# SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

ROBRECHT TIMMERMANS

JULY 2019

# 1. SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

## Primary sources of law, regulation and practice

**1. What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?**

The primary sources are the Dutch Civil Code, the Dutch Financial Supervision Act, the Dutch corporate governance code, the Euronext Listing Rules, EU Regulations and Dutch case law. It is mandatory for listed limited liability companies (NV) to comply with the Euronext Listing Rules. The Dutch corporate governance code, which contains best practice provisions for listed companies, applies on a comply or explain basis.

## Responsible entities

**2. What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder groups or proxy advisory firms whose views are often considered?**

The Dutch government drafts laws together with the Upper House and the Lower House. Usually, the government submits a bill, which is originally the initiative of a specific ministry. But also any member of the Lower House (but not the Upper House) may submit a bill. The government often presents draft bills for consultation to the public, enabling anyone to comment on the draft bill. These comments, usually including comments from interest groups and prominent law firms, may influence the ultimate bill, but it is up to the Lower House and the Upper House to ultimately adopt the bill. Sometimes, private initiatives occur. For example, recently several captains of industry have requested the government to prepare a bill on the response time (see question 3), which initiative has been adopted by the government.

# 2. RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS

## Shareholder powers

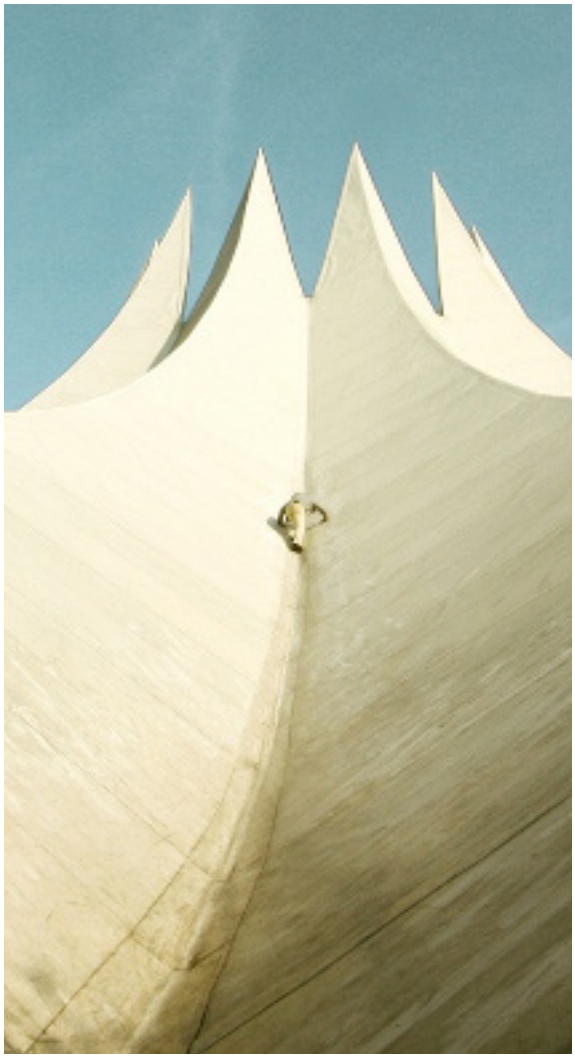
**3. What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?**

A single shareholder does not have the power to appoint or remove directors, since this requires a resolution by the general meeting. However, a shareholder who meets certain criteria can request the management board that an item to replace managing and supervisory directors be put on the agenda of the general meeting (see question 7). The power of the general meeting to appoint and remove managing and supervisory directors can be restricted; see below. In addition, if the item that the shareholder wants to be put on the agenda may result in a change in the company's strategy, for example as a result of the dismissal of managing or supervisory directors, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). This follows from the Dutch corporate governance code and currently, the Dutch government is preparing a bill to implement this soft law rule in the Dutch Civil Code.

The Dutch Supreme Court has consistently ruled that the adoption of policies and strategy is in principle a matter for the management board. And by extension, the Dutch Supreme Court has recently ruled that a shareholder cannot request the management board to bring an agenda item that falls within the competence of the management board to a vote in a general meeting. Therefore, it will be difficult for shareholders to require the board to pursue a particular course of action by requesting this change in the strategy to be put to a vote in a general meeting.

Most listed companies have limited the rights of the general meeting to appoint and dismiss managing and supervisory directors in such way that such resolution requires a (non-binding) nomination to be prepared by the supervisory board, or in some cases by the meeting of holders of priority shares. A resolution to appoint a managing director or supervisory director nominated by the supervisory board will be adopted by an absolute majority of the votes cast. If a person were not nominated for appointment or removal by the supervisory board, a qualified majority may apply. Pursuant to the Dutch corporate governance code, this majority may represent a given proportion of the issued capital, which proportion may not exceed one-third of the total issued share capital.

A different appointment and removal system applies to structure regime companies. The Dutch structure regime applies to - briefly put - (listed) companies of which the majority of the employees are employed in the Netherlands. In such companies, the involvement of the supervisory board and the works council in the appointment of supervisory directors is greater.



## Shareholder decisions

**4. What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?**

The following matters, inter alia, are reserved to the general meeting:

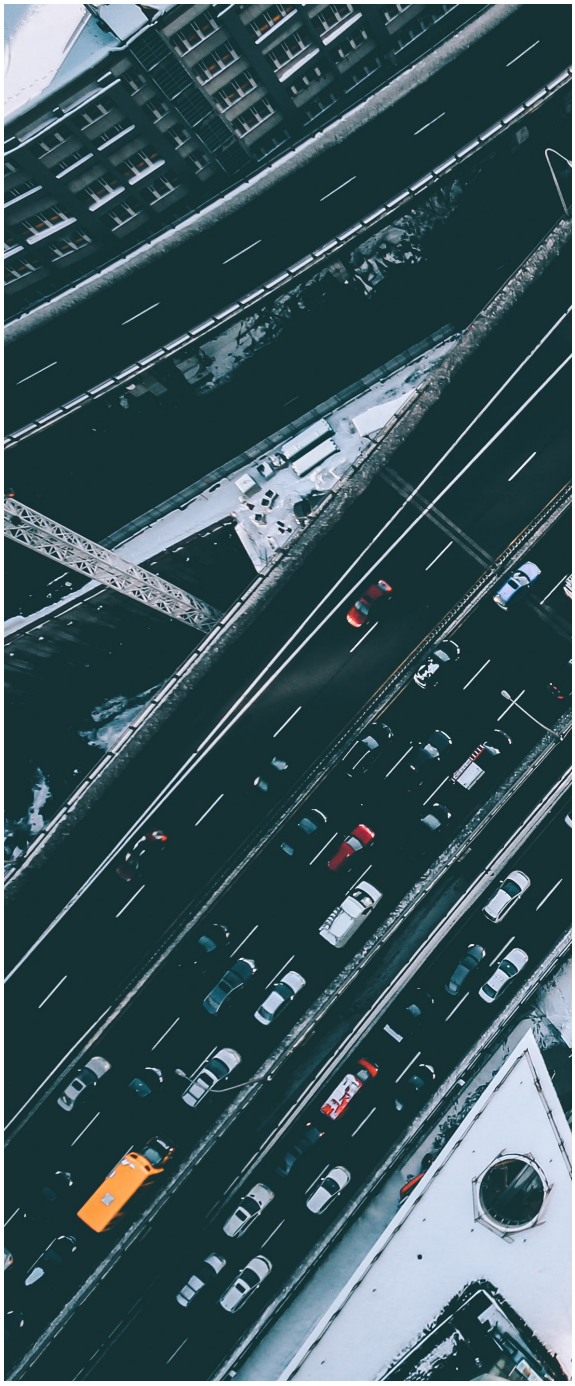
- the appointment, suspension and dismissal of managing directors and supervisory directors;
- the determination of the general remuneration policy of the management board;
- the adoption of the annual accounts;
- the amendment of the articles of association;
- the issue of shares, the granting of rights to subscribe for shares, unless such authority has been delegated to another corporate body;
- the restriction or exclusion of pre-emptive rights in relation to a share issuance, unless such authority has been delegated to another corporate body;
- the delegation to another corporate body of the authority to issue shares, to grant rights to subscribe for shares and to restrict or to exclude pre-emptive rights;
- the authorisation of the management board to repurchase shares;
- the reduction of the issued share capital;
- the approval for resolutions of the management board that result into changes of the identity or the character of the company or its enterprise;
- the distribution of dividends or distributable reserves;
- the dissolution of the company;
- the merger or demerger of the company; and
- the appointment of auditors.

Dutch law does not require matters to be subject to a non-binding shareholder vote, but the company's articles of association may stipulate otherwise.

## Disproportionate voting rights

**5. To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?**

The starting point is that each shareholder may cast as many votes as he or she holds shares. If the authorised share capital were divided into shares of an unequal nominal amount, the number of votes that may be cast by each shareholder is equal to the total nominal amount of his or her shares divided by the nominal amount of the smallest share. Thus disproportionate voting rights can be created by issuing two different types of shares, for example class A shares and class B shares, each class of share having a different nominal value. Each class A share having a nominal value of €0.01 carries one vote in respect of all matters, and each class B share having a nominal value of €0.10, for example, carries 10 votes. The class B shares may be held by the founding shareholder, who therefore gets a controlling interest in the company, while acquisitions can be financed by the issuance of the class A shares. Disproportionate voting rights may undermine the interests of the minority shareholders and some institutional investors prefer to limit this construction as far as possible.



## Shareholders' meetings and voting

**6. Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?**

For each general meeting, the statutory record date will be applied in order to determine in which persons voting rights and meeting rights are vested. The record date is the 28th date before the date of the meeting. A shareholder who wants to attend the general meeting and who wants to vote must be a shareholder on such record date. In order to exercise the meeting and voting rights, a shareholder should submit at the meeting a receipt of deposit that has been issued by his or her bank. Shareholders cannot act by written consent without holding a formal meeting, since this would require the unanimous vote of all shareholders.

Under Dutch law, the management board is authorised to determine that the meeting rights can be exercised by using electronic means of communication. If so decided, it will be required that each person holding meeting rights, or his or her proxyholder, can be identified through the electronic means of communication, directly follow the discussions in the meeting and, to the extent applicable, exercise the voting right. The management board may determine further conditions to the use of electronic means of communication, provided such conditions are reasonable and necessary for the identification of persons holding meeting rights and the reliability and safety of the communication. Pursuant to the Dutch corporate governance code the company should, insofar as possible, give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.

## Shareholders and the board

**7. Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?**

Shareholders who jointly represent at least 1/10th of the company's issued capital may request the management board to convene a general meeting, stating specifically the business to be discussed. In addition, shareholders who jointly represent at least 1/10th of the issued share capital, may be authorised by the provisional relief judge of the District Court, upon their application, to convene a general meeting. Such request will be rejected if the shareholder has not already requested the management board in writing to convene a general meeting, with a precise description of the matters to be discussed at such meeting, and the management board has not taken the necessary measures to ensure that the general meeting could be held within six weeks after the request was made to one of them.

Further, if a general meeting were convened by the company, shareholders who, alone or jointly, represent at least 3 per cent of the company's issued share capital will have the right to request the management board to place items on the agenda of such general meeting, provided that the reasons for the request must be stated therein and the request must be received by the company in writing at least 60 days before the date of the general meeting. The convocation right and the right to place items on the agenda are limited by the response time and new legislation that is being prepared (see question 3).

Shareholders will be able to put resolutions and director nominations to a shareholder vote, if the general meeting were authorised to resolve upon such resolution. If the company's articles of association state that certain resolutions by the general meeting require the approval or the nomination by the supervisory board, it is doubtful whether without such approval the item can be put to a vote in the general meeting.

## Controlling shareholders' duties

**8. Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?**

Shareholders may in principle be primarily guided by their own interests. However, this does not release them from the obligation to act reasonably and fairly, which could mean that they should take into account the interests of minority shareholders and the interests of other stakeholders such as employees and creditors. As a general rule one could argue that the bigger the stake the shareholder holds in the company, the bigger his or her responsiveness towards other stakeholders will be. An enforcement action can be brought against controlling shareholders for breach of these duties on the basis of a breach of reasonable and fairness. In addition, the company or minority shareholders who meet certain criteria may request the Enterprise Chamber of the Amsterdam Court of Appeal to start an inquiry into the company affairs and the Enterprise Chamber may order immediate relief.

## Shareholder responsibility

**9. Can shareholders ever be held responsible for the acts or omissions of the company?**

Under Dutch law, shareholders can in principle not be held responsible for acts or omissions of the company. This may be different if a shareholder were acting as a formal policymaker of the company (ie, acts as if he or she were a managing director). In such case, a shareholder can be held liable like a managing director. Further, it would be conceivable that a shareholder could be held responsible if he or she violates a statutory duty, or does not act reasonably and fairly towards those who pursuant to law and the articles of association are involved in the company's organisation.

# 3. CORPORATE CONTROL

## Anti-takeover devices

**10. Are anti-takeover devices permitted?**

Anti-takeover devices are certainly permitted in the Netherlands, provided, however, that the triggering of such device is justified if the measure is necessary, inter alia, with a view to the continuity of (the policy of) the company and the interests of those involved. Anti-takeover devices will enable the management board under supervision of the supervisory board to take care for all involved stakeholders, including the shareholders. Anti-takeover devices may be used in case of a hostile takeover bid or in situations of shareholders' activism. The possibility to have preference shares issued to an independent foundation is the most commonly used protective measure instrument in the Netherlands.

## Issuance of new shares

11. **May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?**

Shares may be issued pursuant to a resolution of the management board, if and insofar as that board is authorised to issue shares by the general meeting. Such authorisation can be made each time for a maximum period of five years and can be extended by the general meeting each time for a maximum period of five years.

Upon the issuance of shares, each shareholder will have pre-emptive rights in proportion to the aggregate nominal value of his shares. A shareholder does not have pre-emptive rights in respect of shares issued against a non-cash contribution or shares issued to employees of the company. Holders of preference shares shall not have pre-emptive rights upon the issuance of ordinary shares (and vice versa), unless the articles stipulate otherwise. The pre-emptive rights can be excluded or restricted by the general meeting or by the corporate body that has been authorised thereto by the general meeting.

## Restrictions on the transfer of fully paid shares

**12. Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?**

No, listed shares should be freely transferable. The transfer of non-listed shares may be subject to a share transfer restriction clause, pursuant to which the approval from a corporate body such as the management board or the supervisory board will be required. The transfer of non-listed shares may also be subject to a right of first refusal.

## Compulsory repurchase rules

**13. Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?**

Compulsory share repurchases are allowed, provided that it is not contrary to financial assistance rules. Technically, compulsory share repurchases will be difficult to execute since it requires the authorisation of the management board, which authorisation may only last 18 months, and the purchase price must be paid out of the company's distributable reserves.

## Dissenters' rights

**14. Do shareholders have appraisal rights?**

Shareholders do not have such statutory rights. There may be contractual agreements in place pursuant to which the company should buy shares from a shareholder if a specific circumstance, but this may be limited by financial assistance rules. If a shareholder disagrees with a merger, it should vote against the proposal to merge in the general meeting. If the result of the vote would be that the motion to merge is passed, the shareholder may sell his or her shares on the stock exchange against the price as listed at the stock exchange.

# 4. RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

## Board structure

**15. Is the predominant board structure for listed companies best categorised as one-tier or two-tier?**

Historically, Dutch law only provided for two-tier boards with a management board and separate supervisory board. Since 2013, Dutch law also provides for one-tier boards for private limited liability companies and public limited companies (including listed companies). Although several listed companies have adopted the one-tier board, the predominant board structure is still the two-tier board.

## Board's legal responsibilities

**16. What are the board's primary legal responsibilities?**

Under Dutch law, the main rule is that the management board manages the company. Several duties have been specified as falling within the scope of the management board, including:

- day-to-day management of the company;
- adopting the company's policies and the strategy;
- monitoring the liquidity position of the company, financial policy and fulfilling tax obligations (including tax planning);
- overseeing risk management;
- reporting to the (annual) general meeting;
- preparing, publishing and filing the annual accounts; and
- representing the company towards third parties.

The management board must carry out its duties in line with the objects of the company, which are included in the company's articles of association. Dutch law provides that the managing directors, when carrying out their duties, must primarily be guided by the interests of the company and the enterprise connected with it. This means that the management board should also take into account the interests of stakeholders, not only the shareholders but also employees, creditors and other stakeholders.

## Board obligees

**17. Whom does the board represent and to whom does it owe legal duties?**

As set out in question 16, the primary concern of the management board is to be guided by the company's interests and the enterprise connected with it. As such, the management board is largely autonomous when performing its duties, even if the managing directors would risk being dismissed by the general meeting, for example, because some shareholders would be of the opinion that their interests would be subordinated.

The management board's autonomy can be restricted to a certain extent. For example, certain resolutions by the management board can and will mostly be subject to approval by the general meeting, the supervisory board, or both. Management board resolutions pertaining to important changes to the identity of a listed company require the general meeting's approval in any case. Further, to a certain extent the general meeting can have the right to issue instructions to the management board. The management board and the supervisory board shall provide the general meeting with all requested information, unless a substantial interest of the company opposes this.

## Enforcement action against directors

**18. Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?**

The corporate body that originally appointed a managing director - usually the general meeting - is authorised to suspend and dismiss a managing director (see questions 3 and 7). A managing director should be heard before he or she is suspended or dismissed. Other managing directors must also be given the opportunity to express their views regarding the proposal to suspend or dismiss a managing director. In addition, minority shareholders who meet certain criteria may request the Enterprise Chamber of the Amsterdam Court of Appeal to start an inquiry into the company's affairs and the Enterprise Chamber may order immediate relief, for example by suspending or temporarily replacing a managing director.

## Care and prudence

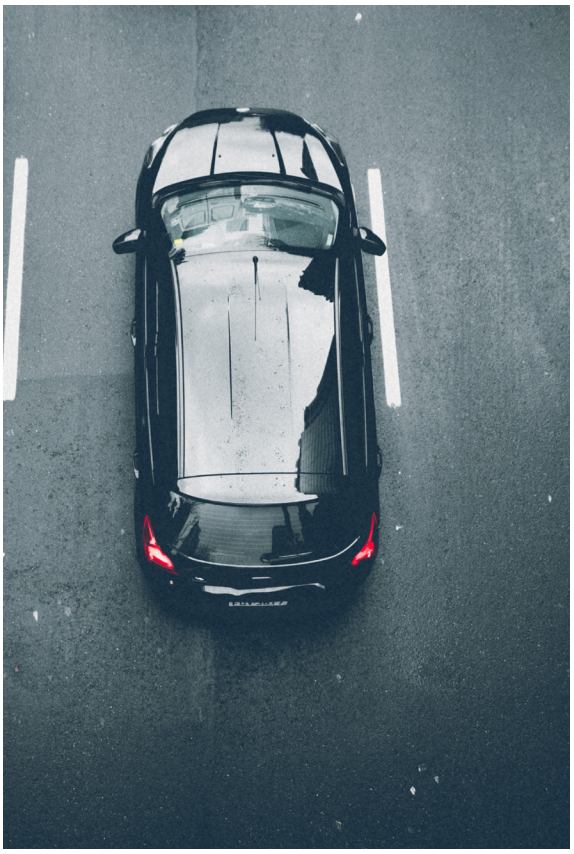
**19. Do the board's duties include a care or prudence element?**

Under Dutch law, a managing director must fulfil his or her duties with due care and attention. Should he or she fail this duty of care, then the managing director may be held personally liable for any damage caused to the company as a result. Based on Supreme Court case law, it is established that a managing director is personally liable only if he or she could be blamed for seriously culpable conduct. Actions by the managing directors are most likely to constitute seriously culpable conduct, if such actions would not have been taken by any other reasonably acting and fully experienced managing director.

## Board member duties

**20. To what extent do the duties of individual members of the board differ?**

A multi-member management board may divide duties among its various managing directors. Such division is typically included in management board regulations. Dividing duties does not mean that responsibility for the actions of each of the managing directors is limited to the duties conferred to them. Managing directors have joint responsibility for the company's day-to-day and general policy. The management board has a joint responsibility, which includes joint and several liabilities for shortcomings in the performance of management board duties. If an individual director can prove that he or she has not been negligent in taking measures in order to prevent improper management by demonstrating that he or she took all measures in his or her power in order to prevent improper management, such director can exculpate him or her from directors' liability.



## Delegation of board responsibilities

**21. To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?**

Listed companies often establish an executive committee. Such executive committees usually consist of both statutory managing directors and members of senior management. An executive committee can be defined as a management layer responsible for preparing and adoption of resolutions by the company. It usually has an advisory and supporting function, but it can also have a more managerial function. In addition, the management board may grant a (continuing) power of attorney. This type of power of attorney is also referred to as a power of procuration. Holders of powers of attorney will carry out their duties on the basis and within the limits of this power of attorney. This power of attorney is often granted to officers in certain positions that are not a part of the statutory management board.

## Non-executive and independent directors

**22. Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?**

A two-tier board structure does not have non-executive directors but a separate body, being the supervisory board. For structure regime companies, the supervisory board consists of at least three members. The supervisory board is responsible for supervising the policy pursued by the management board and the general course of affairs in the company and its business. The supervisory board also advises the management board. Pursuant to the Dutch corporate governance code, the composition of the supervisory board should be such that the members are able to operate independently and critically in relation to one another, the management board and any particular interests involved. The Dutch corporate governance code includes detailed independence criteria.

A one-tier board consists of executive and non-executive directors. The non-executive directors are charged with the general management of the company. To a certain extent, the role of non-executive directors can be compared to the role of supervisory directors, but they are more than supervisory directors actively involved in the general policy of the company and the decision-taking of the board. Pursuant to the Dutch corporate governance code, the majority of the board should be made up of non-executive directors. The Dutch corporate governance code includes detailed independence criteria for non-executive directors.

## Board size and composition

**23. How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?**

As for the management board, the minimum number of directors is one (in a one-tier board, the minimum number of executives is one and non-executive directors should be two). Maximum numbers are not provided. The number of directors is usually set by the general meeting.

For the appointment of board members, see questions 3 and 7.

With regard to criteria, gender balance rules at the moment are still unenforceable. Dutch law prescribes that an equally balanced composition means at least 30 per cent of the board seats are occupied by women and at least 30 per cent by men. Pursuant to the Dutch corporate governance code, the supervisory board must draw up a diversity policy for the composition of the management board, the supervisory board and, if applicable, the executive committee. Such policy should address concrete targets relating to diversity and the diversity aspects relevant to the company, such as nationality, age, gender and education and work background.

Directors of insolvent companies may be banned for five years from taking director positions.

## Board leadership

**24. Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?**

In the two-tier board structure this issue does not apply as a managing director cannot be member of the supervisory board at the same time.

In the one-tier board structure, only a non-executive director can become chair. The functions of board chair and CEO (the latter being an executive director) cannot be combined by one person.

## Board committees

**25. What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?**

The management board may establish an executive committee (see question 21).

Pursuant to the Dutch corporate governance code, if the supervisory board consists of more than four members, it should appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. Without prejudice to the collegiate responsibility of the supervisory board, the duty of these committees is to prepare the decision-making of the supervisory board. If the supervisory board decides not to establish an audit committee, a remuneration committee or a selection and appointment committee, the best practice provisions applicable to such committees applies to the entire supervisory board.

## Board meetings

**26. Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?**

There is no statutory requirement regarding the minimum number of meetings of the management board or of the supervisory board. Usually the minimum number is included in the articles of association or in the respective board regulations.

## Board practices

**27. Is disclosure of board practices required by law, regulation or listing requirement?**

Relationships between a company's corporate bodies (the management board, the general meeting and possibly also the supervisory board), as well as relationships within these corporate bodies can be included in the articles of association or in board regulations. As the articles of association of companies are publicly available through registration in the Trade Register of the Chamber of Commerce and usually also through publication on the company's website, such information is disclosed to the public. With regard to supervisory board regulations and management board regulations, the Dutch corporate governance code prescribes that these should be posted on the company's website. The regulations usually contain detailed provisions on board practice.

## Remuneration of directors

**28. How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?**

The general meeting adopts the remuneration policy of the management board. The works council (mandatory in companies with more than 50 employees) has the right to determine a position in advance on the remuneration policy and then explain this position at the general meeting. The remuneration itself is usually adopted by the supervisory board. Proposals for remunerations that are to be paid in the form of shares or rights to subscribe for shares require the approval of the general meeting. The remuneration for the supervisory directors is adopted by the general meeting.

Pursuant to the Dutch corporate governance code, the remuneration policy applicable to management board members should be clear and understandable, should focus on long-term value creation for the company and its affiliated enterprise, and take into account the internal pay ratios within the enterprise. The remuneration policy should not encourage management board members to act in their own interest, nor to take risks that are not in keeping with the strategy formulated and the risk appetite that has been established. The supervisory board is responsible for formulating the remuneration policy and its implementation.

In recent years, the remuneration paid to managing directors has become the subject of increasing scrutiny. This has manifested itself in a number of ways, including various pieces of (sectoral) legislation that impose limits on the remuneration paid to managing directors.

## Remuneration of senior management

**29. How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?**

In principle, remuneration of senior management falls within the scope of the management board. The Dutch corporate governance code prescribes that if the management board works with an executive committee, the management board should inform the supervisory board about the remuneration of the members of the executive committee who are not management board members. The management board should discuss this remuneration with the supervisory board annually.

## D&O liability insurance

**30. Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?**

Directors' and officers' liability is common practice in the Netherlands. Typically, the company is the policyholder and pays the insurance premiums, while managing directors and supervisory directors are the insured parties. Usually all acts on the part of managing directors and supervisory directors are covered with the (usual) exception of wilful misconduct and fraud.

## Indemnification of directors and officers

**31. Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?**

Managing directors and supervisory directors may be offered protection by the company by way of contractual indemnification or indemnification under the company's articles of association A director shall, however, have no right to be indemnified against any liability in any matter if it shall have been finally determined that such liability resulted from the intent, wilful recklessness or serious culpability of such director.

## Exculpation of directors and officers

**32. To what extent may companies or shareholders preclude or limit the liability of directors and officers?**

The liability of directors cannot be limited, but the consequences of director's liability can be mitigated. Members of the management board and supervisory board may be granted discharge by the general meeting. Such discharge releases the directors from (potential) liability to the company. The general meeting is not obliged to discharge the directors and shareholders may vote against or abstain from voting for such discharge. Once granted, the director in principle will no longer be able to be held liable by the company. Further, the directors can be indemnified (see question 31), and it is common practice to have directors' and officers' liability insurance (see question 30).

## Employees

**33. What role do employees have in corporate governance?**

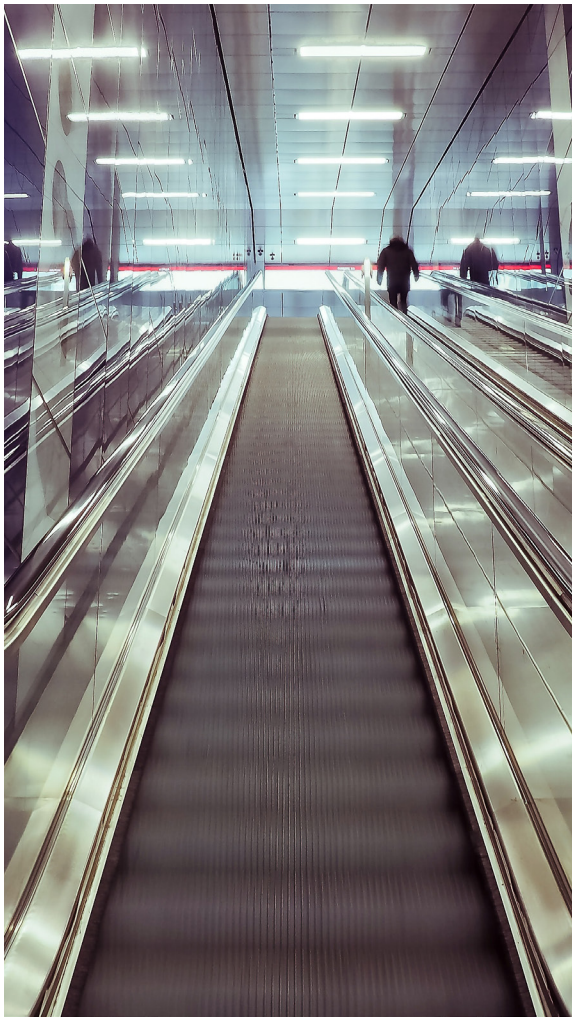
A company is obliged to establish a works council if a company has 50 employees or more. The management board is obliged to provide the works council with certain information and meet with the works council at least twice a year.

The works council should be consulted by the management board prior to taking certain decisions, which include among others appointing or dismissing a managing or supervisory director, transferring of control of or terminating all or part of the (activities of the) company, important investments, major organisational changes in the company and the remuneration policy of the managing directors.

## Board and director evaluations

**34. Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?**

Pursuant to the Dutch corporate governance code, 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 managing directors. The management board, in addition, should at least once a year evaluate its own functioning as a whole and that of the individual managing directors.
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 directors.
The supervisory board's report should state in what manner the evaluations have been carried out and what has been or will be done with the conclusions from the evaluations.



# 5. DISCLOSURE AND TRANSPARENCY

### Corporate charter and by-laws

**35. Are the corporate charter and by-laws of companies publicly available? If so, where?**

The publicly available Trade Register of the Chamber of Commerce includes the corporate data of companies (including registered seat and address, details of directors, the articles of association, as well as certain limited financial information. Further, listed companies usually publish their articles of association and the board regulations on their websites.

### Company information

**36. What information must companies publicly disclose? How often must disclosure be made?**

See question 35. In addition, the annual accounts must be filed with the Trade Register of the Chamber of Commerce annually and listed companies should publish their half-year results. Further, each capital increase must be filed at the Trade Register. Listed companies are required to publish price-sensitive information directly related to the company via press release as quickly as possible. In addition, the yearly results and half-year results of listed companies must be made publicly available.

# 6. HOT TOPICS

### Say-on-pay

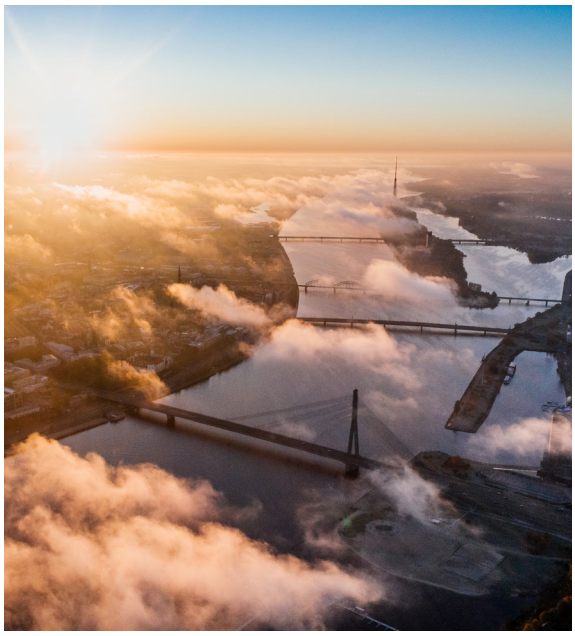
**37. Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?**

The general meeting has the authority to adopt the remuneration policy of the managing directors and can also adopt the remuneration of the supervisory directors. Pursuant to the Dutch corporate governance code, the remuneration policy should focus on long-term value creation for the company and its affiliated enterprise, and take into account the internal pay ratios within the enterprise. The remuneration of the managing directors is usually determined by the supervisory board, within the limits of the remuneration policy adopted by the general meeting. Proposals for remuneration that is to be paid in the form of shares or rights to subscribe for shares must be approved by the general meeting. The remuneration policy should be discussed yearly in the general meeting. Pursuant to a new bill currently being discussed in Parliament, the remuneration policy of the managing directors and supervisory directors will have to be presented to the shareholders every four years. In addition, the remuneration report will have to be submitted to the general meeting each year. The remuneration of the senior management is usually determined by the management board.

### Shareholder-nominated directors

**38. Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?**

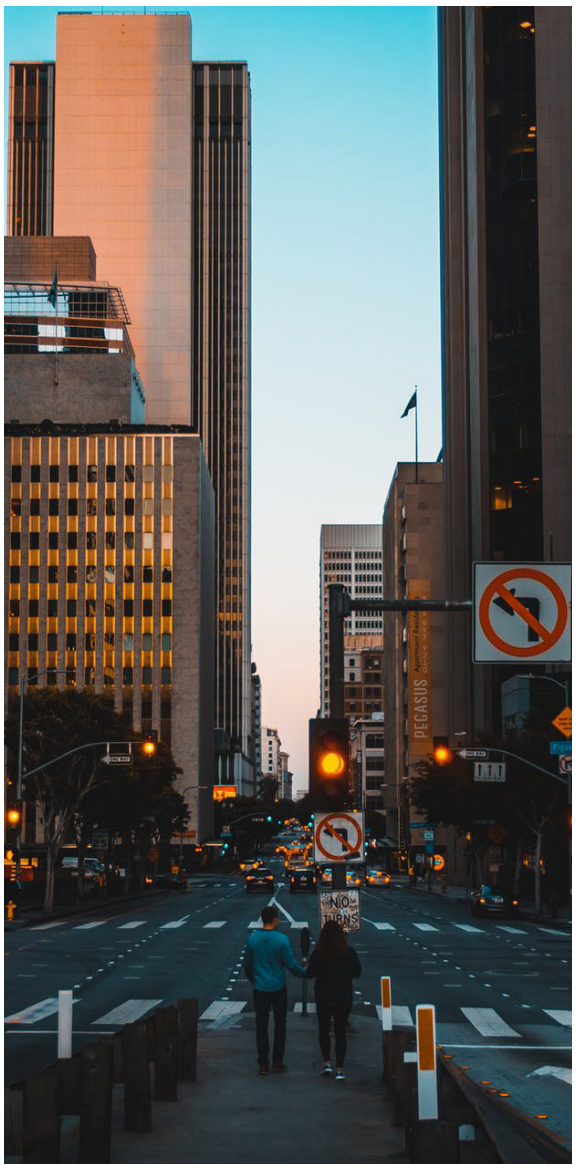
The starting point is that the directors are nominated by a resolution of the general meeting (see question 3). Individual shareholders cannot easily nominate a director without the cooperation of the management and supervisory board.



## Shareholder engagement

**39. Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?**

The management board and the supervisory board ensure proper engagement between the company and its shareholders. The management board and the supervisory board shall provide the general meeting with all requested information, unless a substantial interest of the company opposes this. However, the Dutch Supreme Court has ruled that such right to information does not apply to individual shareholders or to shareholders outside of the general meeting. Bilateral contacts between the company and major shareholders are not uncommon. Pursuant to the Dutch corporate governance code, the company should formulate an outline policy on bilateral contacts with the shareholders and should post this policy on its website.




## Sustainability disclosure

**40. Are companies required to provide disclosure with respect to corporate social responsibility matters?**

Listed companies that have at least an average of 500 employees must include a declaration in their annual report setting out how the company is dealing with at minimum environmental, social and staff matter issues, respect for human rights and the tackling of corruption and bribery. Sustainability is more often put as a separate discussion item on the agenda of the general meeting. In addition, large listed companies must provide information about their diversity policy in relation to the composition of the management and supervisory board (see also question 23). The company should state the objectives of the policy, as well as the way in which the policy is implemented and the results in the past financial year. If the company does not have a diversity policy, it has to explain why this is the case.

## CEO pay ratio disclosure

**41. Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?**

Pursuant to the Dutch corporate governance code, the supervisory board should render account of the implementation of the remuneration policy in a transparent manner in its remuneration report. This report must include whether the development of the remuneration of managing and supervisory directors would be in proportion to the salary of the average employee. The report should be posted on the company's website.

## Gender pay gap disclosure

**42. Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?**

In the Netherlands there is no regulation that requires disclosure of gender pay gap information.

Key contacts

**Robrecht Timmermans**
Partner | Candidate Civil Law Notary
E r.timmermans@burenlegal.com
T +31 (0)20 333 8394