy should not encourage management board members to take risks that conflict with the strategy formulated. The supervisory board should be responsible for the remuneration policy and its implementation.

##### **3.1.1 Remuneration policy proposal**

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration policy to be pursued with regard to the management board including the severance payments.

### 3.1.2 Adoption of the remuneration policy

The following aspects should in any event be considered when adopting the remuneration policy:

- i. the objectives in respect of the strategy to achieve long-term value creation referred to in best practice provision 1.1.1;
- ii. the remuneration ratios within the enterprise affiliated with the company;
- iii. the ratio between the short- and long-term variable remuneration components in relation to the fixed remuneration component;
- iv. the development of the market price of the shares;
- v. in the event of remuneration in shares, the terms and conditions for holding such shares in the long term; and
- vi. the achievement of pre-determined objectives and how these relate to developments in the market.

### 3.1.3 Responsibility remuneration executive committee

In consultation with the management board, the supervisory board should determine the responsibility of the supervisory board with regard to the remuneration of members of the executive committee who are not management board members. The relevant arrangements should be laid down in the terms of reference referred to in best practice provision 2.3.3.

### 3.1.4 Parameters claw back

The remuneration policy should specify the parameters on the basis of which the company may, under pre-determined circumstances, reclaim the variable remuneration awarded or adjust such remuneration downwards.

## Principle 3.2 Determination of management board remuneration

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

### 3.2.1 Remuneration committee's proposal

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration of individual members of the management board. In this proposal the manner in which the aspects referred to in best practice provision 3.1.2 were weighed should be addressed.

### 3.2.2 Management board members' own views

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

### 3.2.3 Severance payments

The remuneration in the event of dismissal should not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for a management board member who is dismissed during his first term of office, such board member should be eligible for severance pay not exceeding twice the annual salary.

### Principle 3.3 Remuneration supervisory board

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

#### 3.3.1 Time spent and responsibility

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

#### 3.3.2 Remuneration of supervisory board members in the form of shares

Any shares held by a supervisory board member in the company should be long-term investments. Supervisory board members may be awarded remuneration in the form of shares and/or rights to shares in the company, on condition that:

- i. such shares and/or rights to shares are held for at least two years following the end of the appointment period;
- ii. at the time of award, the value of the shares does not exceed half of the total remuneration; and
- iii. the shares and/or rights to shares continue to be held in full ownership by the supervisory board member until the period mentioned at i. above has expired.

### Principle 3.4 Remuneration accountability

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

#### 3.4.1 Remuneration report

The supervisory board is responsible for drawing up the remuneration report. This report should in any event describe in a clear and transparent manner, in addition to the matters required by law:

- i. how the remuneration policy contributes to long-term value creation;
- ii. the total package of benefits for each management board member;
- iii. in the event a management board member receives variable remuneration: substantiation of how this remuneration contributes to long-term value creation; and
- iv. in the event a current or former management board member receives a payment when leaving: substantiation of how this remuneration does not reward inadequate performance.

#### 3.4.2 Contract of management board member

The main elements of the contract of a management board member with the company should be made public in a clear and transparent overview after it has been concluded, and in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed.

## 6. THE SHAREHOLDERS AND THE GENERAL MEETING OF SHAREHOLDERS

The preamble already states that the Code should be viewed in the context of Dutch and European legislation and case law on corporate governance. This applies in full to the principles and best practice provisions regarding the shareholders, including the general meeting. The Committee is aware that various discussions and developments are currently taking place that concern the rights and responsibilities of shareholders. Examples that may be mentioned in this connection are the negotiations currently being conducted on a proposal for revision of the European Directive 2007/36/EG on shareholders' rights<sup>21</sup>, pertaining to aspects such as transparency and shareholder engagement of institutional investors as regards their investments, identification of shareholders, voting rights in respect of directors' remuneration and transparency on and shareholder engagement in related party transactions. In addition, there is the discussion on the position of minority shareholders of companies with a controlling shareholder, which took off following the publication of Eumedion's draft position paper.<sup>22</sup> Finally, discussions are ongoing regarding the use of protective measures in relation to the position of minority shareholders.

The Committee considers it too early at this point to introduce far-reaching substantive changes to the current Code regarding a company's relationship with its shareholders, including the general meeting, during this revision. Only when today's discussions and developments have crystallised further can specific proposals for principles and best practice provisions be made, in the Committee's opinion. In a future revision, the Committee deems it advisable to explore the possibilities to include shareholder responsibilities in a stewardship code.

The Committee proposes to restructure the principles and best practice provisions of the current Code on shareholders and the general meeting in this revision, so that the structure corresponds to the thematic structure of the proposal for the revised Code. On that point, the Committee aimed to use a design that contributes to the mutual correlation and ease of reference of the various best practice provisions. Principles and best practice provisions were subsequently clarified and shortened where possible. In addition, the Committee aimed to avoid overlaps with legislation as much as possible by deleting or changing specific principles and best practice provisions in whole or in part where necessary. As a result, the changes proposed by the Committee are primarily of a technical nature, while the Committee aimed to keep the substantive changes to a minimum.

The Committee proposes to structure the principles and best practice provisions regarding the shareholders, including the general meeting, according to the following four principles:

- › the general meeting of shareholders (principle 4.1);
- › provision of information (principle 4.2);
- › casting votes (principle 4.3); and
- › issuing depository receipts for shares (principle 4.4).

<sup>21</sup> Proposal (COM 2014/213) to amend Directive 2007/36/EU.

<sup>22</sup> Eumedion, Draft Position Paper '*Positie minderheidsaandeelhouders in ondernemingen met controlerend aandeelhouder*', October 2015, available at [www.eumedion.nl](http://www.eumedion.nl).

## The general meeting of shareholders

The general meeting of shareholders is a corporate body that holds a key position as part of the checks and balances within the company. The general meeting of shareholders may exert influence on the company's management board and supervisory board, by which it may (indirectly) influence the policies pursued by the company. The Committee believes that involved and well-informed participation by the shareholders in the general meeting's decision-making is crucial for good corporate governance at the company.

The Committee proposes to largely adopt the principle and best practice provisions from the current Code pertaining to the decision-making in the general meeting of shareholders and, additionally, not to make any far-reaching substantive changes. The best practice provisions included to elaborate on principle 4.1 primarily pertain to ensuring the orderly process of information provision, dialogue and decision-making at the general meeting of shareholders. Parts of principle I.2 and IV.1 and best practice provisions III.1.6(f), IV.1.4 to IV.1.6 inclusive, IV.1.8, IV.3.7 to IV.3.10 inclusive and IV.4.6 from the current Code should be adopted without change. Below, an explanation is given of a proposal for a new best practice and the proposed changes to the text of best practice provisions II.1.9 and IV.4.4 concerning the response time.

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

The current Code already provides that proposals on the appointment of members of the management board and supervisory board should be discussed as separate agenda items during the general meeting of shareholders. To supplement this provision, the Committee proposes to introduce a new best practice provision to the effect that the management board and supervisory board members who have been nominated should attend the general meeting at which votes will be cast on their nomination. This will give shareholders the opportunity to ask questions to the newly nominated members directly. The Committee takes the position that this will contribute to the relationship and interaction between the company's management board members and supervisory board members and its shareholders.

#### 4.1.6 Attendance of members nominated for the management board or supervisory board

Management board and supervisory board members nominated for appointment should attend the general meeting at which votes will be cast on their nomination. They may be questioned personally by shareholders.

### Response time

The current Code contains two best practice provisions dealing with the response time that the management board may stipulate if one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy. For the sake of clarity, the Committee proposes to combine these best practice provisions into one best practice provision in the revision. The cross-references currently included in the best practice provisions from the current Code will of course lapse because of this combination.

The best practice provisions concerning the response time were introduced in the Code during the 2008 amendment. The aim was to afford the management board time to responsibly consider how it should respond to wishes expressed by shareholders, whilst weighing the interests of all the other stakeholders. This reflects the attention paid by the Committee in this revision to long-term value creation for the company. The management board should use the response time in any event, but not exclusively, to hold constructive consultations with any shareholder(s) who expressed their wish to put an item on the agenda. During the response time, the management board and the supervisory board have overall responsibility for carefully weighing up all interests involved in the company. In that process, they should ensure the continuity of the enterprise affiliated with the company, whilst acting in a sustainable manner and seeking to create long-term value. The response time should be a reasonable period not exceeding 180 days. It is important that the management board actually uses this period for further deliberation and constructive consultation and, in so far as

relevant, for exploring the alternatives. The management board should also endeavour to keep the response time to a minimum. The supervisory board should supervise the efficient use of the response time, whilst assisting the management board with advice in that context.

Finally, the Committee proposes to make three substantive changes to the text of the best practice provision on response time. First, the Committee proposes to clarify how ‘a change in the company’s strategy’ should be interpreted. The best practice provision is supplemented with the explanation that ‘changes to the company’s strategy’ are deemed to include management board resolutions on a major change in the identity or character of the company or the enterprise affiliated with it. Under Section 2:107a of the Dutch Civil Code, such resolutions are subject to the general meeting’s approval. The Committee believes that this clarification reflects current practice. Second, the Committee proposes to add that the management board should render account to the general meeting at the end of the response time of the constructive consultations and the exploration of alternatives for which purpose it had stipulated the response time. Third, the Committee proposes to delete that the shareholders should respect the response time stipulated by the management board. The nature of the principles and best practice provisions implies that shareholders may generally be expected to respect compliance with the Code. The Committee therefore believes that this does not need to be emphasised in this specific case.

#### **4.1.8 Response time**

If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company’s strategy, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). Changes to the strategy are deemed to include management board resolutions on a major change in the identity or character of the company or the enterprise affiliated with it that are subject to the approval of the general meeting under Section 2:107a of the Dutch Civil Code. The opportunity to stipulate the response time should also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to Section 2:110 of the Dutch Civil Code.

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

The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which the response time had been previously stipulated, or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

### **Provision of information**

The management board and the supervisory board are responsible for how the company provides and explains information to its shareholders, including the general meeting. The Committee believes that an adequate provision of information and explanation is crucial to further involved and well-informed participation by the shareholders in the general meeting’s decision-making.

The Committee proposes to adopt the principle and best practice provisions from the current Code pertaining to the provision of information largely without change in the revision. They concern best practice provisions IV.3.1, IV.3.5, IV.3.6, IV.3.11 and IV.3.15 and part of principle IV.3 from the current Code, which

discuss how the management board and the supervisory board may discharge their shared responsibility for adequately informing the shareholders (including the general meeting).

The principle will read as follows:

#### **Principle 4.2 Provision of information**

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

#### **Availability of information in English**

The Committee proposes to introduce one new best practice provision providing that information should in any event be made available to the shareholders (including the general meeting) in English. The management board and the supervisory board may additionally choose to make information available in Dutch as well. In this regard, the Committee applies the notion that information should be made available in a language understood by the greatest possible number of shareholders and other stakeholders.

#### **4.2.2 Availability of information in English**

Information to shareholders (including the general meeting of shareholders) should be made available in English and alternatively in Dutch.

#### **Casting votes**

The company should, in so far as possible, give shareholders and/or other persons entitled to vote every opportunity to vote by proxy and to communicate with other persons entitled to vote. With this amendment, the Committee again emphasises the importance of full participation of the greatest possible number of involved and well-informed persons entitled to vote in the decision-making of the general meeting of shareholders. The Committee considers this to be crucial for a proper operation of corporate governance. The company is responsible for facilitating shareholder voting as much as possible. Persons entitled to vote are expected to participate in the general meeting's decision-making in an involved and well-informed manner.

#### **Issuing depositary receipts for shares**

The Committee proposes to adopt best practice provisions IV.2.1 to IV.2.8, inclusive, of the current Code concerning the issue of depositary receipts for shares without change and to only amend certain passages in principle IV.2 that the Committee considers to be either outdated or conflicting with legislation.

**Only if beneficial to long-term value creation**

The view that the issue of depositary receipts for shares is not used as a protective measure no longer accords with practice, according to the Committee, noting that such an issue is indeed used as a protective measure in some cases. In the Committee's opinion, depositary receipts should only be issued if it helps create long-term value for the company. This is in line with the Committee's point of view that the management board should focus on creating long-term value for the company and its affiliated enterprise. The Committee proposes that this limitation of the issue of depositary receipts be clarified in the text of the principle.

In addition, the Committee proposes to delete the passage of the principle stating that depositary receipts for shares are a means of preventing a (chance) majority of shareholders from controlling the decision-making as a result of absenteeism. The Committee has observed that the need for a means to counter the possible consequences of absenteeism has reduced significantly. This is because the participation of persons with voting rights in the general meeting's decision-making has increased in recent years to approx 70% in 2015.<sup>23</sup>

Finally, the Committee proposes to delete the passage from the current Code stating that the board of the trust office should issue proxies in all circumstances and without limitation to the holders of depositary receipts who so request. The reason for this proposed deletion is that Section 2:118(2) of the Dutch Civil Code describes three situations in which the voting proxies of depositary receipt holders may be limited, excluded or revoked by the trust office. Briefly put, this provision entails that the proxy need not be provided by the trust office board in the event of a takeover battle ('war time'). The Committee therefore takes the position that leaving the passage that holders of depositary receipts should be granted voting proxies in all circumstances and without limitation unchanged would conflict with the law.

The principle will then read as follows:

**Principle 4.4 Issuing depositary receipts for shares**

Depositary receipts for shares should only be issued as an anti-takeover protective measure in so far as such issue serves the long-term value creation of the company and its affiliated enterprise. The board of the trust office should have the confidence of the holders of depositary receipts. Depositary receipt holders should have the possibility of recommending candidates for the board of the trust office. The company should not disclose to the trust office information which has not been made public

<sup>23</sup> Eumedion, 'Evaluatie van het AVA-seizoen 2015', July 2015, available at [www.eumedion.nl](http://www.eumedion.nl).

## 7. CLARIFICATION OF REQUIREMENTS REGARDING THE QUALITY OF THE EXPLANATION

The Code operates on the basis of the ‘comply or explain’ principle. According to this principle, either a best practice provision is applied or a substantiated explanation is given if a provision is not applied. Unlike legislation, the Code offers companies room to depart from the best practice provisions. The operation of the ‘comply or explain’ principle stands or falls by the quality of the explanation given by companies in the event of any departures.

The quality of the explanation has been a key point of attention for the committees monitoring compliance with the Code for many years. The report by the Streppel Committee on the financial year 2010 identified an increase in the number of in-house regulations. In response, the Streppel Committee gave the following guidance. The application of a company’s own regulations is only regarded as compliance with the Code if a statement is given on:

- i. why the in-house regulations are necessary; and
- ii. how these regulations meet the corresponding principle in the Code.

The Streppel Committee also stated in its report on the financial year 2010 that if any departure from a provision in the Code is temporary and lasts for more than one year, an explanation must be given of when the provision is expected to be applied again. In recent years, these definitions have formed the basis for the Committee’s assessment of the quality of the explanation.

In the revised Code, the Committee aims to better channel the operation of the ‘comply or explain’ principle and give the quality of the explanation a prominent place in the Code. When drafting the proposal, it was guided by the European Commission Recommendation on the quality of the explanation.<sup>24</sup> With this Recommendation, the European Commission offers guidance to companies to help them improve the quality of the corporate governance statement. The Recommendation includes a general framework for the quality of the explanation, consisting of a number of elements to be met by the explanation. The guidance provided by the Streppel Committee is largely in line with this Recommendation, but the Recommendation goes a step further on some points. The Committee has adopted the framework for the quality of the explanation from the Recommendation. The Committee would like to add to the text of the Recommendation that temporary departures are departures lasting more than one financial year. The alignment with the text from the European Recommendation may contribute to creating a level playing field in Europe.

The Committee proposes to include a passage on Code compliance in the revised Code. This passage should deal with the operation of the ‘comply or explain’ principle. Companies should be asked to state how the principles from the Code have been applied. In addition, a framework should be outlined for a good explanation of any departures from a provision. In this respect, the Committee would like to emphasise that departures may be justified under certain circumstances. Companies and shareholders share responsibility for proper self-regulation according to the ‘comply or explain’ principle.

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<sup>24</sup> Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting (‘comply or explain’) (2014/208/EU).

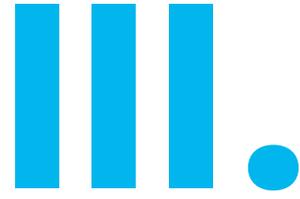
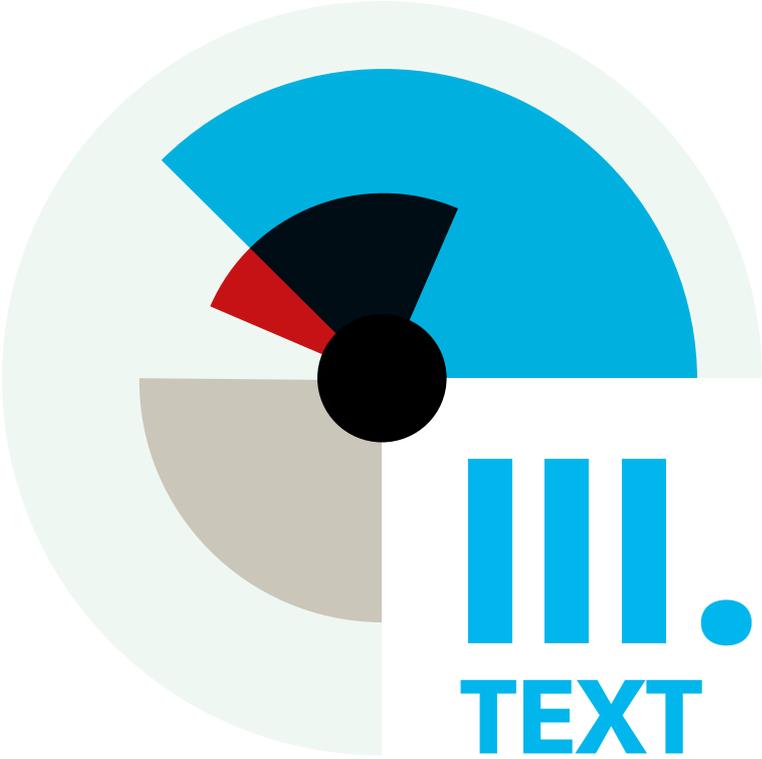
## COMPLIANCE WITH THE CODE

Compliance with the Code is based on the 'comply or explain' -principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the best practice provisions. However, any such departure is conditional upon a substantive and transparent explanation by the company as to why it did not comply with a specific best practice provision.

Each year, the company should state in its management report or on its website how it applied the principles of the Code in the past year. In addition, it should state that the best practice provisions of the Code were applied in the past year or give a reasoned explanation as to why a specific best practice provision was not applied. Importantly, the explanation should in any event include the following elements:

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

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



**TEXT  
PROPOSAL  
NEW CODE**

## PREAMBLE

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

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

### Scope

The Code applies to:

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

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

### Contents of the Code

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). The principles and provisions are aimed at defining responsibilities for long-term value creation, risk control, effective management and supervision, remuneration and the relationship with shareholders (including the general meeting of shareholders) and stakeholders. The principles may be regarded as reflecting widely held general views on good corporate governance. The principles have been supplemented in the form of specific best practice provisions. These provisions create a set of standards governing the conduct of management board members, supervisory board members and shareholders. They reflect best practices and supplement the general principles of good corporate governance. Companies may depart from these best practice provisions. The conditions for departures are explained below at 'Compliance with the Code'. Relations between the company and its employees (representatives) are regulated elsewhere. Nonetheless, the interests of the employees should be taken into account when the interests of all stakeholders are weighed in connection with compliance with the Code.

## **Underlying notions**

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

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

## **Shareholders and institutional investors**

In principle, shareholders can give priority to their own interests, as long as they act in keeping with the principles of reasonableness and fairness in relation to the company, its organs and their fellow shareholders. This includes the willingness to engage with the company and fellow shareholders. The greater the interest which the shareholder has in a company, the greater is his responsibility to the company, fellow shareholders and other stakeholders. Institutional investors have a responsibility to the ultimate beneficiary owners to assess, carefully and transparently, how they wish to exercise their rights as shareholders of companies.

## **Relation to legislation**

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

The amendments to the Code are based on current legislation and case law on the external and internal relations of companies, and take into account relevant corporate governance trends. When formulating the principles and best practice provisions, overlaps with legislation have been avoided as much as possible. For the sake of the Code's readability and its internal coherence, some overlap between legislation and the Code is unavoidable, if only because the Code can supplement statutory provisions. Where the standard of a principle or best practice provision also ensues from the law, the law prevails and compliance with that statutory standard is mandatory. In that event, reasoned departure from that principle or best practice provision is no longer possible.

## COMPLIANCE WITH THE CODE

Compliance with the Code is based on the 'comply or explain' -principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the best practice provisions. However, any such departure is conditional upon a substantive and transparent explanation by the company as to why it did not comply with a specific best practice provision.

Each year, the company should state in its management report or on its website how it applied the principles of the Code in the past year. In addition, it should state that the best practice provisions of the Code were applied in the past year or give a reasoned explanation as to why a specific best practice provision was not applied. Importantly, the explanation should in any event include the following elements:

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

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

# 1. LONG-TERM VALUE CREATION

## Principle 1.1 Long-term value creation

The management board is responsible for the continuity of the company and its affiliated enterprise, focusing on long-term value creation for the company and its affiliated enterprise. The management board formulates and implements a strategy focus on long-term value creation that may, depending on market dynamics, continually require short-term adjustment. The supervisory board supervises this.

### 1.1.1 Long-term value creation strategy

The management board should have a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy to realise this view, paying attention to:

- i. the strategy's implementation and feasibility;
- ii. the business model applied by the company and the market in which the company operates;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in relevant markets;
- v. non-financial corporate issues relevant to the company, such as the environment, social and employee-related matters, respect for human rights, and fighting corruption and bribery; and
- vi. weighing the interests of all stakeholders.

### 1.1.2 Role of the supervisory board

The management board should engage the supervisory board at a timely stage in formulating the view on long-term value creation and the strategy for its realisation. The management board should submit the strategy, and the explanatory notes to that strategy, to the supervisory board for approval.

The supervisory board should supervise the manner in which the management board realises the long-term value creation strategy. The supervisory board should in any event once per year discuss the strategy aimed at long-term value creation, the implementation of the strategy and the principal risks associated with it. This discussion should be mentioned in the report of the supervisory board.

### 1.1.3 Accountability

In the management report, the management board should give a substantive description of the view on long-term value creation, the strategy for its realisation and which contributions were made to the long-term value creation in the past financial year. The management board should report on both the short-term and long-term developments.

## Principle 1.2 Risk management

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

### 1.2.1 Risk assessment

The management board should identify and analyse the risks associated with the company's strategy and activities. It should establish the risk appetite within which the company may accept risks and the control measures to counter those risks. The context for this analysis should be determined by aspects such as the company's continuity, reputation, financial reporting, funding, operating activities and long-term value creation.

### 1.2.2 Implementation

Based on the risk assessment, the management board should design, implement and maintain adequate internal risk management and control systems. As much as possible, these systems should form part of the work processes within the company and – to the extent relevant – should be known at all levels within the enterprise affiliated with the company. The internal risk management and control systems should be adjusted in response to incidents in a timely fashion.

### 1.2.3 Evaluation

The management board should monitor the operation of the internal risk management and control systems and, at least annually, carry out a systematic review of the effectiveness of the systems' design and operation. Such monitoring should cover all material control measures, including the financial, operational and compliance aspects, and take account of weaknesses observed and lessons learned, signals from whistleblowers and findings from the internal audit function and the external auditor. Where necessary, improvements should be made to internal risk management and control systems.

## Principle 1.3 Internal audit function

The duty of the internal audit function is to assess the effectiveness of the design and the operation of the internal risk management and control systems. The management board is responsible for the functioning of the internal audit function. The supervisory board supervises the functioning of, and maintains regular contact with, the internal audit function.

### 1.3.1 Appointment

The management board should both appoint and dismiss the senior internal auditor. Both the appointment and the dismissal of the senior internal auditor should be submitted to the chairman of the audit committee for approval.

### 1.3.2 Assessment of the internal audit function

The management board should annually assess the functioning of the internal audit function, taking into account the audit committee's opinion.

### 1.3.3 Internal audit plan

The internal audit function should draw up an internal audit plan and, after coordinating with the external auditor, should submit it for approval to the management board and then to the audit committee. In this internal audit plan, attention should also be paid to the interaction with the external auditor.

### 1.3.4 Performance of work

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

### 1.3.5 Reports of findings

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

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

In the consultation by the management board and the audit committee with the internal audit function, issues pertaining to the culture and conduct within the enterprise affiliated with the company should also be addressed.

### **1.3.6 Absence of an internal audit function**

If there is no internal audit function, the audit committee should annually consider the need for an internal audit function and assess whether adequate alternative measures have been taken. On the proposal of the audit committee, the supervisory board should include the conclusions, along with any resulting recommendations, in the report of the supervisory board.

## **Principle 1.4 Risk management accountability**

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

### **1.4.1 Accountability**

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

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

- i. the execution of the risk assessment, with a description of the principal risks facing the company and the risk appetite of the company. These risks may include strategic, operational, financial, compliance and non-financial risks;
- ii. the design of the internal risk management and control systems;
- iii. the operation of the internal risk management and control systems during the past financial year and how these systems contributed to mitigating and managing the risks;
- iv. any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, and the discussion of these issues with the audit committee and the supervisory board; and
- v. the sensitivity of the results of the company to material changes in external factors.

### **1.4.2 'In control' statement in the management report**

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

- i. that the internal risk management and control systems worked properly in the financial year;
- ii. that the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies; and
- iii. that the expectation is that the company's continuity has been safeguarded for the next twelve months.

## Principle 1.5 Role of the supervisory board and the audit committee

The supervisory board should supervise the management conducted by the management board and the general affairs of the company and its affiliated enterprise. In so doing, the supervisory board should also focus on the effectiveness of the company's internal risk management and control systems and the integrity and quality of the financial reporting. The audit committee should prepare the supervisory board's decision-making regarding these specific elements of supervision.

### 1.5.1 Duties and responsibilities of the audit committee

The audit committee's duties and responsibilities include monitoring the company's financial reporting and the risk management conducted by the management board. In addition to what is laid down in legislation<sup>1</sup>, the audit committee should in any event focus on monitoring the management board with regard to:

- i. relations with, and compliance with recommendations and following up of comments by, the internal audit function and the external auditor;
- ii. the funding of the company;
- iii. the application of information and communication technology of the company; and
- iv. the company's tax policy.

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

In principle, the internal auditor and the external auditor should attend the audit committee meetings. The audit committee should decide whether and, if so, when the chairman of the management board and the chief financial officer should attend its meetings.

### 1.5.3 Audit committee report

The audit committee should report to the supervisory board on its deliberations and findings. In this report attention should in any event be paid to:

- i. an assessment of the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3, inclusive;
- ii. the methods used to assess the effectiveness of the internal and external audit processes;
- iii. material considerations concerning the financial reporting; and
- iv. the expectation as to whether the company's continuity has been safeguarded for the next twelve months.

### 1.5.4 Supervisory board

The supervisory board should discuss the items reported on by the audit committee on the basis of best practice provision 1.5.3. The supervisory board's report should mention these discussions.

### 1.5.5 Supervision of irregularities

The supervisory board should be informed by the management board and the external auditor without delay of any material irregularities within the company, including irregularities with regard to the integrity of the financial reports. The supervisory board should supervise proportionate and independent investigations into the irregularities discovered and an adequate follow-up of any recommendations for remedial actions.

In order to safeguard the independence of the investigation, the supervisory board should have the option to initiate its own investigation into any irregularities that have been discovered and to coordinate this investigation.

<sup>1</sup> Decree of 26 July 2008 implementing Article 41 of Directive No 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts, amending Directives No 78/660/EEC and No 83/253/EEC of the Council of the European Communities (Bulletin of Acts and Decrees 2008, 323) and Regulation 537/214.

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

The supervisory board should submit the nomination for the appointment of the external auditor to the general meeting of shareholders and should supervise the external auditor's functioning. The audit committee performs a leading role in preparing the supervisory board's decision-making.

### 1.6.1 Functioning and appointment

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

### 1.6.2 Engagement

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the financial statements. The management board should assist and facilitate. In formulating the terms of engagement, attention should be paid to the scope, materiality and remuneration of the audit. The supervisory board should resolve on the engagement.

### 1.6.3 Accountability

The main conclusions of the audit committee regarding the external auditor's nomination and the outcomes of the external auditor selection process should be communicated to the general meeting of shareholders. If the supervisory board does not accept the audit committee's advice concerning the external auditor's appointment, the arguments for this decision should be communicated to the general meeting and mentioned in the report of the supervisory board.

### 1.6.4 Departure of the external auditor

The company should publish a press release in the event of the external auditor's early departure. The press release should explain the reasons for such early departure.

## Principle 1.7 Performance of the external auditor's work

The audit committee and the external auditor should discuss the audit plan and the findings ensuing from the work performed by the external auditor. The management board and the supervisory board should maintain regular contact with the external auditor.

### 1.7.1 Provision of information to the external auditor

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

### 1.7.2 Audit plan and external auditor's findings

The audit committee should annually discuss with the external auditor:

- i. the scope and materiality of the audit plan and the principal risks of the financial statements identified by the external auditor in the audit plan; and
- ii. based also on the management letter and the audit report, the findings and outcomes of the audit work on the financial statements and the management letter.

In the consultations between the audit committee and the external auditor there should also be room to address issues pertaining to the culture and conduct within the enterprise affiliated with the company.

### **1.7.3 Publication of financial reports**

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

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

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

### **1.7.5 Observance by the external auditor of irregularities**

The audit committee should act as the principal contact for the external auditor if they observe irregularities during the execution of their engagement.

### **1.7.6 Provision of reports to the management board and supervisory board**

The management board and the supervisory board should simultaneously receive the management letter and the audit report from the external auditor along with their findings and outcomes relating to the audit of the financial statements and the management report and the management letter. The audit committee should be permitted to examine any material changes that have been made to the draft management letter or the draft audit report by the external auditor at the management board's request.

### **1.7.7 Identification of failings in Code compliance accountability**

The external auditor should inform the management board and the supervisory board if, during the execution of their work, they discover misrepresentations of the company's compliance with this Code in the management report, including the corporate governance statement, or the report of the supervisory board.

### **1.7.8 External auditor's attendance of supervisory board meetings**

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

## 2. EFFECTIVENESS OF MANAGEMENT AND SUPERVISION

### Principle 2.1 Composition and size

The management board and the supervisory board should be composed such that the requisite expertise, background, skills and – as regards the supervisory board – independence are present, enabling them to carry out their duties properly. The size of these two bodies reflects these requirements.

#### 2.1.1 Profile

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

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

The profile should be made generally available and should be posted on the company's website.

#### 2.1.2 Personal information

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

- i. gender;
- ii. age;
- iii. profession;
- iv. principal position;
- v. nationality;
- vi. other positions, in so far as they are relevant to the performance of the duties of the supervisory board member;
- vii. date of initial appointment; and
- viii. current term of office.

#### 2.1.3 Executive committee

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

In the management report, account should be rendered of:

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

#### 2.1.4 Expertise

Each supervisory board member and each management board member should have the specific expertise

required for the fulfilment of his duties. Each supervisory board member should be capable of assessing the broad outline of the overall management. At least one supervisory board member should have specific expertise in technological innovations and new business models.

### 2.1.5 Diversity

The supervisory board should draw up a diversity policy with regard to the composition of the management board and the supervisory board that addresses the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background. The diversity policy should be explained in the corporate governance statement, addressing:

- i. the policy objectives;
- ii. how the policy has been implemented; and
- iii. the results of the policy in the past financial year.

If the existing composition of the management board and the supervisory board differs from the intended situation as expressed in the company's diversity policy or as ensues from the statutory target figure of 30 percent in respect of the male/female ratio<sup>2</sup>, it should also be explained in the corporate governance statement which measures are being taken to attain the intended situation and by when this is likely to be achieved.

### 2.1.6 Independence of supervisory board members

Any one of the following dependence criteria should be applicable to at most one supervisory board member. The supervisory board member concerned or his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:

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

### 2.1.7 Independence of supervisory board members: shareholding

A company may appoint one or more supervisory board members who, or whose spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree, has a shareholding in the company of at least ten percent, taking into account the shareholding of natural persons or legal entities cooperating with him or her on the basis of an express or tacit, verbal or written agreement. Jointly, the number of supervisory board members who satisfy said criterion and the dependence criteria referred to in best practice provision 2.1.6 should account for less than half the total number of supervisory board members.

<sup>2</sup> Section 2:166(1) of the Dutch Civil Code.

### **2.1.8 Accountability regarding supervisory board member independence**

The report of the supervisory board should state that, in the opinion of the supervisory board, the independence requirements referred to at best practice provisions 2.1.6 and 2.1.7 have been fulfilled and, if applicable, should also state which supervisory board member(s), if any, it does not consider to be independent.

### **2.1.9 Independence of the chairman of the supervisory board**

The chairman of the supervisory board should not be a former member of the management board of the company and should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7.

## **Principle 2.2 Appointment, succession and evaluation**

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

### **2.2.1 Appointment and reappointment periods – management board members**

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

### **2.2.2 Appointment and reappointment periods – supervisory board members**

A supervisory board member should be appointed for a period of four years and may then be reappointed once for a period of four years. Only under specific circumstances may the supervisory board member be reappointed again, for a period of two years, which appointment may be extended by at most two years. The circumstances giving rise to reappointment should be explained in the report of the supervisory board. In any appointment or reappointment, the profile referred to in best practice provision 2.1.1 should be observed.

### **2.2.3 Early retirement**

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

### **2.2.4 Succession**

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

### **2.2.5 Duties of the selection and appointment committee**

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

- i. drawing up selection criteria and appointment procedures for management board members and supervisory board members;
- ii. periodically assessing the size and composition of the management board and the supervisory board, and making a proposal for a composition profile of the supervisory board;

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

The selection and appointment committee should make the description of its duties available on the company's website.

### **2.2.6 Evaluation of the supervisory board**

At least once per year, outside the presence of the management board, the supervisory board should evaluate its own functioning, the functioning of the various committees of the supervisory board and that of the individual supervisory board members, and should discuss the conclusions that are attached to the evaluation. In doing so, attention should be paid to:

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

### **2.2.7 Evaluation of the management board**

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

### **2.2.8 Evaluation accountability**

The supervisory board's report should state:

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

## **Principle 2.3 Organisation of the supervisory board and reports**

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

### **2.3.1 Supervisory board's terms of reference**

The division of duties among the supervisory board members and the procedure of the supervisory board should be laid down in terms of reference. The supervisory board's terms of reference should include a paragraph dealing with its relations with the management board, the general meeting of shareholders and the employee participation body. The terms of reference should be posted on the company's website.

### 2.3.2 Establishment of committees

If the supervisory board consists of more than four members, it should appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. Without prejudice to the collegiate responsibility of the supervisory board, the duty of these committees is to prepare the decision-making of the supervisory board. The chairman of the supervisory board should ensure that the committees of the supervisory board function properly. If the supervisory board decides not to establish an audit committee, a remuneration committee or a selection and appointment committee, the best practice provisions applicable to such committee(s) should apply to the entire supervisory board.

### 2.3.3 Committees' terms of reference

The supervisory board should draw up terms of reference for the audit committee, the remuneration committee and the selection and appointment committee. The terms of reference should indicate the role and responsibility of the committee concerned, its composition and the manner in which it discharges its duties. The terms of reference and the names of the supervisory board members who have a seat on the committees should be posted on the company's website.

### 2.3.4 Composition of the committees

The audit committee, the remuneration committee or the selection and appointment committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company. More than half of the members of the committees should be independent within the meaning of best practice provisions 2.1.6 and 2.1.7.

### 2.3.5 Committee reports

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

### 2.3.6 Chairman of the supervisory board

The chairman of the supervisory board should ensure that:

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

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

**2.3.7 Vice-chairman of the supervisory board**

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

**2.3.8 Delegated supervisory board member**

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

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

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

**2.3.10 Company secretary**

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

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

If the secretary notes that the interests of the management board and the supervisory board diverge, creating a conflict of loyalty or other conflict, he should report this to the chairman of the supervisory board. The company secretary should, either on the motion of the supervisory board or otherwise, be appointed and dismissed by the management board, after the approval of the supervisory board has been obtained.

**2.3.11 Report of the supervisory board**

The annual statements of the company should include a report of the supervisory board. In this report, the supervisory board should render account of the supervision conducted in the past financial year, reporting in any event on the items referred to at best practice provisions 1.1.2, 1.3.6, 1.5.4, 1.6.3, 2.1.2, 2.1.8, 2.2.2, 2.2.8, 2.3.5 and 2.4.3.

**Principle 2.4 Decision-making and functioning**

The management board and the supervisory board should ensure that decisions are made in a balanced and effective manner whilst taking account of the interests of stakeholders. To this end, information should be provided in a timely and qualitatively sound manner, knowledge and skills should be kept up to date and sufficient time should be spent on duties and responsibilities.

**2.4.1 Allocation of time and other positions**

Management board members and supervisory board members should have sufficient time to carry out their duties and responsibilities to the company. Management board members and supervisory board members should report any other positions they may have to the supervisory board in advance and, at least annually, the other positions should be discussed with the management board at the supervisory board meeting. The acceptance of membership of a supervisory board by a management board member requires the approval of the supervisory board.

#### **2.4.2 Point of contact for the functioning of supervisory board and management board members**

The chairman of the supervisory board should act on behalf of the supervisory board as the main contact for the management board, the supervisory board and for shareholders regarding the functioning of management board members and supervisory board members. The vice-chairman should act as contact for individual supervisory board members and management board members regarding the functioning of the chairman.

#### **2.4.3 Supervisory board meetings**

The chairman of the supervisory board should ensure that there is sufficient time for deliberation and decision-making by the supervisory board. If supervisory board members are frequently absent from supervisory board meetings, they should be held to account on this. The report of the supervisory board should state which supervisory board members have been frequently absent from the supervisory board meetings.

#### **2.4.4 Induction programme for supervisory board members**

After their appointment, all supervisory board members should follow a formal induction programme geared to their role. The induction programme should in any event cover general financial, social and legal affairs, financial reporting by the company, any specific aspects that are unique to the relevant company and its business activities, the company culture and the responsibilities of a supervisory board member. The chairman of the supervisory board should ensure that supervisory board members follow their induction programme.

#### **2.4.5 Development**

The supervisory board should conduct an annual review to identify any aspects with regard to which the supervisory board members and management board members require further training or education during their period of appointment. The chairman of the supervisory board should ensure that supervisory board members and management board members follow their education or training programme.

#### **2.4.6 Information safeguards**

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

#### **2.4.7 Supervisory board members' responsibility for obtaining information**

The supervisory board and its individual members have their own responsibility for obtaining all information from the management board, the internal audit function and the external auditor that the supervisory board needs in order to be able to carry out its duties as a supervisory organ properly.

#### **2.4.8 Obtaining information from officers and external parties**

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

### **Principle 2.5 Culture**

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

#### **2.5.1 Promoting openness and approachability**

The management board and the supervisory board should promote a culture of openness and approachability within the company and show that they expect the same of others in the enterprise affiliated with the company. The management board and the supervisory board should take measures to facilitate debate among management board and supervisory board members and to encourage a mutual dialogue.

### 2.5.2 Signs and suspicions of misconduct

The management board should inform the chairman of the supervisory board on signs and actual or suspected material misconduct.

### 2.5.3 Management board's responsibility for culture

The management board should be responsible for embedding the culture in the enterprise. In doing so, the management board should pay attention to culture- and conduct-determining factors such as the business model and the environment in which the enterprise operates.

The management board should:

- i. adopt common values for the company that contribute to long-term value creation;
- ii. draw up a code of conduct and endeavour to ensure that all employees and other stakeholders of the company support this code. The code of conduct should be posted on the company's website;
- iii. propagate the culture by setting the right 'tone at the top' and displaying model behaviour. The management board should show that it expects the same of others in the company;
- iv. assure itself of the effect of the measures taken to embed the culture; and
- v. draw up a scheme for reporting actual or suspected misconduct within the company and post this scheme on the website.

### 2.5.4 Employee participation

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

### 2.5.5 Accountability regarding culture

In the management report, the management board should explain the manner in which a culture is shaped within the company that is aimed at long-term value creation.

## Principle 2.6 Preventing conflicts of interest

Any form of conflict of interest between the company and the members of its management board or supervisory board should be prevented. Adequate measures should be taken for this purpose. The supervisory board is responsible for the decision-making on dealing with conflicting interests regarding management board members and supervisory board members in relation to the company.

### 2.6.1 Terms of reference

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

### 2.6.2 Reporting of transactions

A conflict of interest exists in any event if the company intends to enter into a transaction with a legal entity:

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

agement or supervisory position.

A management board member should immediately report any conflict of interest or potential conflict of interest in a transaction that is of material significance to the company and/or to such management board member to the chairman of the supervisory board and to the other members of the management board. The management board member should provide all relevant information in that regard, including the information relevant to the situation concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree.

A supervisory board member should immediately report any conflict of interest or potential conflict of interest in a transaction that is of material significance to the company and/or to such supervisory board member to the chairman of the supervisory board and should provide all relevant information in that regard. If the chairman of the supervisory board has a conflict of interest or potential conflict of interest, he should report this immediately to the vice-chairman of the supervisory board.

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

### **2.6.3 Accountability regarding transactions**

All transactions in which there are conflicts of interest with management board members or supervisory board members should be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with management board members or supervisory board members that are of material significance to the company and/or to the relevant management board members or supervisory board members should require the approval of the supervisory board. Such transactions should be published in the management report, together with a statement of the conflict of interest and a declaration that best practice provisions 2.6.2 and 2.6.3 have been complied with.

### **2.6.4 Accountability regarding transactions: shareholding**

All transactions between the company and legal or natural persons who hold at least ten percent of the shares in the company should be agreed on terms that are customary in the market. Decisions to enter into transactions with such persons that are of material significance to the company and/or to such persons should require the approval of the supervisory board. Such transactions should be published in the management report, together with a declaration that best practice provision 2.6.4 has been complied with.

### **2.6.5 Personal loans**

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

## **Principle 2.7 Takeover situations**

In the event of an actual or proposed takeover bid for the shares in the company, both the management board and the supervisory board should ensure that all stakeholder interests concerned are carefully weighed and any conflict of interest for supervisory board members is avoided. The management board and the supervisory board should be guided in their actions by the interests of the company and its affiliated enterprise.

### **2.7.1 Supervisory board involvement in takeover bid**

When a takeover bid for the company's shares or for the depositary receipts for the company's shares is being prepared, the management board should ensure that the supervisory board is involved in the takeover process closely and in a timely fashion.

**2.7.2 Informing the supervisory board about request for inspection by competing bidder**

If the management board of a company in respect of which a takeover bid has been announced or made receives a request from a competing bidder to inspect the company's records, the management board should discuss this request with the supervisory board without delay.

**2.7.3 Management board's position on a public private bid**

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

**2.7.4 Establishment of special committee**

In the event of a takeover bid or proposed takeover bid for the shares and in the event of a public bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, the management board and the supervisory board should establish a special committee to prepare the decision-making concerning the bid. This should not diminish the responsibilities of the management board members and supervisory board members under the articles of association.

**2.7.5 Composition of the special committee**

The special committee referred to at best practice provision 2.7.4 should consist of members of the management board and the supervisory board. The chairman of the supervisory board should chair this committee. If one or more dependent members of the supervisory board within the meaning of best practice provisions 2.1.7 and 2.1.8 have a seat on the supervisory board or on the special committee, the chairman should carefully weigh the involvement of these dependent supervisory board members in the decision-making concerning the bid referred to in best practice provision 2.7.4.

## 3. REMUNERATION

### Principle 3.1 Remuneration policy – management board

The remuneration policy applicable to management board members should be simple and transparent and should promote long-term value creation for the company and its affiliated enterprise. The remuneration policy should not encourage management board members to take risks that conflict with the strategy formulated. The supervisory board should be responsible for the remuneration policy and its implementation.

#### 3.1.1 Remuneration policy proposal

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration policy to be pursued with regard to the management board including the severance payments.

#### 3.1.2 Adoption of the remuneration policy

The following aspects should in any event be considered when adopting the remuneration policy:

- i. the objectives in respect of the strategy to achieve long-term value creation referred to in best practice provision 1.1.1;
- ii. the remuneration ratios within the enterprise affiliated with the company;
- iii. the ratio between the short- and long-term variable remuneration components in relation to the fixed remuneration component;
- iv. the development of the market price of the shares;
- v. in the event of remuneration in shares, the terms and conditions for holding such shares in the long term; and
- vi. the achievement of pre-determined objectives and how these relate to developments in the market.

#### 3.1.3 Responsibility remuneration executive committee

In consultation with the management board, the supervisory board should determine the responsibility of the supervisory board with regard to the remuneration of members of the executive committee who are not management board members. The relevant arrangements should be laid down in the terms of reference referred to in best practice provision 2.3.3.

#### 3.1.4 Parameters claw back

The remuneration policy should specify the parameters on the basis of which the company may, under pre-determined circumstances, reclaim the variable remuneration awarded or adjust such remuneration downwards.

### Principle 3.2 Determination of management board remuneration

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

#### 3.2.1 Remuneration committee's proposal

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration of individual members of the management board. In this proposal the manner in which the aspects referred to in best practice provision 3.1.2 were weighed should be addressed.

### 3.2.2 Management board members' own views

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

### 3.2.3 Severance payments

The remuneration in the event of dismissal should not exceed one year's salary (the 'fixed' remuneration component). If the maximum of one year's salary would be manifestly unreasonable for a management board member who is dismissed during his first term of office, such board member should be eligible for severance pay not exceeding twice the annual salary.

## Principle 3.3 Remuneration supervisory board

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

### 3.3.1 Time spent and responsibility

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

### 3.3.2 Remuneration of supervisory board members in the form of shares

Any shares held by a supervisory board member in the company should be long-term investments. Supervisory board members may be awarded remuneration in the form of shares and/or rights to shares in the company, on condition that:

- i. such shares and/or rights to shares are held for at least two years following the end of the appointment period;
- ii. at the time of award, the value of the shares does not exceed half of the total remuneration; and
- iii. the shares and/or rights to shares continue to be held in full ownership by the supervisory board member until the period mentioned at i. above has expired.

## Principle 3.4 Remuneration accountability

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

### 3.4.1 Remuneration report

The supervisory board is responsible for drawing up the remuneration report. This report should in any event describe in a clear and transparent manner, in addition to the matters required by law:

- i. how the remuneration policy contributes to long-term value creation;
- ii. the total package of benefits for each management board member;
- iii. in the event a management board member receives variable remuneration: substantiation of how this remuneration contributes to long-term value creation; and
- iv. in the event a current or former management board member receives a payment when leaving: substantiation of how this remuneration does not reward inadequate performance.

### 3.4.2 Contract of management board member

The main elements of the contract of a management board member with the company should be made public in a clear and transparent overview after it has been concluded, and in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed.

## 4. THE SHAREHOLDERS AND THE GENERAL MEETING OF SHAREHOLDERS

### Principle 4.1 The general meeting of shareholders

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

#### 4.1.1 Supervisory board supervision

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

#### 4.1.2 Proper conduct of business at meetings

The chairman of the general meeting is responsible for ensuring the proper conduct of business at meetings in order to promote a meaningful discussion at the meeting.

#### 4.1.3 Agenda

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

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

#### 4.1.4 Proposal for approval or authorisation

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

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

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

#### 4.1.6 Attendance of members nominated for the management board or supervisory board

Management board and supervisory board members nominated for appointment should attend the general meeting at which votes will be cast on their nomination. They may be questioned personally by shareholders.

#### **4.1.7 External auditor's attendance**

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

#### **4.1.8 Response time**

If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). Changes to the strategy are deemed to include management board resolutions on a major change in the identity or character of the company or the enterprise affiliated with it that are subject to the approval of the general meeting under Section 2:107a of the Dutch Civil Code. The opportunity to stipulate the response time should also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to Section 2:110 of the Dutch Civil Code.

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

The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which the response time had been previously stipulated, or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

#### **4.1.9 General meeting's report**

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

### **Principle 4.2 Provision of information**

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

#### **4.2.1 Substantiation of invocation of overriding interest**

If the management board and the supervisory board depart from the principle of providing the general meeting with all information desired with the invocation of an overriding interest, they must give reasons.

#### **4.2.2 Availability of information in English**

Information to shareholders (including the general meeting of shareholders) should be made available in English and alternatively in Dutch.

#### **4.2.3 Policy on bilateral contacts with shareholders**

The company should formulate an outline policy on bilateral contacts with the shareholders and should publish this policy on its website.

#### 4.2.4 Meetings and presentations

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

#### 4.2.5 Posting information in a separate section of the website

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

#### 4.2.6 Management board contacts with press and analysts

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

#### 4.2.7 Outline of anti-takeover measures

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

### Principle 4.3 Casting votes

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

#### 4.3.1 Voting as deemed fit

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

#### 4.3.2 Providing voting proxies or voting instructions

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

#### 4.3.3 Cancelling the binding nature of a nomination or dismissal

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

#### 4.3.4 Voting right on financing preference shares

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

#### **4.3.5 Publication of institutional investors' voting policy**

Institutional investors (pension funds, insurers, investment institutions and asset managers) should publish annually, in any event on their website, their policy on the exercise of the voting rights for shares they hold in listed companies.

#### **4.3.6 Report on the implementation of institutional investors' voting policy**

Institutional investors should report annually, on their website and/or in their management report, on how they implemented their policy on the exercise of the voting rights in the relevant financial year. In addition, they should report on their website at least once per quarter on whether and, if so, how they have voted as shareholders at general meetings.

### **Principle 4.4 Issuing depositary receipts for shares**

Depositary receipts for shares should only be issued as an anti-takeover protective measure in so far as such issue serves the long-term value creation of the company and its affiliated enterprise. The board of the trust office should have the confidence of the holders of depositary receipts. Depositary receipt holders should have the possibility of recommending candidates for the board of the trust office. The company should not disclose to the trust office information which has not been made public.

#### **4.4.1 Trust office board**

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

#### **4.4.2 Appointment of board members**

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

#### **4.4.3 Board appointment period**

A person may be appointed to the board of the trust office for a maximum of three four-year terms.

#### **4.4.4 Attendance of the general meeting of shareholders**

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

#### **4.4.5 Exercise of voting rights**

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

#### **4.4.6 Periodic reports**

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

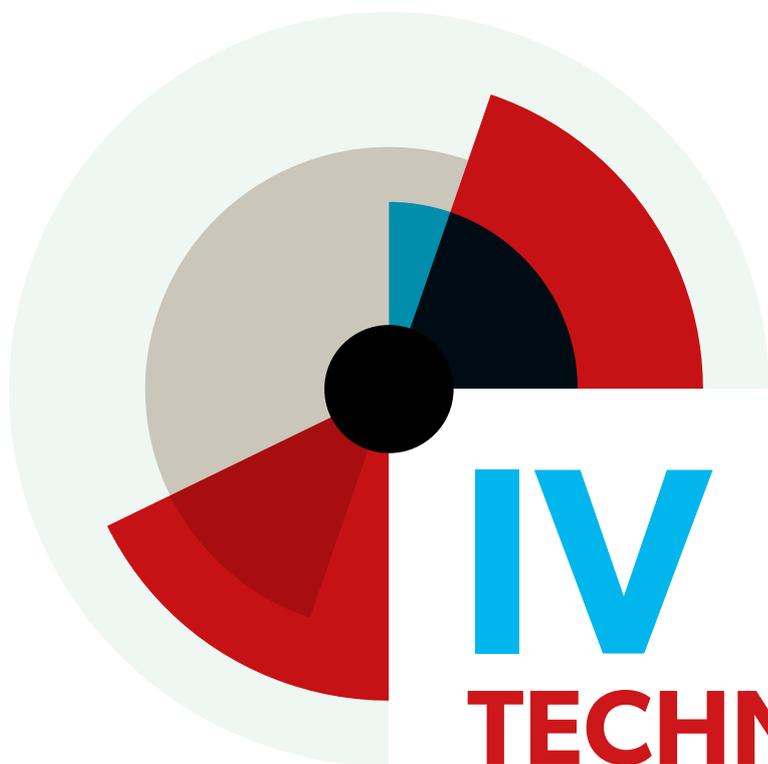
#### **4.4.7 Contents of the reports**

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

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

#### **4.4.8 Voting proxies**

Each depositary receipt holder may also issue binding voting instructions to the trust office in respect of the shares which the trust office holds on his behalf.



# IV

## TECHNICAL AMENDMENTS

In Chapter II, an explanation is provided regarding the main proposals for revision. As compared to principles and best practice provisions from the current Code, some technical adjustments have been made to the text proposal for the revised Code as well. In addition, some elements have been deleted from the current Code. The technical adjustments were mainly driven by the new structure and, where necessary, the clean-up of the text of the current Code. Also, the introduction of new themes, such as long-term value creation and culture, has influenced other best practice provisions; for example, with regard to the interest in adequate provision of information and the succession plan. In the overview below, the technical adjustments made by the Committee are outlined. Consequently, the overview is not exhaustive. It is followed by a list of elements from the current Code that the Committee proposes to delete. Deletion is proposed on account of overlap with legislation or where, in the opinion of the Committee, the standard is sufficiently addressed in another best practice provision.

## Tax policy

The Committee replaced the term 'tax planning' with the term 'tax policy' in the proposals for revision. The Committee believes that 'tax policy' is the more apt term. This technical amendment has been made in best practice provision 1.5.1 of the proposals for revision.

## Succession plan

In best practice provision 2.2.4 of the proposals for revision, the Committee proposes to add that the supervisory board is responsible for the drafting of a sound plan for the succession of management board members and supervisory board members. This proposal carries over into principle 2.2, which deals with appointment, succession and evaluation, and best practice provision 2.2.5, which describes the duties of the selection and appointment committee.

## Employee participation body

In the proposals for revision, the Committee has replaced the term '(central) works council' with the term 'employee participation body'. This technical amendment was made in best practice provisions 2.3.1, 2.3.6 and 2.5.4 of the proposals for revision.

## Supervisory board responsibility for committees

The Committee wished to emphasise that establishing an audit committee, a remuneration committee or a selection and appointment committee does not detract from the supervisory board's collegiate responsibility. Consequently, establishing committees does not release the other supervisory board members from the responsibilities of the supervisory board as a whole. This technical amendment was made in best practice provision 2.3.2 of the proposals for revision.

## Chairman of the supervisory board

The duties of the chairman of the supervisory board are described in best practice provision 2.3.6 of the proposals for revision. As compared to the current Code, these duties have been expanded with oversight of the management board performance of activities with regard to culture, a proper flow of information concerning signs and suspicions of misconduct, and any takeover process.

## Company secretary

In the proposals for revision, the duties of the company secretary have been expanded as compared to best practice provision III.4.3 of the current Code. The Committee proposes that the duties of the secretary include being alert to diverging interests so that any conflict of interest can be avoided. If the secretary notes any such divergence, he should report this to the chairman of the supervisory board. This technical amendment was made in best practice provision 2.3.10 of the proposals for revision.

## Preventing conflicts of interest

Principles II.3 and III.6 of the current Code provide that any conflict of interest or apparent conflict of interest between a company and its management board members and supervisory board members shall be avoided. The Committee proposes to delete the word 'apparent'. The appearance of a conflict of interest is of a subjective nature and cannot be objectively determined. The Committee considers it important that members of the management board and the supervisory board are aware that an apparent conflict of interest may arise and may turn against them. This technical amendment was made in principle 2.6 of the proposals for revision.

## On terms that are customary in the market

In the proposals for revision, the Committee proposes to replace 'on terms that are customary in the sector' with 'on terms that are customary in the market'. This is because the Committee considers the term 'sector' to be unclear. This technical amendment was made in best practice provisions 2.6.3 and 2.6.4 of the proposals for revision, which deal with preventing conflicts of interest of management board members and supervisory board members.

## Agenda general meeting of shareholders

Spread across various best practice provisions, the current Code provides that proposals regarding certain items should be submitted to the general meeting as separate agenda items. In the proposals for revision, the Committee seeks to clarify this by including these separate agenda items in a single best practice provision. This technical amendment can be found in best practice provision 4.1.3 of the proposals for revision.

## Management report

With the entry into force of the Act Implementing the Accounting Directive (Uitvoeringswet richtlijn jaarrekening), the term 'annual report' was replaced with the term 'management report' in Book 2 of the Dutch Civil Code. The Committee proposes to adopt this change. This technical amendment was made in various best practice provisions.

## Financial year

In the proposals for revision, the Committee replaced the term 'year under review' with the term 'financial year'. In the current Code, the term 'year under review' is used in best practice provisions II.1.5, IV.2.7 and IV.4.2. In so doing the Committee seeks to align with the Dutch Civil Code and prevent any uncertainty. This technical amendment was made in various best practice provisions.

## Remuneration

The Committee replaced the Dutch term 'bezoldiging' with the term 'beloning' in the proposals for revision. In the current Code, the term 'bezoldiging' is used in, for example, best practice provisions II.2 and III.7. The term 'beloning' is used in the section on remuneration (Section 3) and in best practice provision 4.4.7 of the proposals for revision.

## Deleted provisions

Provision	Text of the provision in the current Code	Reason for deletion
I	<p><b>Compliance with the Code</b></p> <p>The management board and the supervisory board are responsible for the corporate governance structure of the company and for compliance with this code. They are accountable for this to the general meeting and should provide sound reasons for any non-application of the provisions.</p> <p>Shareholders take careful note and make a thorough assessment of the reasons given by the company for any non-application of the best practice provisions of this code. They should avoid adopting a 'box-ticking approach' when assessing the corporate governance structure of the company and should be prepared to engage in a dialogue if they do not accept the company's explanation. There should be a basic recognition that corporate governance must be tailored to the company-specific situation and that nonapplication of individual provisions by a company may be justified. [...]</p>	Incorporated in the preamble to the proposals for revision.
I.1	<p><b>Compliance with the Code</b></p> <p>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. In this chapter the company shall indicate expressly to what extent it applies the best practice provisions in this code and, if it does not do so, why and to what extent it does not apply them.</p>	Incorporated in the preamble to the proposals for revision. Also included in the Decree of 23 December 2004 adopting further rules on the contents of the annual report (Bulletin of Acts and Decrees 2004, 747).
II.1	<p><b>Duties and procedure board of management</b></p> <p>The role of the management board is to manage the company [...]</p>	Laid down in the law in Section 2:129(1) DCC.

<b>II.1</b>	<b>Duties and procedure board of management</b> [...] In discharging its role, the management board shall be guided by the interests of the company and its affiliated enterprise [...].	Laid down in the law in Section 2:129(5) DCC.
<b>II.1.7</b>	<b>Whistleblowing procedure</b> The management board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature within the company to the chairman of the management board or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of management board members shall be reported to the chairman of the supervisory board. [...]	A bill, called House for Whistleblowers, is currently pending before the Dutch Senate (Parliamentary Documents I 2014/15, 34105, A). This has led to the establishment of a whistleblower procedure. The publication of a procedure for reporting misconduct is addressed in best practice provision 2.5.3 in the proposals for revision.
<b>II.1.8</b>	<b>Restriction of management board members' supervisory board memberships</b> A management board member may not be a member of the supervisory board of more than two listed companies. Nor may a management board member be the chairman of the supervisory board of a listed company. Membership of the supervisory board of other companies within the group to which the company belongs does not count for this purpose. [...]	Laid down in the law in Section 2:132a DCC.
<b>II.2</b>	<b>Level and composition of management board members' remuneration</b> The level 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. [...]	Ensues from the principles and best practice provisions of the remuneration section of the proposals for revision.
<b>II.2.1</b>	<b>Analysis of management board members' remuneration</b> Before drawing up the remuneration policy and determining the remuneration of individual management board members, the supervisory board shall analyse the possible outcomes of the variable remuneration components and how they may affect the remuneration of the management board members.	Deleted to make the company's remuneration policy simpler and more transparent.
<b>II.2.2</b>	<b>Remuneration of management board members</b> The supervisory board shall determine the level and structure of the remuneration of the management board members by reference to the scenario analyses carried out [...].	Idem.
<b>II.2.4</b>	<b>Granting options</b> If options are granted, they shall, in any event, not be exercised in the first three years after the date of granting. The number of options to be granted shall be dependent on the achievement of challenging targets specified beforehand.	Idem.
<b>II.2.5</b>	<b>Shares of management board members</b> Shares granted to management board members without financial consideration shall be retained for a period of at least five years or until at least the end of the employment, if this period is shorter. The number of shares to be granted shall be dependent on the achievement of challenging targets specified beforehand.	Idem.

<b>II.2.6</b>	<b>Option exercise price</b> The option exercise price may not be fixed at a level lower than a verifiable price or a verifiable price average in accordance with the trading in a regulated market 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.	Idem.
<b>II.2.7</b>	<b>Conditions for exercising options</b> Neither the exercise price of options granted nor the other conditions may be modified during the term of the options, except in so far as prompted by structural changes relating to the shares or the company in accordance with established market practice.	Idem.
<b>II.2.10</b>	<b>Claw back</b> If a variable remuneration component conditionally awarded in a previous financial year would, in the opinion of the supervisory board, produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the supervisory board has the power to adjust the value downwards or upwards.	Laid down in the law in Section 2:135(6) DCC.
<b>II.2.11</b>	<b>Claw back</b> The supervisory board may recover from the management board members any variable remuneration awarded on the basis of incorrect financial or other data (claw-back clause).	Laid down in the law in Section 2:135(8) DCC.

<p><b>II.2.13</b></p>	<p>The overview referred to in best practice provision II.2.12 shall in any event contain the following information:</p> <ul style="list-style-type: none"> <li>a) an overview of the costs incurred by the company in the financial year in relation to management board remuneration; this overview shall provide a breakdown showing fixed salary, annual cash bonus, shares, options and pension rights that have been awarded and other emoluments; shares, options and pension rights must be recognised in accordance with the accounting standards;</li> <li>b) a statement that the scenario analyses referred to in best practice provision II.2.1 have been carried out;</li> <li>c) for each management board member the maximum and minimum numbers of shares conditionally granted in the financial year or other share-based remuneration components that the management board may member acquire if the specified performance criteria are achieved;</li> <li>d) a table showing the following information for incumbent management board members at year-end for each year in which shares, options and/or other share-based remuneration components have been awarded over which the management board member did not yet have unrestricted control at the start of the financial year: <ul style="list-style-type: none"> <li>i) the value and number of shares, options and/or other share-based remuneration components on the date of granting;</li> <li>ii) the present status of shares, options and/or other share-based remuneration components awarded: whether they are conditional or unconditional and the year in which vesting period and/or lock-up period ends;</li> <li>iii) the value and number of shares, options and/or other share-based remuneration components conditionally awarded under i) at the time when the management board member obtains ownership of them (end of vesting period), and</li> <li>iv) the value and number of shares, options and/or other share-based remuneration components awarded under i) at the time when the management board member obtains unrestricted control over them (end of lock-up period);</li> </ul> </li> <li>e) if applicable: the composition of the peer group of companies whose remuneration policy determines in part the level and composition of the remuneration of the management board members;</li> <li>f) a description of the performance criteria on which the performance-related component of the variable remuneration is dependent in so far as disclosure would not be undesirable because the information is competition sensitive, and of the discretionary component of the variable remuneration that can be fixed by the supervisory board as it sees fit;</li> <li>g) a summary and account of the methods that will be applied in order to determine whether the performance criteria have been fulfilled;</li> <li>h) an ex-ante and ex-post account of the relationship between the chosen performance criteria and the strategic objectives applied, and of the relationship between remuneration and performance;</li> <li>i) current pension schemes and the related financing costs; and</li> <li>j) agreed arrangements for the early retirement of management board members.</li> </ul>	<p>Deleted to make the company's remuneration policy simpler and more transparent.</p>
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<p><b>II.3.1</b></p>	<p><b>Conflicts of interest – management board members</b></p> <p>A management board member shall:</p> <p>a) not enter into competition with the company;</p> <p>b) not demand or accept (substantial) gifts from the company 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 as defined under Dutch law;</p> <p>c) not provide unjustified advantages to third parties to the detriment of the company; and</p> <p>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 as defined under Dutch law.</p>	<p>Ensues implicitly from principle 2.6 on the prevention of conflicts of interest. Further, the list is neither exhaustive nor representative of all situations that might occur in this respect.</p>
<p><b>II.3.3</b></p>	<p><b>Management board members with conflict of interest refraining from discussion and decision-making</b></p> <p>A management board member may not take part in any discussion or decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the company.</p>	<p>Laid down in the law in Section 2:129(6) DCC.</p>
<p><b>III.1</b></p>	<p><b>Duties of the supervisory board</b></p> <p>[...] In discharging its role, the supervisory board shall be guided by the interests of the company and its affiliated enterprise [...].</p>	<p>Laid down in the law in Section 2:140(2) DCC.</p>
<p><b>III.1</b></p>	<p><b>Duties of the supervisory board</b></p> <p>The role of the supervisory board is to supervise the policies of the management board and the general affairs of the company and its affiliated enterprise, as well as to assist the management board by providing advice. [...]</p>	<p>Ensues from best practice provision 1.1.2 of the proposals for revision.</p>
<p><b>III.3.2</b></p>	<p><b>Financial expert on the supervisory board</b></p> <p>At least one member of the supervisory board shall be a financial expert with relevant knowledge and experience of financial administration and accounting for listed companies or other large legal entities.</p>	<p>Included in Article 39(1) of Directive 2014/56/EU.</p>
<p><b>III.3.3</b></p>	<p><b>Company’s facilitating role</b></p> <p>[...] The company shall play a facilitating role in this respect.</p>	<p>Ensues logically from best practice provisions 2.4.4 and 2.4.5 of the proposals for revision.</p>
<p><b>III.3.4</b></p>	<p><b>Restriction of supervisory board members’ supervisory board memberships</b></p> <p>The number of supervisory boards of Dutch listed companies 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.</p>	<p>Laid down in the law in Section 2:142a(1) DCC.</p>
<p><b>III.5.4</b></p>	<p><b>Duties of the audit committee</b></p> <p>The audit committee shall in any event focus on supervising the activities of the management board with respect to:</p> <p>a) the operation of the internal risk management and control systems, including supervision of the enforcement of relevant primary and secondary legislation, and supervising the operation of codes of conduct;</p> <p>b) 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 financial statements, forecasts, work of internal and external auditors, etc.); [...]</p>	<p>Included in Article 39(1) of Directive 2014/56/EU.</p>

<b>III.5.7</b>	<b>Financial expert on the audit committee</b> At least one member of the audit committee shall be a financial expert within the meaning of best practice provision III.3.2.	Idem.
<b>III.5.11</b>	<b>Chairman of the remuneration committee</b> The remuneration committee may not be chaired [...] by a supervisory board member who is a member of the management board of another listed company.	Fairly detailed.
<b>III.5.12</b>	<b>Remuneration committee</b> No more than one member of the remuneration committee may be a member of the management board of another Dutch listed company.	Idem.
<b>III.5.13</b>	<b>Remuneration adviser</b> If the remuneration committee makes use of the services of a remuneration consultant in carrying out its duties, it shall verify that the consultant concerned does not provide advice to the company's management board members.	Fairly detailed and the requirement regarding the independence of advisers applies in full to other services.
<b>III.6.2</b>	<b>Supervisory board members with conflict of interest refraining from discussion and decision-making</b> A supervisory board member may not take part in a discussion and/or decisionmaking on a subject or transaction in relation to which he has a conflict of interest with the company.	Laid down in the law in Section 2:140(5) DCC.
<b>III.8</b>	<b>One-tier board</b> The composition and functioning of a management board comprising both members having responsibility for the day-to-day running of the company (executive directors) and members not having such responsibility (nonexecutive directors) shall be such that proper and independent supervision by the latter category of members is assured.	To be incorporated along with the conversion of the proposals for revision to the version for one-tier boards.
<b>III.8.1</b>	<b>One-tier board</b> The chairman of the management board may not also be or have been an executive director.	Idem.
<b>III.8.2</b>	<b>One-tier board</b> The chairman of the management board shall check the proper composition and functioning of the entire board.	Idem.
<b>III.8.3</b>	<b>One-tier board</b> The management board shall apply chapter III.5 of this code. The committees referred to in chapter III.5 shall consist only of non-executive management board member.	Idem.
<b>III.8.4</b>	<b>One-tier board</b> The majority of the members of the management board shall be non-executive directors and are independent within the meaning of best practice provision III.2.2.	Idem.
<b>IV.1.2</b>	<b>Voting right on financing preference shares</b> [...] This shall in any event apply to the issue of financing preference shares.	Ensues implicitly from best practice provision 4.3.4 of the proposals for revision.
<b>IV.1.6</b>	<b>Code compliance accountability</b> [...] Compliance with the Code shall be accounted for as part of the annual report.	Incorporated in the preamble to the proposals for revision.
<b>IV.1.7</b>	<b>Registration date for persons entitled to vote/attend meetings</b> The company shall determine a registration date for the exercise of the voting rights and the rights relating to meetings.	Laid down in the law in Section 2:119(1) DCC.

<b>IV.2</b>	<b>Issuing depositary receipts for shares</b> Depositary receipts for shares are a means of preventing a (chance) majority of shareholders from controlling the decision-making process as a result of absenteeism at a general meeting. [...]	Deleted because, in the Committee's opinion, the standard is no longer compatible with actual practice.
<b>IV.2</b>	<b>Proxies issued to holders of depositary receipts</b> [...] 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 holders of depositary receipts thus authorised can exercise the voting right at their discretion. [...]	In contravention of Section 2:118a(2) DCC.
<b>IV.2.1</b>	<b>Trust office board</b> The management of the trust office shall enjoy the confidence of the depositary receipt holders [...].	Included in principle 4.4 of the proposals for revision.
<b>IV.2.8</b>	<b>Proxies issued to holders of depositary receipts</b> The trust office shall, without limitation and in all circumstances, issue proxies to depositary receipt holders who so request. [...]	In contravention of Section 2:118a(2) DCC.
<b>IV.3</b>	<b>Price-sensitive information</b> 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 share price. [...]	Laid down in the law in Section 5:25i jo. Section 5:53(1) Financial Supervision Act (Wet op het financieel toezicht) .
<b>IV.3</b>	<b>Price-sensitive information</b> [...] If price-sensitive information is provided during a general meeting, or the answering of shareholders' questions has resulted in the disclosure of pricesensitive information, this information shall be made public without delay.	Idem.
<b>IV.3.2</b>	<b>Analysts' reports</b> Analysts' reports and valuations may not be assessed, commented upon or corrected, other than factually, by the company in advance.	Enues implicitly from best practice provision 4.2.6 of the proposals for revision.
<b>IV.3.3</b>	<b>Analysts' fees</b> The company may 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, with the exception of credit rating agencies.	Idem.
<b>IV.4</b>	<b>Responsibility of institutional investors</b> Institutional investors shall act primarily in the interests of the ultimate beneficiaries or investors and have a responsibility to the ultimate beneficiaries or investors and the 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. [...]	Incorporated in the preamble to the proposals for revision.
<b>IV.4</b>	<b>Responsibility of shareholders</b> [...] Shareholders shall act in relation to the company, the organs of the company and their fellow shareholders in keeping with the principle of reasonableness and fairness. This includes the willingness to engage in a dialogue with the company and their fellow shareholders.	Incorporated in the preamble to the proposals for revision.
<b>V.1</b>	<b>Quality and completeness of financial reports</b> The management board is responsible for the quality and completeness of publicly disclosed financial reports. The supervisory board shall ensure that the management board fulfils this responsibility.	Enues implicitly from best practice provisions 1.4.2 and 1.5.4 of the proposals for revision.

<b>V.1.1</b>	<b>Financial reports</b> The preparation and publication of the annual report, the financial statements, the quarterly and/or half-yearly figures and ad hoc financial information require careful internal procedures. The supervisory board shall supervise compliance with these procedures.	Idem.
<b>V.1.3</b>	<b>Information systems</b> 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 are assured. For this purpose, the management board ensures that the financial information from business divisions and/or subsidiaries is reported directly to it and that the integrity of the information is not compromised. The supervisory board shall ensure that the internal procedures are established and maintained.	Idem.
<b>V.2</b>	<b>Non-audit services provided by the external auditor</b> [...]The remuneration of the external auditor, and instructions to the external auditor to provide nonaudit services, shall be approved by the supervisory board on the recommendation of the audit committee and after consultation with the management board.	In contravention of Section 24b of the Audit Firms (Supervision) Act (Wet toezicht accountantsorganisaties).

**V.4.3 Content of the audit report**

The report of the external auditor pursuant to Article 2:393, paragraph 4, of the Netherlands 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 audit of the financial statements and the related audits. The following examples can be given:

**A. With regard to the audit:**

- information about matters of importance to the assessment of the independence of the external auditor;
- information about the course of events during the audit and co-operation 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.

**B. With regard to the financial figures:**

- analyses of changes in shareholders' equity and results, which do not appear in the information to be published, and which, in the 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.

**C. 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 supervisors, etc.

Deleted because, in the Committee's opinion, the list is not exhaustive.

# COMPOSITION

## MONITORING COMMITTEE

## CORPORATE GOVERNANCE CODE

### Chairman<sup>1</sup>

**prof. dr. J.A. van Manen**

*Partner at Strategic Management Centre  
Vice Chairman of the supervisory board at  
De Nederlandsche Bank NV*

### Secretariat

**mr. I.L.J.M. Heemsker**

*Ministry of Economic Affairs, Directorate of Entrepreneurship*

**K. van Kalleveen, MA**

*Ministry of Economic Affairs, Directorate of Entrepreneurship*

### Advisors

**mr. L.D.V.M. Kompier**

*Directorate of Legislation, Ministry of Security and Justice*

**M. Rookhuijzen, LL.M.**

*Directorate of Financial Markets, Ministry of Finance*

### Members

**prof. dr. B.E. Baarsma**

*General Director at SEO Economic Research  
Professor of market mechanism and competitive economy at the University of  
Amsterdam  
Crown-appointed member of the Social and Economic Council of the  
Netherlands (SER)  
Vice Chairman of the supervisory board at Loyalis NV  
Member of the supervisory board at Aon Groep Nederland BV  
Vice Chairman of the supervisory board at Espria foundation  
Member of the Advisory Board Responsible Investment at PGGM*

**drs. E.F. Bos**

*Chief Executive Officer at PGGM  
Member of the supervisory board at Nederlandse Waterschapsbank NV  
Member of the supervisory council at Nederlandse Opera & Ballet  
Non-executive Director at Sustainalytics Holding BV*

**mr. P.J. Gortzak**

*Head of Policy Group Strategie en Beleid APG  
Member of the supervisory council at CFK  
Member of the committee Evaluatie Politiewet  
Secretary and Treasurer of the management board at Stichting de Volkskrant  
Member of the supervisory council at IDH*

**mr. S. Hepkema**

*Member of the supervisory board at SBM Offshore NV  
Chairman of the supervisory board at Wavin NV*

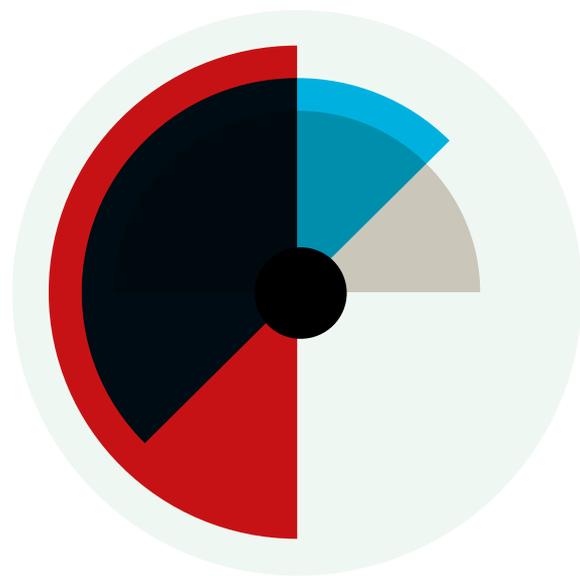
**R.J. van de Kraats RA**

*CFO & Vice Chairman at Executive Board Randstad Holding NV  
Non-executive Director at OCI NV  
Member of the supervisory board at Schiphol Group*

**prof. mr. H.M. Vletter-van Dort**

*Professor of Financial Law and Governance at Erasmus School of Law  
Chairman of the supervisory board at Intertrust NV  
Member of the supervisory board at NN Group NV*

<sup>1</sup> This is an overview of positions and secondary positions as of January 2016. A full overview of positions and secondary positions of members of the Committee can be found on the website ([www.mccg.nl](http://www.mccg.nl)).



[www.mccg.nl](http://www.mccg.nl)