

## **Comments for the Draft Dutch Corporate Governance Code**

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The draft code proposed by the Tabaksblatt Committee makes a number of good suggestions to improve transparency, protect shareholder and public interests and increase the pay-for-performance link in the area of executive compensation. However, these suggestions should be in line with both Dutch and international best practices as many companies compete on a global basis. Therefore, we would like to make the two suggestions described below.

### 50% Cap on Variable Pay

While we agree that performance criteria and measurement should be improved for management incentive plans, we would suggest that no absolute value limitation or cap will be based on the amount of variable compensation. The labor market for executive talent is global. In order to attract and retain the best executive talent both in the Netherlands and worldwide, the Dutch multinational companies need to offer compensation packages in line with the international best practices and with local country or region market practice.

However, the pay mix, i.e. % of salary, annual bonus and long-term incentive as % of total compensation, varies considerably between countries. Therefore, Dutch multinational companies should have the flexibility in deciding the appropriate amount of variable pay to compete with the multinationals from other countries that do not face similar restrictions. For example, the corporate governance codes in the US, the UK, Germany and Switzerland do not include a cap on variable pay. Therefore, to hire executives in countries with high portion of variable pay, the Dutch companies may need to increase the base salaries above the usual market practice. This is not in line with the shareholder interests, as base salaries do not fluctuate based on performance.

### Stock Option Plan

Long-term incentive plans including stock option plans are also usually offered on a global basis, which means that the plan design may need to vary on a country-by-country basis to accommodate the local market practice and regulatory and tax environment. In addition, according to the international best practices the stock option plan design should be tailored to each company's unique HR and business objectives.

Therefore, we do not recommend adding clauses in the draft code, which limit the company's flexibility to determine the appropriate vesting or exercise term. For example, we would suggest deleting clauses such as:

- If performance criteria are applied to option grant, the option should not be exercised in the first 3 years after they have been granted;
- The term of options shall be limited to a maximum of 7 years and should not be extended.

The length of the option term and vesting or waiting period before options can be exercised should be in line with each company's performance objectives. Regulating this area could lead to "one-size-fits-all" approach with companies implementing identical stock option plan designs. These plan designs are then unlikely to be in line with each of the company's long-term business and HR objectives and as such do not represent the best interests of the shareholders and employees.

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