



The Dutch

CORPORATE GOVERNANCE CODE

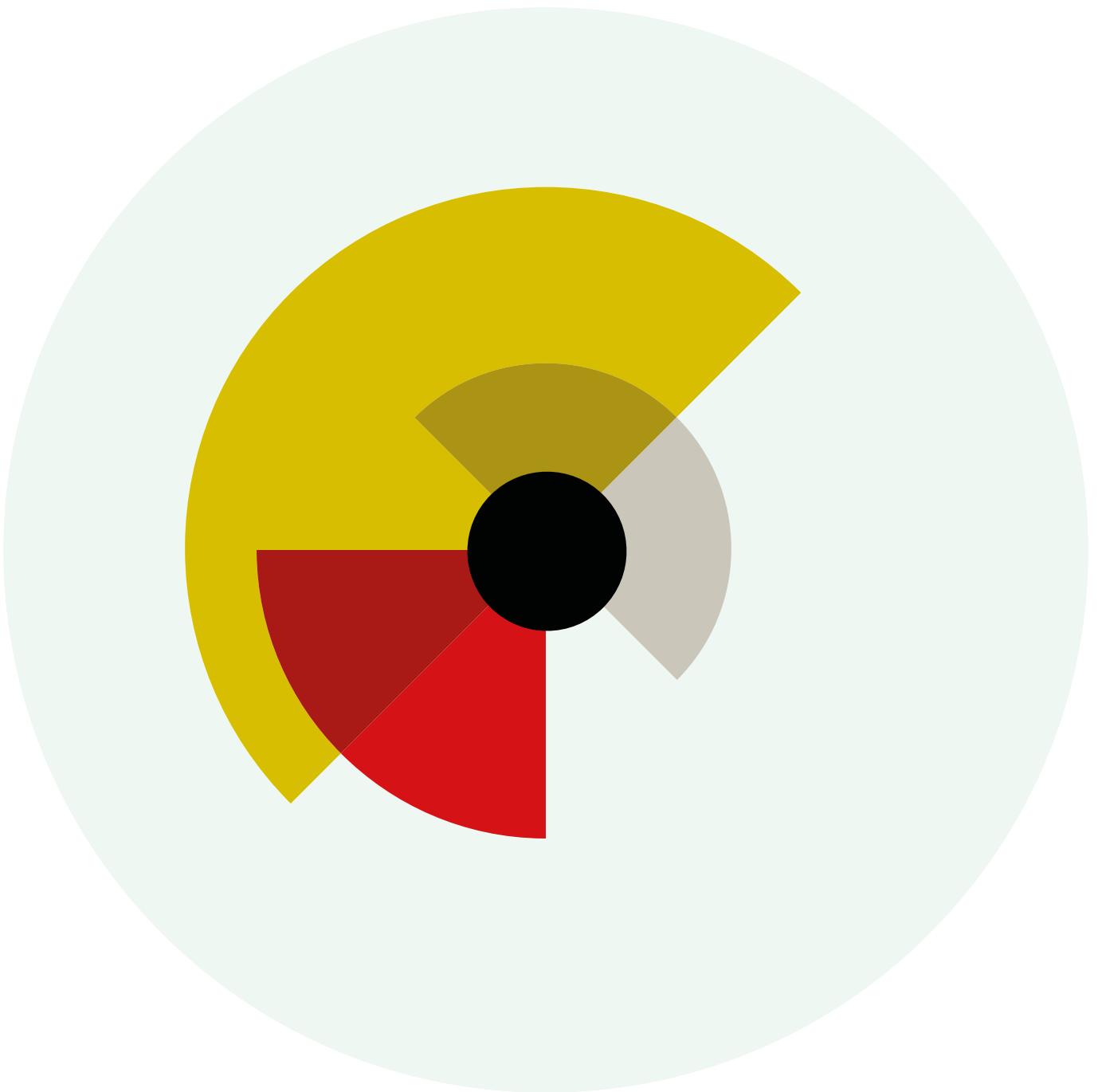
Monitoring Commissie

**CORPORATE
GOVERNANCE
CODE**

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TABLE OF CONTENTS

Preamble	5
Compliance with the Code	9
Chapter 1. Sustainable long-term value creation	10
Principle 1.1 Sustainable long-term value creation	10
Principle 1.2 Risk management	13
Principle 1.3 Internal audit function	14
Principle 1.4 Risk management accountability	16
Principle 1.5 Role of the supervisory board	18
Principle 1.6 Appointment and assessment of the functioning of the external auditor	20
Principle 1.7 Performance of the external auditor's work	21
Chapter 2. Effective management and supervision	22
Principle 2.1 Composition and size	22
Principle 2.2 Appointment, succession and evaluation	27
Principle 2.3 Organisation of the supervisory board and reports	29
Principle 2.4 Decision-making and functioning	31
Principle 2.5 Culture	33
Principle 2.6 Misconduct and irregularities	34
Principle 2.7 Preventing conflicts of interest	35
Principle 2.8 Takeover situations	37
Chapter 3. Remuneration	40
Principle 3.1 Remuneration policy – management board	40
Principle 3.2 Determination of management board remuneration	41
Principle 3.3 Remuneration of supervisory board	42
Principle 3.4 Reporting on execution of remuneration policy	42
Chapter 4. The general meeting	44
Principle 4.1 The general meeting	44
Principle 4.2 Provision of information	46
Principle 4.3 Casting votes	48
Principle 4.4 Recognising the importance of company strategy	49
Principle 4.5 Issuing depositary receipts for shares	50
Chapter 5. One-tier governance structure	52
Principle 5.1 One-tier governance structure	52
Entry into force	54



PREAMBLE

Focusing on the governance of listed companies, the Dutch Corporate Governance Code (referred to below as the Code) provides guidance for effective collaboration and management. Governance is about management and control, about responsibility and influence, and about supervision and accountability. The purpose of the Code is to facilitate – together 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 relationships between the management board, the supervisory board and the general meeting/shareholders. Compliance with the Code contributes to confidence in good and responsible management of companies and their embedding in society.

The Code was first adopted in 2003 and was amended in 2008, 2016 and 2022. The Code has been amended by the Monitoring Committee Corporate Governance Code (referred to below as the Committee) at the request of the National Federation of Christian Trade Unions in the Netherlands (CNV), Eumedion, 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 times and overlap with legislation were reasons to amend the Code. The present Code is an updated version of the 2022 Code, with guidelines regarding the management report on the effectiveness of internal risk management and control systems.

Scope

The Code applies to:

- i. all companies with registered offices in the Netherlands 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 with registered offices in the Netherlands (balance sheet value > € 500 million) whose shares or depositary receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system.

For the purposes of the Code, holders of depositary receipts issued with the collaboration of the company are equated with shareholders. The Code does not apply to an investment company or an undertaking for collective investment in transferable securities that is not a manager ("beheerder") 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 general meeting/shareholders. The principles and provisions are aimed at defining responsibilities for sustainable 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 expressed in the form of best practice provisions. These provisions contain standards for the conduct of management board members, supervisory board members and shareholders. They reflect best practices and supplement the general principles of good corporate governance. Companies may diverge from these best practices, in case they provide justification. The conditions for such divergence are explained below under "Compliance with the Code".

The relationship between the company and its employees (and employee representatives) with regard to employee participation, is governed inter alia by the Works Councils Act (Wet op de ondernemingsraden, WOR). If properly applied, the Works Councils Act sufficiently safeguards the relationship between the

company and its employees (and employee representatives). In addition to the legal provisions, this relationship is addressed in the Code in provisions related to culture and to the contacts between the supervisory board and the employee participation body.

Underlying notions

The Code is based on the notion that a company is a long-term alliance between the various stakeholders of the company. Stakeholders are groups and individuals who, directly or indirectly, influence – or are or could be influenced by – the attainment of the company's objectives: employees, shareholders and other capital providers, suppliers, customers and other stakeholders. The management board and the supervisory board have responsibility for considering their interests, generally with a view to ensuring the continuity of the company and its affiliated enterprise. The company strives to create long term sustainable value. If stakeholders are to collaborate within and with the company, they need to be confident that their interests are duly taken into consideration. Good entrepreneurship and effective supervision are essential conditions for stakeholder confidence in management and supervision. This includes integrity and transparency of the management board's actions and accountability for the supervision by the supervisory board. The effect of the Code is determined not by the extent to which it is complied with to the letter, but rather by the extent to which all stakeholders are guided by the spirit of the Code.

Shareholders and institutional investors

Shareholders can prioritize their own interests, as long as they act in line with the principles of reasonableness and fairness in relation to the company, its components and their fellow shareholders. This includes the willingness to engage with the company and fellow shareholders. The greater the interest of the shareholder in a company, the greater is his responsibility towards the company, fellow shareholders and other stakeholders. Institutional investors are accountable to the ultimate beneficial owners for the careful and transparent assessment of how to exercise their shareholders' rights.

Relation to legislation

The Code was formed through self-regulation. It was made by, and is intended for, the parties addressed by the Code. Self-regulation means that parties create their own rules, without government intervention, to which they then commit by implementing, enforcing and updating them. Self-regulation supplements governmental 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 in the fact that the Code focuses more on the behaviour of management board members, supervisory board members and shareholders.

The amendments to the Code are based on applicable legislation and case law regarding external and internal relationships of companies, taking 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 may supplement legal provisions.

One-tier governance structure

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

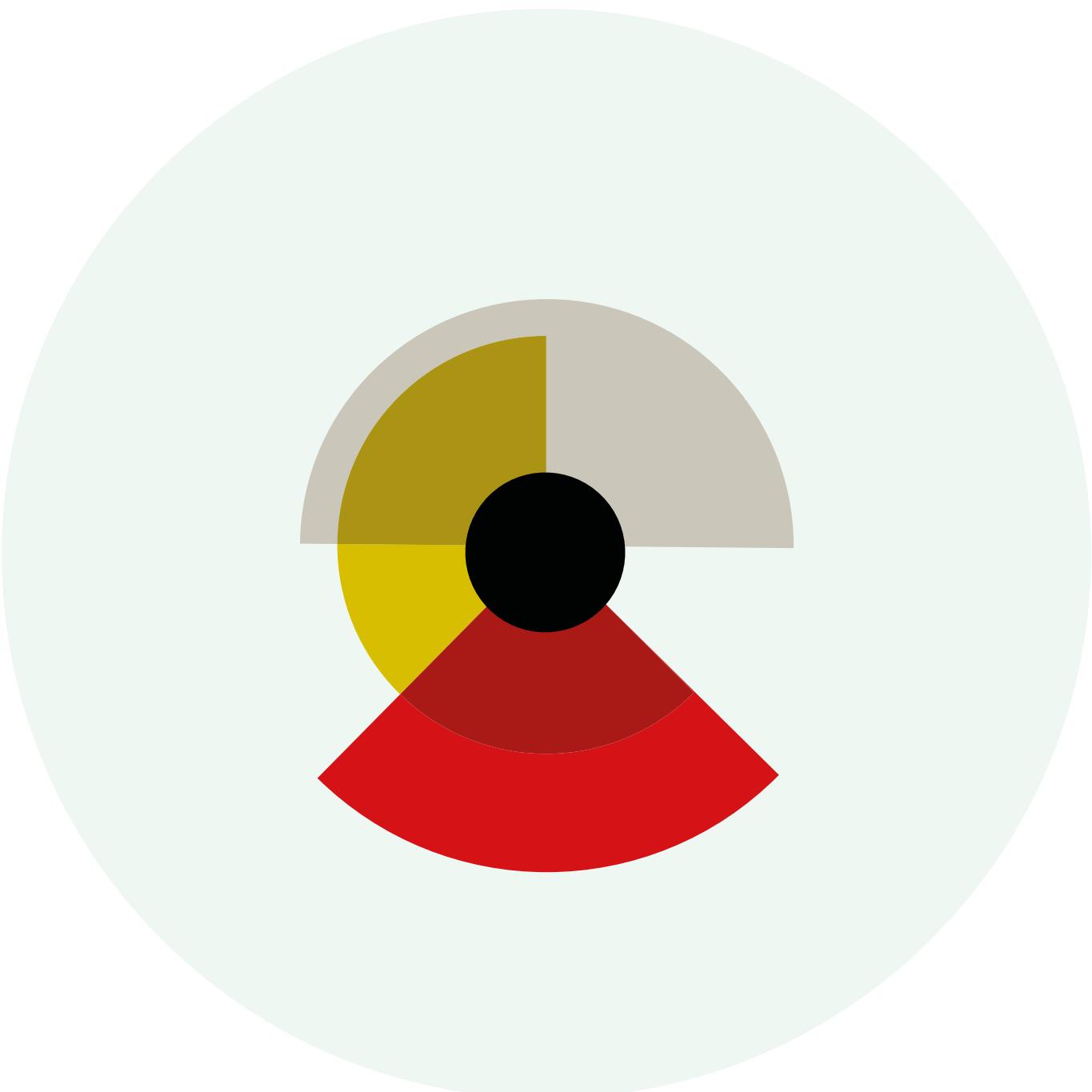
More diverse group of listed companies

The group of listed companies within the scope of the Code is becoming increasingly diverse. For example, the number of listed companies having their primary listing abroad has increased and the number of special purpose acquisition companies (SPACs) has also grown in recent years. All these companies are expected to comply with the Code.

For SPACs, part of the provisions of the Code only become relevant after the SPAC has made an acquisition. However, there are also various provisions that are relevant before the SPAC has made an acquisition, such as principle 2.7 and the underlying best practice provisions on preventing conflicts of interest.

Explanation

Investment institutions and undertakings for collective investment in transferable securities that are centrally managed in a group that is in scope of the Code, as such are excluded from the scope of the Code.



COMPLIANCE WITH THE CODE

The management board and the supervisory board are responsible for the corporate governance of the company and for compliance with this Code. Compliance with the Code is based on the "comply or explain" principle. Unlike legislation, the Code offers flexibility by providing room for divergence from the principles and best practice provisions. The management board and the supervisory board report on compliance with the Code in the general meeting, and provide a substantive and transparent explanation for any divergence from the principles and best practice provisions.

The broad outline of the company's corporate governance is annually reported in a separate chapter of the management report or published on the company's website, partly based on the principles in this Code. The company explicitly states the extent to which it complies with the Code's principles and best practice provisions and, where not, why and to what extent it diverges from them.

It is important that the explanations for any divergence includes the following elements:

- i. how the company diverges from the principle or best practice provision;
- ii. the reasons for the diverging;
- iii. in case the divergence is temporary but for more than one financial year, an indication of when the company intends to comply again with the principle or the best practice provision; and
- iv. where applicable, a description of the alternative measure in place with explaining how it attains the purpose of the principle or best practice provision, or a clarification of how the measure contributes to good corporate governance of the company.

Shareholders, companies specialized in rating the corporate governance of listed companies and proxy voting advisers, should carefully assess the reasons for each and every divergence from the Code's principles and best practice provisions. Shareholders as well as the management board and supervisory board, should be prepared to discuss the reason why a principle or best practice provision was not applied. It is up to the shareholders to call the management board and the supervisory board to account for compliance with the Code. The guiding principle is that corporate governance requires a tailor-made approach and deviations from the Code may be justified. Companies and shareholders share the responsibility for successful self-regulation by applying the "comply or explain" principle, to make it serve as an effective alternative to legislation.

CHAPTER 1.

SUSTAINABLE LONG-TERM VALUE CREATION

Principle 1.1 Sustainable long-term value creation

The management board is responsible for the continuity of the company and its affiliated enterprise as well as for sustainable long-term value creation by the company and its affiliated enterprise. The management board considers the impact that actions of the company and its affiliated enterprise have on people and environment, and to that end weighs relevant stakeholder's interests. The supervisory board oversees the management board in this regard.

Explanation

The board is responsible for creating long-term value in a sustainable way, taking into account the effects of the actions of the company and its affiliated companies, on people and the environment. When determining the strategy and making decisions, the long-term sustainability is central and the interests of stakeholders are carefully weighed. As is generally the case for the performance of directors' duties, this responsibility does not result in an obligation to achieve a result. It does not prescribe what the outcome of the weighing of relevant interests and external consequences should be in specific cases. Moreover, the responsibility that may be expected of directors in the performance of their duties should not be equated with liability, for which it is required that the director can be seriously blamed.

Sustainability in this context refers to the balance between the social, ecological and economic aspects of entrepreneurship, also known as the three Ps: people, planet and profit. Environmental, social and governance factors, as set out in the Article 19a of Directive 2013/34/EU, as inserted into that Directive as a result of the proposal to amend Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 on Corporate Sustainability Reporting (CSRD), are relevant for the implementation of the people and planet aspects.

Sustainability is a comprehensive topic that is in a transition phase worldwide. In addition to the CSRD, the European Council has adopted a Directive on corporate sustainability due diligence and amending Directive (EU) 2019/1937 (CSDD). Sustainability reporting standards are still under development. For example, the European Financial Reporting Advisory Group (EFRAG) developed European Sustainability Reporting Standards (ESRS) and the International Sustainability Standards Board (ISSB) of the IFRS Foundation is developing global standards. These standards influence the sustainability efforts expected of companies. Other regulations that can serve as a guideline in the interpretation of the concept of sustainability include:

- the OECD Guidelines for Multinational Enterprise and the OECD Due Diligence Guide for Corporate Social Responsibility from 2018, which provides guidance for companies in international business as far as the interpretation of supply chain responsibility is concerned;
- the UN Guiding Principles on Business and Human Rights as well as the UN Global Compact;
- the reporting standards of the Task Force on Climate-related Financial Disclosure.

The management board is expected to follow the relevant developments in this area and take them into account.

Sustainable long-term value creation also requires awareness and anticipation of developments in new technologies and changes in business models and associated risks, including cybersecurity, supplier and chain dependencies, data protection and the ethical application of new technologies (e.g. 'Responsible AI').

Having sufficient attention to the broader context in which the company and its affiliated enterprise operate, contributes to the continued success of the company and is therefore in line with the interests of the company. There can be situations in which the focus on the sustainable long term is no longer relevant for a company, for example in the event of bankruptcy or a takeover, and the company's right to exist is finite. The company complies with the Code by explaining why sustainable long-term value creation is not (or no longer) relevant.

Stakeholders are groups and individuals that directly or indirectly influence or are (or may be) influenced by the achievement of the company's objectives: employees, shareholders and other capital providers, suppliers, customers and other stakeholders.

1.1.1 Strategy for sustainable long-term value creation

The management board should develop a view on sustainable long-term value creation by the company and its affiliated enterprise and formulate a strategy in line with this. The management board should formulate specific objectives in this regard. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy.

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

- i. the strategy's implementation and feasibility;
- ii. the business model of the company and the market in which the company and its affiliated enterprise operate;
- iii. opportunities and risks for the company;
- iv. the company's operational and financial goals and their impact on its future position in relevant markets;
- v. the interests of the stakeholders;
- vi. the impact of the company and its affiliated enterprise in the field of sustainability, including the impact on people and environment;
- vii. paying a fair share of taxes to the countries in which the company operates; and
- viii. the impact of new technologies and changing business models.

Explanation

Suitable strategy

Sustainability is an important aspect in the development of a vision re long-term and sustainable value creation, and a corresponding company strategy. It is important that, in the development of the vision, strategy and concrete objectives, the (potential) impact of the company and its affiliated enterprise on people and the environment, as well as (potential) impact of sustainability issues on the company and the impact of its (double materiality) is considered. Companies are also expected to consider stakeholders' interests and to provide insight into the way the foregoing is implemented. This can be achieved by the following framework presented in the Code:

- As part of the development of a vision on sustainable long-term value creation and an appropriate strategy, companies take into account sustainability aspects of doing business, including the (potential) impact of the company and its affiliated enterprise on people and the environment,

and the (potential) impact of sustainability issues on the company and its affiliated enterprise.

Concrete objectives are formulated in this regard (best practice provision 1.1.1);

- companies enter into a dialogue with relevant stakeholders about the sustainability aspects of the strategy and its implementation (best practice provision 1.1.5);
- the management report accounts for the vision of sustainable long-term value creation, the strategy for achieving it and the objectives formulated in this regard, the impact of the company on people and the environment, how the stakeholders' interests have been taken into account and the extent to which the objectives have been achieved (best practice provision 1.1.4).

Taxation

The way in which companies deal with the tax payment should also be part of the vision and strategy aimed at sustainable long-term value creation. For several years, there is worldwide attention for the distribution of tax revenues from cross-border activities of companies, in a way acceptable to all countries rather than shifting corporate profits to countries with low taxes or no taxation. Companies are expected to contribute to this by paying their fair share of taxes in the countries in which they actually perform their business activities and make the profit.

1.1.2 Involvement of the supervisory board

The management board engages the supervisory board early on in the strategy setting for achieving sustainable long-term value creation. The management board accounts to the supervisory board for the strategy and the explanatory notes to that strategy.

Explanation

'Formulation of the strategy' also includes making material changes to the strategy.

1.1.3 Role of the supervisory board

The supervisory board supervises the execution by the management board of the strategy for sustainable long-term value creation. The supervisory board regularly discusses the strategy, its implementation and the main risks associated. The supervisory board report includes its involvement in the strategy setting, and the way it monitors implementation.

1.1.4 Reporting by the management board

In the management report, the management board explains its view on sustainable long-term value creation and the related strategy, and describes the contributions made in the past financial year. In addition, it describes the objectives, what effects the company's products, services and activities have had on people and environment, how the interests of stakeholders were considered, what actions have been taken in that context and the extent to which objectives were achieved. The management board should report on both short- and the long-term developments.

The second sentence of this best practice provision is not applicable if the company reports in accordance with the requirements laid down in Dutch legislation pursuant to the CSRD or comparable standards applicable to the company in respect of its listing outside the Netherlands.

Explanation

The management report includes the company and its affiliated enterprise impact on people and environment by means of at least a qualitative description. To increase the understanding of the impacts and the comparability with the financial information/reporting, it is recommended to quantify and monetize impacts where possible.

1.1.5 Dialogue with stakeholders

To ensure that the interests of the relevant stakeholders of the company are considered when the sustainability aspects of the strategy are determined, the company should draft a policy for effective dialogue with those stakeholders. The relevant stakeholders and the company should be willing to engage in a dialogue. The company should facilitate this dialogue unless, in the opinion of the management board, this is not in the interests of the company and its affiliated enterprise. The company should publish the policy on its website.

Explanation

It is up to the board to draw up a policy for a dialogue with the relevant stakeholders about at least the sustainability aspects of the strategy. It is also expected that the board in the policy pays attention to the way in which the company's employee participation body part of this dialogue and how it relates to the other consultations between the supervisory board and the participation body. This is not the premise of every stakeholder of the company for every sustainability aspect of the strategy as well as for relevant and that it is up to the management of the company to decide on a case-by-case basis relevant stakeholders; It is thus not intended to confer a right to dialogue with the company for the stakeholders. It is up to the board to decide determine whether the dialogue is in the interest of the company and its affiliates.

Principle 1.2 Risk management

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

Explanation

The risks to be identified and managed in the context of Principle 1.2 include both internal and external risks that the company may face.

The internal risk management and control systems must be tailored to the company. This provides smaller listed companies the opportunity to comply using less extensive procedures.

1.2.1 Risk assessment

The management board should identify and analyse the risks associated with the strategy and activities of the company and its affiliated enterprise. The identification and analysis should cover in any case the strategic, operational, compliance and reporting risks. The management board is responsible for establishing the risk appetite, and also for the measures put in place to manage and control the risks.

Explanation

Examples of strategic, operational, compliance and reporting risks include risks such as climate change, social inequality, tax risks, fraud risks, money laundering risks and information and communication technology risks (including in the areas of cybersecurity, supplier and supply chain dependencies, data protection and risks associated with new technologies and changing business models, such as in the area of ethically responsible application of new technologies (e.g. Responsible AI).

With regard to strategic risks, a distinction can be made between the decision-making process on the strategy and its implementation. The risk management and control systems do not oversee the decision-making on the strategy. Risks associated with the implementation of the strategy translate into operational, compliance and reporting risks. Without prejudice to the necessary robustness of the strategy determination, many strategic risks cannot be managed because they are wholly or partly outside the company's sphere of influence.

1.2.2 Implementation

Based on the risk assessment, as referred to in best practice provision 1.2.1, the management board should design, implement and maintain adequate internal risk management and control systems. To the extent relevant, these systems should be integrated into the work processes within the company and its affiliated enterprise, and should be familiar to those whose work they are relevant to.

1.2.3 Monitoring of design and operating effectiveness

The management board should monitor the design and operating effectiveness of the internal risk management and control systems and should carry out a systematic assessment of their design and operating effectiveness at least once a year. Attention should be paid to observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the external auditor. Where necessary, improvements should be made to internal risk management and control systems.

Principle 1.3 Internal audit function

The task of the internal audit function is to assess the design and operating effectiveness of the internal risk management and control systems. The management board is responsible for the internal audit function. The supervisory board oversees the internal audit function and maintains regular contact with the chief audit executive.

1.3.1 Appointment and dismissal

The management board both appoints and dismisses the chief audit executive. Both the appointment and the dismissal of the chief audit executive should be submitted to the supervisory board for approval, along with the recommendation of the audit committee.

1.3.2 Assessment of the internal audit function

The management board should annually assess how the internal audit function fulfils its role, after consultation with the audit committee. An independent third party should assess the performance of the internal audit function at least every five years.

1.3.3 Internal audit plan

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

1.3.4 Performance of work

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

1.3.5 Reports of findings

The internal audit function should report the audit results to the management board and the audit committee, and inform the external auditor. The findings of the internal audit function should, at least, include the following:

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

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

Explanation

The reporting of audit results by the internal audit function to the audit committee is not necessarily identical to the reporting by the internal audit function to the management board. It is up to the internal audit function and the audit committee to agree on this.

1.3.6 Absence of an internal audit department

If no separate internal audit function is in place, the supervisory board will assess annually whether adequate alternative measures have been taken, considering an advise of the audit committee, and will consider whether it is necessary to establish a separate internal audit function. The supervisory board should include the conclusions, along with any resulting recommendations and alternative measures, in the report of the supervisory board.

Explanation

The basic principle is that companies set up an internal audit function. If this principle is deviated from, for example because of the size of the company, outsourcing can be an adequate alternative. Also in that case, the Supervisory Board and the Audit Committee is involved in the execution of tasks by the internal audit function, as defined in best practice Provisions 1.3.1 to 1.3.5.

Principle 1.4 Risk management accountability

The management board should report on both design and the operating effectiveness of the internal risk management and control systems.

Explanation

The Board is responsible for continuous monitoring of the design and operating effectiveness of the internal risk management and control systems and assesses their effectiveness at least once a year, reporting on it in the management report. In view of the inherent practical limitations associated with internal risk management and control systems, the determination of the design and operating effectiveness of these systems will not be able to provide absolute assurance that all possible risks have been fully identified and mitigated at all times. The Board's statement on risk management therefore does not provide absolute assurance, but declares about management of material risks in line with the board's strategy and risk appetite.

1.4.1 Accountability to the supervisory board

The management board should discuss the design and operating effectiveness of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3 inclusive with the audit committee, and report on it to the supervisory board.

1.4.2 Reporting on risk management

In the management report, the management board reports on:

- i. the execution of the risk assessment, with a description of the main risks facing the company in relation to its risk appetite, as referred to in best practice provision 1.2.1;
- ii. the design and operating effectiveness of the internal risk management and control systems during the past financial year and which frameworks were used;
- iii. its assessment of the effectiveness of the internal risk management and control systems in relation to operational, compliance and reporting risks for the past financial year;
- iv. any major deficiency in the internal risk management and control systems observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the audit committee and the supervisory board; and
- v. the sensitivity of the results of the company to material changes in external factors.

Explanation

Based on best practice provision 1.4.2, the management board describes in the management report the design, operating effectiveness and the assessment of the effectiveness of the internal risk management and control systems. Pursuant to part i, the company includes in its annual report a description of the main risks with which it faces in the performance of its tasks. The description does not only cover reporting risks, but also all types of risks referred to in best practice provision 1.2.1. This is not so much an exhaustive explanation of all potential risks, but a description of the main risks the company faces. The description of main risks in section i is in line with the risk section prescribed in Section 2:391 of the Dutch Civil Code (hereinafter: the Dutch Civil Code) and with the description of material risks in the context of Section 5:25c of the Financial Supervision Act.

With regard to best practice provision 1.4.2, part ii, it is expected that the management board indicates, in the reporting on the design and operating effectiveness of the internal risk management and control systems, which reference or standards framework (e.g. the COSO framework for internal control) has been used. It is also expected that the management board clearly explains how it has assessed the operating effectiveness of the internal risk management and control systems.

1.4.3 Statement by the management board

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

- i. that the report provides sufficient insights into any deficiency in the effectiveness of the internal risk management and control systems;
- ii. that the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
- iii. that these systems provide at least limited assurance that sustainability reporting is free from material misstatements;
- iv. what level of assurance these systems provide that operational and compliance risks are effectively managed;
- v. that, based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and
- vi. that the report includes material risks, as referred to in best practice provision 1.2.1, as well as uncertainties, to the extent that they are relevant for the company's continuity for a period of twelve months after the preparation of the report.

Explanation

Based on best practice provision 1.4.3, the management board declares that it has provided sufficient insight into the operational, compliance and reporting risks, also looking forward to the risks relevant to the continuity of the company. This concerns both identified material shortcomings and material risks and uncertainties that can reasonably be foreseen at the time the statement is given, as well as the impact of these material risks and uncertainties on the company. Parts i and vi of the management board's statement are not limited to financial reporting risks. This is in line with the internal risk management and control systems, also not limited to financial reporting risks.

With regards to part iii, it is obvious to seek connection with the introduction of the CSRD. The CSRD and the associated European Sustainability Reporting Standards (ESRS) contain a comprehensive framework of standards and a detailed timeline for their implementation. It is obvious that the reporting about the internal risk management and control systems with regard to sustainability reporting risks in line with the CSRD, for the time being assumes the provision of limited assurance.

A management board is free to indicate that the internal risk management and control systems with regard to sustainability information provide reasonable assurance that the sustainability reporting does not contain any material misstatements.

Part iv is about the management board self-indicating the level of assurance that the risk management and internal control systems provide about effectively managing the operational and compliance risks, considering the company's risk appetite and the choice made in designing the internal risk management and control systems. In this context, the word 'assurance' is not to be read as the term 'assurance' used in auditing, nor is it intended that companies should apply a fixed framework for this. Nor is 'effectiveness' connected to the similar wording in American legislation (i.e. the Sarbanes-Oxley Act). Companies can explain the terminology used in their statement or in the explanation thereof.

It is possible that the management board will conclude that certain risks cannot be effectively managed by their nature, or that the effectiveness of the aforementioned systems cannot be determined. An example is compliance with laws and regulations, where the company is partly dependent on the behaviour of its employees worldwide, while their behaviour cannot reasonably be continuously controlled or fully embedded in procedures. To comply with this provision, the management board can declare this and explain.

As noted in the explanatory note to Principle 1.4, internal risk management and control systems are inextricably restricted. It is therefore logical that the statement that the management board also includes in the management reporting based on best practice provision 1.4.3: (a) the responsibilities of the management board with regard to the internal risk management and control systems, (b) the objectives of these systems, (c) the characteristics of these systems, and (d) the inherent limitations of these systems.

Principle 1.5 Role of the supervisory board

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

1.5.1 Duties and responsibilities of the audit committee

The audit committee undertakes preparatory work for the supervisory board's decision-making regarding the supervision of the integrity and quality of the company's financial and sustainability reporting and the effectiveness of the company's internal risk management and control systems, as referred to in best practice provisions 1.2.1 to 1.2.3 inclusive as well as 1.4.1 to 1.4.3 inclusive. It focuses among other things on the supervision of the management board with regard to:

- i. connecting with, implementation and follow up on recommendations by the internal and external auditors and any other external party involved in auditing the sustainability reporting;
- ii. the funding of the company; and
- iii. the company's tax policy.

Explanation

Most of the tasks assigned to the audit committee already stem from legislation and have not been repeated in the Code. Specific reference is made to Article 39 of European Audit Directive 2006/43/EC.¹ This article is implemented in Dutch legislation: Article 2, paragraph 2 of the Decree of 26 July 2008². Requirements for the composition and available expertise with regard to the preparation and audit of the annual accounts, are also included in Article 2 of the aforementioned Decree.

In some cases, especially in the case of companies active in the financial sector, a risk committee has been set up in addition to an audit committee. Article 39 (4) of the aforementioned Directive states that the management report must include information about another body being appointed to carry out the tasks of the audit committee, and about the composition of that body.

In the meantime, several companies set up a committee, in addition to the audit committee, to oversee sustainability issues relating to the company. Such a committee is often called a sustainability committee or corporate responsibility committee.

If a company has set up such a committee, the preparation of the decision-making in the context of the supervision of integrity and quality of sustainability reporting, can be carried out by this committee instead of the audit committee.

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

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

1.5.3 Audit committee report

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

- i. the methods used to assess the design and operating effectiveness 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 financial and sustainability reporting; and
- iv. the way in which the material risks and uncertainties, referred to in best practice provisions 1.4.2 and 1.4.3, were analysed and discussed, along with a description of the most important findings of the audit committee, and the way of substantiating the statement meant in provision 1.4.3.

1 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC. Directive 2006/43/EC has been amended with Directive 2014/56/EU of 16 April 2014.

2 Decision of 26 July 2008 implementing Article 41 of Directive No. 2006/43/EC of the European Parliament and of the Council of the European Union of 17 May 2006 on statutory audits of annual accounts and audited annual accounts, amending Council Directives Nos. 78/660/EEC and 83/349/EEC and repealing Council Directive No. 84/253/EEC ('Staatsblad 2008, 323')

Explanation

In case the company has established a separate committee to oversee the company's sustainability issues, this committee may report to the supervisory board on the committee's deliberations and findings and the material considerations regarding sustainability reporting, instead of the audit committee.

1.5.4 Supervisory board

The supervisory board discusses the reporting by the audit committee, done on the basis of best practice provision 1.5.3.

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

The supervisory board submits the nomination for the appointment of the external auditor to the general meeting and supervises the external auditor's functioning.

1.6.1 Functioning and appointment

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

1.6.2 Informing the external auditor about its functioning

The supervisory board should give the external auditor a summary of the reporting on its functioning.

1.6.3 Engagement

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the annual reporting. The management board should facilitate this. In formulating the terms of engagement, attention should be given to the scope of the audit, the materiality to be applied and the remuneration for the audit. The supervisory board should decide on the engagement.

1.6.4 Accountability

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

1.6.5 Termination of the external auditor

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

Principle 1.7 Performance of the external auditor's work

The audit committee and the external auditor should discuss the audit plan and the findings of the external auditor based on the work performed. 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 receives all information necessary to perform his work in a timely fashion. The management board should give the external auditor the opportunity to respond to the information provided.

1.7.2 Audit plan and external auditor's findings

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

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

1.7.3 Publication of financial reports

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

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 without the presence of the management board.

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

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

1.7.6 External auditor's attendance of supervisory board meetings

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

CHAPTER 2.

EFFECTIVE MANAGEMENT AND SUPERVISION

Principle 2.1 Composition and size

The management board, the supervisory board and the executive committee (if any) should be composed in such a way as to ensure a degree of diversity appropriate to the company with regard to expertise, experience, competencies, other personal qualities, sex or gender identity, age, nationality and cultural or other background.

Explanation

A diverse composition of the management board, the supervisory board and the executive committee - if any - contributes to effective management and supervision. For a valuable discussion, diversity of opinions, contradiction but also teamwork and cohesion are essential conditions. Diversity in expertise, experience, competences, personal qualities, age, gender or identity, nationality and (cultural) background, lead to different perspectives that, in turn, help preventing possible group thinking.

2.1.1 Profile

The supervisory board should prepare a profile, considering the nature and 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 diversity in composition of the supervisory board, referred to in best practice provision 2.1.5;
- iii. the size of the supervisory board; and
- iv. the independence of the supervisory board members.

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

2.1.2 Personal information

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

- i. sex or, if preferred by the individual, gender identity;
- ii. age;
- iii. nationality;
- iv. principal position (if appropriate);
- v. other positions, insofar relevant to the performance of the duties of the supervisory board member;
- vi. date of initial appointment; and
- vii. current term of office.

2.1.3 Executive committee

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

The management report includes:

- i. the choice to work with an executive committee;
- ii. the role, duties and composition of the executive committee; and
- iii. the way contacts between the supervisory board and the executive committee have been shaped.

Explanation

An executive committee is a committee closely involved in the managing board's decision making and includes senior management, next members of the management board. Best practice provision 2.1.3 and the other provisions mentioning the term executive committee, also apply when another name is used for a similar function.

2.1.4 Expertise

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

Explanation

Society is undergoing a transformation in terms of both sustainability and digitisation. To steer this transformation in the right direction, the management board and the supervisory board should have in-depth knowledge and experience to explore these dimensions within the company and to monitor its quality. Sustainability and digitisation are not separate or supporting processes, but touch the core of the strategy and the business operations of the company. Companies are free to choose whether or not to have a dedicated digitisation and sustainability commissioner and/or a specific management board member with related knowledge. Such an appointment does not dismiss the other management board or supervisory board members of close involvement in these themes. Because the transformations mentioned are so far-reaching, it is the duty of every managing board and supervisory board member to make the relevant considerations in this regard. It is important to pay attention to this in both the composition of the supervisory board, and in the periodic training and education pursuant to best Practice Provision 2.4.6.

The requirement of financial expertise within the supervisory board is included in legislation. Based on the European Audit Directive 2006/43/EC³, at least one member of the audit committee has expertise in the preparation and audit of the annual accounts. This article is implemented in Dutch law: Article 2, third paragraph, of the Decree of 26 July 2008.⁴

³ Same footnote 2.

⁴ Same footnote 3.

2.1.5 Policy on Diversity and Inclusion (D&I policy)

The company should have a D&I policy for the enterprise. The D&I policy should in any case set specific, appropriate and ambitious targets in order to achieve a good balance in gender diversity and the other D&I aspects of relevance to the company with regard to the composition of the management board, the supervisory board, the executive committee (if any) and a category of employees in managerial positions ("senior management") to be determined by the management board.

The supervisory board adopts the D&I policy for the composition of the management board and the supervisory board. The management board adopts the D&I policy for the executive committee (if applicable), senior management and the rest of the workforce, after approval by the supervisory board.

2.1.6 Reporting on the D&I policy

The corporate governance statement should explain the D&I policy and its execution. This includes the following information:

- i. the goals of the D&I policy;
- ii. the plan to achieve the goals of the D&I policy;
- iii. the results of the D&I policy in the past financial year and – where relevant and applicable – insight into the inflow, progression and retention of employees; and
- iv. the gender composition of the management board, the supervisory board, the executive committee (if any) and senior management at the end of the past financial year.

If one or more goals for the composition of the management board, the supervisory board, the executive committee (if any) and/or senior management are not achieved, an explanation of the reasons should be included in the corporate governance statement, along with measures to attain the goals, and by when this is likely to be achieved.

Explanation 2.1.5 and 2.1.6

Best practice provisions 2.1.5 and 2.1.6, go beyond the legal requirements of Section 2:142b of the Dutch Civil Code (regarding the statutory quota of at least one-third men and one-third women on the supervisory boards of companies whose shares or depositary receipts for shares are admitted to trading on a regulated market in the Netherlands) and Section 2:166 of the Dutch Civil Code (the target figure scheme for the number of men and women on the board, the Supervisory Board and the categories of employees in managerial positions to be determined by the company). Based on best practice provision 2.1.5, companies are expected to pursue a broader D&I policy for the entire company. Part of this D&I policy is in any case concrete, appropriate and ambitious goals to achieve a good balance in gender diversity and other aspects of D&I relevant to the company with regard to the composition of the management board, the supervisory board, the executive committee (if any), and employees in managerial positions ("senior management") to be determined by the management board.

Diversity concerns all aspects and personal characteristics in which people differ from each other, including sex and gender identity, age, ethnicity, occupational disabilities and sexual orientation. Inclusion refers to an organization's ability to create a culture where every employee feels valued and respected, so that employees have the same opportunities regardless of their identity and the diversity in the flow of employees to the top is facilitated. Inclusion also concerns social safety within the company, including the approach to transgressive behaviour.

The management board and supervisory board are expected to ask themselves what the social role of the company is in the field of D&I, what its relevance is for the culture of the company and how this can be implemented in leadership development. D&I policy starts with awareness and objectives, even if it is still too premature to set specific targets. Awareness starts with gaining insight - where relevant and possible - into the inflow, promotion and retention of employees. In this context, companies can take note of the latest insights for the promotion of diversity made available by the SER (including through the Diversity and Inclusion Programme and on the SER6 diversity portal) and best practices for the aggregated mapping of employee inflow, promotion and retention. For internationally operating companies with employees in various countries, the degree of insight into inflow, flow and retention can differ from country to country.

The reporting obligation of best practice provision 2.1.6 goes beyond the reporting obligation on the basis of Article 2:16⁵ of the Dutch Civil Code and the Decree of 22 April 2022 amending the Decree on the content of the management report in connection with the temporary obligation for large companies to report on the male-female ratio in the top and sub-top and on the target figures, as the D&I policy as referred to in this best practice provision is broader than the statutory target figure scheme. With regard to the subjects on which the company must report and the sequencing in the report, the Decree on the content of the management report has been followed as much as possible. Companies that report in accordance with the Decree on the content of the management report, are also expected to include the additional information required on the basis of best practice provision 2.1.6 in their accounts.

Finally, the above-mentioned legal provisions are based on the gender of the individuals concerned and do not provide for a possibility for data subjects, on their own initiative and in the to give up their gender identity as they wish. It is however recommended to make this possible.

2.1.7 Independence of the supervisory board

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

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

- i. any one of the criteria referred to in best practice provision 2.1.8, sections i to v inclusive, should be applicable to at most one supervisory board member;
- ii. the total number of supervisory board members to whom the criteria referred to in best practice provision 2.1.8 are applicable, should account for less than half of the total number of supervisory board members; and
- iii. for each shareholder or group of affiliated shareholders directly or indirectly holding more than 10 per cent of the shares in the company, there is at most one supervisory board member who can be considered to be affiliated with or representing them as stipulated in best practice provision 2.1.8, sections vi and vii.

5 www.ser.nl/nl/thema/diverseitsportaal.

Explanation

Best practice provision 2.1.7(ii) stipulates that the majority of the supervisory board members should be independent. This rule must not be undermined by voting relationships within the supervisory board, if a multiple voting right regime is used on the basis of the Article 2:140, fourth paragraph, of the Dutch Civil Code.

2.1.8 Independence of supervisory board members

Supervisory board members are not independent if they or their spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree:

- i. has been an employee or member of the management board of the company or an issuing institution associated with the company 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 an entity associated with it, other than the compensation received for the work performed as a supervisory board member and insofar as not in line with the normal course of company's business;
- iii. has had an important business relationship with the company or an entity 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 advisor, has acted as advisor to the company (consultant, external auditor, civil notary or lawyer) and the case where the supervisory board member has been a management board member or an employee of a bank with which the company has a lasting and significant relationship;
- iv. is a member of the management board of a company in which a member of the management board of the company which he supervises is a supervisory board member;
- v. has temporarily performed management board duties during the previous twelve months in the absence or incapacity of management board members;
- vi. has a shareholding in the company of at least 10 per cent, taking into account the shareholding of natural persons or legal entities collaborating with him on the basis of an express or tacit verbal or written agreement;
- vii. is a member of the management board or supervisory board – or is a representative in some other way – of a legal entity which directly or indirectly holds at least 10 per cent of the shares in the company, unless the entity is a group company.

Explanation

An entity affiliated with the company includes:

- any legal entity or company with which the company is linked in a group;
- any legal person or company in which the company has a participation as referred to in Article 2:24c of the Dutch Civil Code, if the most recent turnover of that legal entity or company is at least 10% of the consolidated turnover of the company; or
- any legal entity or company that provides more than 25% of the company's capital, directly or indirectly.

2.1.9 Independence of the chairman of the supervisory board

The chairman of the supervisory board should not be a former management board member of the company and should be independent within the meaning of best practice provision 2.1.8.

2.1.10 Accountability regarding supervisory board member independence

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

Principle 2.2 Appointment, succession and evaluation

The supervisory board should ensure that a formal and transparent procedure is in place for the appointment and reappointment of management board and supervisory board members, as well as a sound succession plan for the management board and supervisory board members, in accordance with the D&I policy.

The functioning of the management board and the supervisory board as a collective and the functioning of individual members should be evaluated on a regular basis.

2.2.1 Appointment and reappointment periods – management board members

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

2.2.2 Appointment and reappointment periods – supervisory board members

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

Explanation

The effectiveness of the Supervisory Board is determined by its composition, whereby expertise, diversity and independence are decisive. In the event of reappointment, it is critically reviewed whether the individual supervisory board member supervises from an appropriate distance and whether the necessary knowledge and experience is present in the supervisory board. An appointment term of two times four years for supervisory board members is the principle, appointment afterwards is justified in the report of the supervisory board.

2.2.3 Early retirement

A member of the supervisory board or the management board is expected to retire early in the event of inadequate performance, a structural conflict of interests, and in other instances in which this is deemed necessary by the supervisory board.

In the event of early retirement of a member of the management board or the supervisory board, the company should issue a press release mentioning the reasons for the departure.

Explanation

This provision does not affect the fact that in the case of non two-tier companies, the general meeting may suspend or dismiss supervisory board members at any time. On the basis of the two-tier scheme, the general meeting of two-tier companies can withdraw confidence in the entire supervisory board. Withdrawing confidence results in the immediate dismissal of the members.

2.2.4 Succession

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

2.2.5 Duties of the selection and appointment committee

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

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

- i. drafting 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 proposing 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. drafting a succession plan for the management board members and supervisory board members;
- v. making proposals for appointments and reappointments; and
- vi. supervising the policy of the management board regarding the selection criteria and appointment procedures for senior management.

2.2.6 Evaluation by the supervisory board

At least once per year, without presence of the management board, the supervisory board should evaluate its functioning, the functioning of the various committees of the supervisory board and of the individual supervisory board members, and discuss the conclusions of this evaluation. In doing so, attention should be paid to:

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

The evaluation should take place periodically under the supervision of an external expert.

2.2.7 Evaluation of the management board

At least once per year, without 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 of the evaluation, also in light of the succession of management board members. At least once annually, the management board should also evaluate its own functioning as a whole and that of the individual management board members.

Explanation 2.2.6 and 2.2.7

The purpose of the evaluations is to provide a critical reflection on the performance of the supervisory board members and the management board members. Annual evaluation can assess the quality of the functioning of the supervisory board and the management board and contribute to ensuring that,

when preparing for the (re)appointment of a supervisory board member or management board member, the right choices are made, also in connection with the appropriate (diversity) composition of the supervisory board and management board. The way in which the evaluation is carried out is at the company's discretion. Evaluation can be done collectively or on an individual basis between the Chair and the members individually. The annual review will be carried out periodically under the supervision of an external expert. Every supervisory board member and management board member must be able to express themselves in confidence during the evaluation.

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;
- iii. the main findings and conclusions of the evaluations; and
- iv. what has been or will be done with the conclusions from the evaluations.

Principle 2.3 Organisation of the supervisory board and reports

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

2.3.1 Supervisory board's terms of reference

The division of tasks within the supervisory board as well as the procedures of the supervisory board, should be laid down in terms of reference. The supervisory board's terms of reference should include a paragraph dealing with its relations with the management board, the general meeting, the employee participation body (if any) and the executive committee (if any). The terms of reference should be posted on the company's website.

2.3.2 Establishment of committees

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

2.3.3 Committees' terms of reference

The supervisory board should set 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 executes its duties. The terms of reference should be posted on the company's website.

2.3.4 Composition of the committees

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

2.3.5 Committee reports

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

Explanation

The report provides a substantive explanation of the main topics covered in the committee meetings.

2.3.6 Chairman of the supervisory board

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

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

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 must not extend beyond the duties of the supervisory board itself and must 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 only be of a temporary nature.

The delegation must not detract from the duties and powers of the supervisory board. The delegated supervisory board member continues to be a member of the supervisory board and should report regularly on the execution of his special duty to the plenary supervisory board.

2.3.9 Temporary management board function of a supervisory board member

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

2.3.10 Company secretary

The supervisory board should be supported by the company secretary.

The secretary:

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

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

If the company secretary also undertakes work for the management board and notes that the interests of the management board and the supervisory board diverge, as a result of which it is unclear which interests the company secretary should represent, the company secretary should report this to the chairman of the supervisory board.

2.3.11 Report of the supervisory board

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

Principle 2.4 Decision-making and functioning

The management board and the supervisory board should ensure that decisions are made in a balanced and effective manner, considering the interests of stakeholders. The management board should ensure that information is provided in a timely and sound manner. The management board and the supervisory board should maintain their knowledge and skills up to date and devote sufficient time to their duties and responsibilities. They should ensure that, in performing their duties, they have all information required for effective decision-making.

Explanation

Management board members are required to actively provide information to the supervisory board.

Similarly, supervisory board members are required to actively collect information to adequately perform supervision.

2.4.1 Stimulating transparency and accountability

The management board and the supervisory board are each responsible for stimulating transparency and accountability within the body of which they are part, and between the different bodies within the company.

2.4.2 Other positions

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

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

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

2.4.4 Attendance at supervisory board meetings

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

2.4.5 Induction programme for supervisory board members

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

2.4.6 Development

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

Explanation

In the context of the global transformation in the fields of sustainability and digitisation, it should be safeguarded that the management board and the supervisory board receive adequate related training and education.

2.4.7 Safeguards for providing information

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

2.4.8 Supervisory board members' responsibility for obtaining information

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

2.4.9 Obtaining information from officers and external parties

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

Principle 2.5 Culture

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

Explanation

Culture can be defined as the norms and values that implicitly and explicitly guide behaviour resulting from them. Culture is a reference framework based on which the individual's actions and those of others are assessed. A healthy culture helps to prevent abuses and irregularities.

The Code addresses culture, but does not prescribe what exactly culture is or should be. It is up to the management board to give substance to culture. While shaping the culture of a company, the existence of different subcultures within the company is considered.

2.5.1 Management board's responsibility for culture

The management board should adopt corporate values for the company and its affiliated enterprise that contribute to a culture, focused on sustainable long-term value creation, and discuss these with the supervisory board. The management board is responsible for the embedding and maintenance of these values within the company and its affiliated enterprise. The management board should encourage behaviour that is in line with the values and propagate these values through leading by example. Attention must be paid to the following, among other things:

- i. the strategy and the business model;
- ii. the environment in which the enterprise operates;
- iii. the existing culture within the enterprise, and whether it is desirable to implement any changes in this; and
- iv. the social safety within the enterprise and the ability to discuss and report actual or suspected misconduct or irregularities.

2.5.2 Code of conduct

The management board should draw up a code of conduct and monitor its effectiveness and compliance, for both itself and the employees of the company. The management board should inform the supervisory board of its findings and observations with regard to the effectiveness of and compliance with the code. The code of conduct should be posted on the company's website.

2.5.3 Employee participation

If the company has established an employee participation body, the following should also be discussed in the consultations between the management board, the supervisory board and the employee participation body:

- i. the conduct and culture in the company and its affiliated enterprise;
- ii. the corporate values adopted by the management board on the basis of best practice provision 2.5.1, and
- iii. the company's D&I policy.

2.5.4 Reporting on culture

In the management report, the management board should provide explanatory notes on:

- i. the culture within the company, and whether it is desirable to implement any changes in this;
- ii. how the culture, the underlying corporate values and conduct promoted within the enterprise contribute to sustainable long-term value creation and, if it is considered desirable to amend these, which initiatives are taken to further increase this contribution; and
- iii. the effectiveness of, and compliance with, the code of conduct.

Principle 2.6 Misconduct and irregularities

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

Explanation

Principle 2.6 and associated best practice provisions are aimed at reporting suspicions of abuses and irregularities. It is expected that in the regulation for reporting (suspicions of) abuses and irregularities, it is expressed that such reporting is seen as a contribution to improving the functioning of the company, that the report will be seriously investigated, that - where necessary - measures are taken, and that the reporter is not disadvantaged.

On the basis of the Whistleblower Protection Act, an employer of at least fifty employees (generally), is required to establish a procedure for dealing with the reporting of suspicion of wrongdoing within his organization. The Act applies to suspicions of wrongdoing.⁶ The scope of the principle and best practice in the Code are broader than the statutory regulation, because the Code is also aimed at reporting irregularities. The ability to report applies to all components affiliated with the company, regardless of whether the activities of the company take place in the Netherlands or outside the Netherlands.

2.6.1 Procedure for reporting actual or suspected misconduct or irregularities

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

⁶ Article 1, Whistleblower Protection Act

2.6.2 Informing the chairman of the supervisory board

The management board should inform the chairman of the supervisory board without delay of any signs of actual or suspected material misconduct or irregularities within the company and its affiliated enterprise.

If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, employees can report this directly to the chairman of the supervisory board.

2.6.3 Notification by the external auditor

The external auditor should inform the management board and the chairman of the audit committee without delay if, during the performance of his duties, he/she discovers or suspects an instance of misconduct or irregularity. If the actual or suspected misconduct or irregularity pertains to the functioning of one or more management board members, the external auditor should report this directly to the chairman of the supervisory board.

2.6.4 Notification by the internal audit function

The internal audit function should inform the management board and the chairman of the audit committee without delay if, during the performance of his duties, he/she discovers or suspects an instance of material misconduct or irregularity. If the actual or suspected material misconduct or irregularity pertains to the functioning of one or more management board members, the internal audit function should report this to the chairman of the supervisory board.

2.6.5 Oversight by the supervisory board

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

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

Principle 2.7 Preventing conflicts of interest

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

Explanation

In Book 2 of the Dutch Civil Code⁷, the concept of conflict of interest is interpreted as a situation in which, in the case of deliberation and decision-making, a direct or indirect personal interest of a management board or supervisory board member and the interests of the company are in conflict. The concept of a conflict of interest in the Code focuses on preventing conflicts of interest in general, regardless of whether there is a conflict of interest deliberation or decision-making. In addition, the Code gives further substance to the anti-interest regulation in the law.

⁷ Article 2:129, sixth paragraph, of the Dutch Civil Code and Article 2:140, fifth paragraph, of the Dutch Civil Code

2.7.1 Preventing conflicts of interest

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

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

2.7.2 Terms of reference

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

2.7.3 Reporting

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

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

A management board member should report any potential conflict of interest in a transaction that is of material significance to the company and/or to this management board member, to the chairman of the supervisory board and to the other members of the management board without delay. The management board member should provide all relevant information on this subject, including information relevant to the situation regarding his spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree.

A supervisory board member should report any potential conflict of interest in a transaction that is of material significance to the company and/or to this supervisory board member, to the chairman of the supervisory board without delay and provide all relevant information on this subject, including information relevant to the situation regarding his spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree. If the chairman of the supervisory board has a potential conflict of interest, he must report this to the vice-chairman of the supervisory board without delay.

The supervisory board should decide, without the presence of the management board member or supervisory board member concerned, whether there is a conflict of interest.

2.7.4 Reporting transactions of management board and supervisory board members

All transactions in which there are conflicts of interest with management board members or supervisory board members, should be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with management board members or supervisory board

members that are of material significance to the company and/or to the relevant management board members or supervisory board members, should require the approval of the supervisory board. Such transactions should be published in the management report, together with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3 and 2.7.4 have been complied with.

2.7.5 Reporting transactions of majority shareholders

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

2.7.6 Personal loans

The company should not grant its management board members and supervisory board members any personal loans, guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the supervisory board. Loans should not be forgiven.

Principle 2.8 Takeover situations

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

2.8.1 Supervisory board involvement

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

2.8.2 Informing the supervisory board about a due diligence request by a competing bidder

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

2.8.3 Management board's position on a private bid

In case 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 Article 2:107a(1)(c) of the Dutch Civil Code, the management board of the company should as soon as possible make public its position on the bid and the reasons for this position.

Explanation

A private bid is in any case considered 'not serious' if it is evident that the bidder does not have sufficient financial resources to fund the bid or where there is no reasonable and sensible shareholder that would want the management board to accept the offer, for example because the amount of the bid is disproportionate to the actual value or market value business unit or participation.



CHAPTER 3.

REMUNERATION

Principle 3.1 Remuneration policy – management board

The remuneration policy applicable to management board members should be clear and understandable, should focus on sustainable 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 line with the strategy and risk appetite established. The supervisory board is responsible for formulating the remuneration policy and its implementation.

3.1.1 Remuneration policy proposal

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

3.1.2 Remuneration policy

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

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

Explanation

As of 1 December 2019, Article 2:135a of the Dutch Civil Code came into force. That article contains detailed rules on the remuneration policies of companies whose shares or subsidiaries certificates issued by the company are admitted to trading on a trading basis in a regulated market as referred to in Article 1:1 of the Financial Supervision Act. There is overlap between Article 2:135a of the Dutch Civil Code and best practice provision 3.1.2 of the Code. Because the scope of the Code is broader than the scope of the law, best practice provision 3.1.2 may nevertheless be maintained.

For companies subject to the statutory scheme and the Code, the Code is an addition to what is prescribed by law. For example, on the basis of the Code, in addition to the required companies to take into account the remuneration of the scenario analyses carried out in advance and consider the development of the share price.

In addition to the statutory scheme, shares must also be held for a period of at least five years after granting, and options are not exercised for at least the first three years after granting. For companies not covered by the amended legislation, nothing changes and best practice clause 3.1.2 will continue to apply as the main guideline for remuneration policy.

When it comes to the strategic objectives to implement sustainable long-term value creation (best practice provision 3.1.2 part i), particular attention is paid to the integration of sustainability-related objectives into remuneration policies and relevant criteria for achieving those objectives.

Scenario analyses are understood to mean that the supervisory board, when drawing up the remuneration policy and prior to the determination of the remuneration of individual management board members, analyses possible outcomes of the variable remuneration components and the impact of the remuneration of the directors. The supervisory board determines whether the outcome of the scenario analyses lead to an appropriate remuneration and whether measures are needed to reduce the remuneration.

3.1.3 Remuneration – executive committee

If the management board has an executive committee, the management board should inform the supervisory board about the remuneration of the members of the executive committee who are not management board members. The management board should discuss this remuneration with the supervisory board annually.

Principle 3.2 Determination of management board remuneration

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

3.2.1 Remuneration committee's proposal

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

3.2.2 Management board members' views on their own remuneration

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

Explanation

The vision of directors on their own remuneration is intended for the remuneration committee and is not part of the reporting about the execution of the remuneration policy.

3.2.3 Severance payments

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

Principle 3.3 Remuneration of supervisory board

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

3.3.1 Time spent and responsibility

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

3.3.2 Remuneration of supervisory board members

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

3.3.3 Share ownership

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

Principle 3.4 Reporting on execution of remuneration policy

In the remuneration report, the supervisory board reports on the execution of the remuneration policy, in a transparent manner. The report should be published on the company's website.

3.4.1 Remuneration report

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

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

Explanation

The requirements for the statutory remuneration report are laid down in Section 2:135b and, if applicable, Sections 2:383c to 2:383e of the Dutch Civil Code. Companies that prepare a statutory remuneration report are also expected to report on the components included in best practice provision 3.4.1. These components can be included in the remuneration report that is drawn up on the basis of Section 2:135b of the Dutch Civil Code.

Best practice provision 3.4.1, section ii, stipulates that the remuneration report explains how the implementation of the remuneration policy contributes to sustainable long-term value creation. It explains, among other things, how the total remuneration of directors is in line with the remuneration policy and how sustainability-related objectives have been taken into account in the implementation of the remuneration policy and how this contributes to the creation of value in the long term.

Companies are not expected to disclose the content of the scenario analyses in the remuneration report.

The term 'remuneration ratios' within the meaning of best practice provision 3.4.1(iv) means the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and the group companies whose financial data the company consolidates, where:

- i. the total annual remuneration of the CEO includes all components of remuneration (such as fixed remuneration, variable remuneration in cash (bonus), the share-based part of the remuneration, social security contributions, pension, expense allowance, etc.), as included in the (consolidated) financial statements;
- ii. the average annual remuneration of the employees is determined by dividing the total wage costs in the financial year (as included in the (consolidated) financial statements) by the average number of FTE during the financial year; and
- iii. The value of the share-based portion of the compensation is determined at the time of allocation in accordance with the applicable accounting rules under the applicable accounting rules.

The report also explains whether there are any changes in the remuneration ratios compared to at least five previous financial years. In addition to the information that may at least be expected on the basis of the aforementioned interpretation of the concept of pay ratios as referred to in best practice provision 3.4.1(iv), additional information may be provided. For example, the remuneration ratios for other directors (in addition to the CEO), the remuneration ratios broken down by the main regions in which the company operates and/or the remuneration ratios for certain reference groups of employees.

3.4.2 Employment contract management board member

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

CHAPTER 4.

THE GENERAL MEETING

Principle 4.1 The general meeting

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

Toelichting

Zoals aangegeven in de preambule, zijn het bestuur en de raad van commissarissen verantwoordelijk voor de corporate governance van de vennootschap en de naleving van de Code, waarbij geldt dat naleving is gebaseerd op het 'pas toe of leg uit'-principe. In hoofdstuk 4 van de Code zijn diverse best practice bepalingen opgenomen die zich richten op aandeelhouders. Voor zover het bestuur en de raad van commissarissen geen invloed kunnen uitoefenen op de naleving van best practice bepalingen door aandeelhouders, kan de 'pas toe of leg uit' benadering buiten toepassing worden gelaten door het bestuur respectievelijk de raad van commissarissen.

4.1.1 Supervisory board supervision

The supervisory board's supervision of the management board should include the relationships 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.

4.1.3 Agenda

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

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

4.1.4 Proposal for approval or authorisation

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

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

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

4.1.6 Placing of items on the agenda by shareholders

A shareholder should only exercise the right to put items on the agenda after having consulted the management board. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, for example as a result of the dismissal of one or more management board or supervisory board members, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). The opportunity to stipulate the response time should also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to Article 2:110 of the Dutch Civil Code. The relevant shareholder should respect the response time stipulated by the management board, within the meaning of best practice provision 4.1.7.

4.1.7 Stipulation of the response time

If the management board stipulates a response time, it should be a reasonable period that does not exceed 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting at which the item is to be dealt with. The management board should use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder (or shareholders), and should explore 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 a response time or a statutory reflection period as referred to in Article 2:114b of the Dutch Civil Code has already been stipulated.

Explanation

The statutory cooling-off period introduced in the Dutch Civil Code as of 1 May 2021 (Article 2:114b of the Dutch Civil Code), can be considered as a partial codification of the response time from the Code. Between the two sufficient differences to maintain the response time. For example, the response time can often be invoked at an earlier stage and for more subjects than the statutory cooling-off period, and the consequences of invocation are different (if the company invokes the response time, then a proposal does not have to be put on the agenda (not even as a point of discussion), which is the case with the legal cooling-off period is the case). The starting point of the statutory regulation is also that both regulations in addition to each other. The statutory regulation leaves it to the court to rule on undesirable concurrence of the statutory cooling-off period and other protective measures.

The basic principle of the Code is that in the case of the same matter, overlapping or overlapping successive application in time of the response time and the statutory cooling-off period is not desirable. To this end, the Code has added that the response time cannot be invoked if the response time is the statutory cooling-off period has been invoked earlier. In the opposite situation that first the response time and then the reflection period, it is logical that the duration of the elapsed response time is deducted from the duration of the statutory cooling-off period.

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

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

4.1.9 External auditor's attendance

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

Explanation

The chairman of the general meeting ensures that there is room to inquire with the external auditor.

The presence of the external auditor at the general meeting does not affect general accountability of the management board and the supervisory board to the general meeting, as well as their duty to – unless a compelling interest precludes this – to provide the general meeting with all the information requested. The external auditor may

only be questioned about his audit work and about his statement on the financial statements.

The content of the annual accounts is the primary responsibility of the board. It makes sense that the external auditor participates in the preparation of the general meeting. Reference is made to practice guide 1118 of the NBA on the appearance of the external auditor in the general meeting.

4.1.10 Report of the general meeting

The report of the general meeting should be made available on request to the shareholders, no later than three months after 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 do not provide the general meeting with all information desired with the invocation of an overriding interest on the part of the company, they must give reasons for this.

Explanation

Article 2:107(2) of the Dutch Civil Code states that the management board and the supervisory board must provide the general meeting with all the information requested, unless there is a compelling interest of the company that opposes it. In addition, best practice provision 4.2.1 stipulates that this compelling interest should be sufficiently motivated.

4.2.2 Contacts and dialogue with shareholders

The company should formulate a policy on bilateral contacts with the shareholders and should post this policy on its website. Shareholders and the company should be willing to have a dialogue, where appropriate and at their own discretion.

The company is expected to facilitate the dialogue unless, in the opinion of the management board, this is not in the interests of the company and its affiliated enterprise.

Shareholders are expected to be prepared to enter into a constructive dialogue with the company. If a shareholder enters into a dialogue with the company outside the context of a general meeting, the shareholder shall disclose his full share position (long and short and through derivatives) at the request of the company.

Explanation

Under Dutch company law, companies and shareholders must behave to each other according to standards of reasonableness and fairness. It is up to the board to draft a policy for contact and dialogue with shareholders outside the general meeting, and to determine whether the dialogue is in the interest of the company and its affiliates.

The shareholders' dialogue referred to in this best practice provision covers more topics than the stakeholder dialogue referred to in best practice provision 1.1.5, which is specifically aimed at the sustainability aspects of the strategy.

4.2.3 Meetings and presentations

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

4.2.4 Posting information in a separate section of the website

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

4.2.5 Management board contacts with press and analysts

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

4.2.6 Outline of anti-takeover measures

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

Principle 4.3 Casting votes

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

4.3.1 Voting as deemed fit

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

Explanation

Insofar a shareholder exercises the voting right by means of a voting advisor, it is expected from him/her to ensure that the voting advisor respects the principle of hearing and respects the rebuttal.

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 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 adopt 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 must not be set higher than 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 adopted 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 attached to financing preference shares should be based on the fair value of the capital contribution.

Explanation

Best practice provision 4.3.4 is intended in particular for future issuances of financing preference shares. This does not alter the fact that the management board and the supervisory board may agree with the holders of the existing financing preference shares to change the current control of financing preference shares.

4.3.5 Publication of institutional investors' engagement policy

Institutional investors should implement principle 4.4 when drawing up their engagement policy. Institutional investors should publish their engagement policy on their website.

4.3.6 Report on execution of the institutional investors' engagement policy

Institutional investors should report at least annually, on their website, on how they executed their engagement policy. The report should provide in any case a general description of their voting behaviour, as well as an explanation of the most significant votings and the use of the services of proxy advisors.

"Most significant votings" should be understood in any event to mean:

- i. votings on matters that have received substantive media attention or votings on items that are regarded by institutional investors as a priority in the run-up to the general meeting season;
- ii. votings on a resolution on the agenda of a general meeting (a) that is of strategic importance, or (b) where the institutional investor disagrees with the resolution of the management board; or
- iii. votings in general meetings of companies in which the institutional investor has a large holding compared to the institutional investor's holding in other investee companies.

In addition, institutional investors should report on their website at least once per quarter on whether and, if so, how they have voted as shareholders for each company and voting item. In the report, institutional investors should disclose the key points of the dialogues they have conducted with companies.

If an institutional investor votes against a resolution of the management board or abstains from voting on a resolution of the management board, the institutional investor should explain the reasons for its voting behaviour to the management board either pro-actively or at the company's request.

4.3.7 Abstaining from voting in the event of a larger short position than long position

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

4.3.8 Share lending

Shareholders should recall their lent shares before the voting record date for a general meeting of the company if the agenda for that meeting includes one or more significant matters.

The shareholder should determine what is regarded as a significant matter, but this will include, in any event, resolutions on the agenda of a general meeting:

- i. that are of strategic importance;
- ii. where the shareholder disagrees with the resolution of the management board.

Principle 4.4 Recognising the importance of company strategy

Shareholders, including institutional investors (pension funds, insurance companies, investment institutions and asset managers), recognise the importance of a strategy focused on sustainable long-term value creation for the company and its affiliated enterprise.

Principle 4.5 Issuing depositary receipts for shares

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

Depositary receipt holders 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.

4.5.1 Trust office board

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

4.5.2 Appointment of board members

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

4.5.3 Board appointment period

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

4.5.4 Attendance of the general meeting

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

4.5.5 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.

4.5.6 Periodical reporting

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.

4.5.7 Contents of the report

The report referred to in best practice provision 4.5.6 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 in section iii;
- v. the remuneration of the members of the board of the trust office;
- vi. the number of meetings held by the board 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 or ancillary positions held by the board members of the trust office; and
- x. the contact details of the trust office.

4.5.8 Voting proxies

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

CHAPTER 5.

ONE-TIER GOVERNANCE STRUCTURE

Principle 5.1 One-tier governance structure

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

Explanation

The Code is attributed to companies with a two-tier governance structure, but also applies to companies with a one-tier governance structure. In addition to Chapters 1 to and 4, Chapter 5 contains a principle and five best practice provisions that are specifically applicable to the companies with a one-tier governance structure.

Provisions in the Code that relate to supervisory board members apply to non-executive directors, without prejudice to the other responsibilities of those non-executive directors. Where that is not possible, the 'comply or explain' principle applies.

5.1.1 Composition of the board of directors

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

Explanation

The independence requirements for supervisory board members apply in full to non-executive directors. Best practice provision 2.1.8(i) stipulates that a supervisory board member is not seen as independent if he has been an employee or management board member in the five years prior to his appointment. For a company with a one-tier governance structure, 'management board member' is referred to as 'executive director'.

5.1.2 Chairman of the board of directors

The chairman of the board of directors chairs the meetings of the board. The chairman of the board of directors should ensure that the board collectively, and its committees, have a balanced composition and function properly.

Explanation

Tasks specifically assigned to the chairman of the supervisory board in Chapters 1 to 4 of the Code, in a company with a one-tier governance structure are assigned to the chairman of the board of directors.

5.1.3 Independence of the chairman of the board of directors

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

5.1.4 Composition of committees

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

Explanation

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

Reporting on supervision by non-executive directors

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

Explanation

The reporting by non-executive directors can be part of the management report or can be included in a separate report. The report is published with the annual accounts.

ENTRY INTO FORCE

This Code will come into force as of the financial year starting on or after 1 January 2025. The Committee recommends that companies submit to the general meeting, as a separate agenda item in 2026, the chapter in the report of the management board broadly outlining the corporate governance structure and compliance with this Code.

Where principles or best practice provisions in this Code, compared with the Code adopted in 2022, require changes to rules, regulations, procedures or other written records, a company will be deemed to be compliant with this Code if such changes have been implemented no later than 31 December 2025.

