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The International Comparative Legal Guide to:

# Corporate Governance 2019

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A practical cross-border insight into corporate governance

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## Country Question and Answer Chapters:



## EDITORIAL

Welcome to the twelfth edition of The International Comparative Legal Guide to: Corporate Governance.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

Seven general chapters. These are designed to provide an overview of key issues affecting corporate governance law, particularly from a multi-jurisdictional perspective.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 33 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Sabastian V. Niles & Adam O. Emmerich of Wachtell, Lipton, Rosen & Katz for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Chapter 28

# Netherlands


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## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

Under Dutch law, there are various types of corporate entities. The most common Dutch corporate entities are: (i) the private limited liability company (*besloten vennootschap met beperkte aansprekelijkheid* or "BV"); (ii) the public limited liability company (*naamloze vennootschap* or "NV"); and (iii) the cooperative (*coöperatie* or "Coop"). BVs and NVs are limited liability companies. The following three different liability arrangements may be chosen for a Coop: (i) statutory liability (*wettelijke aansprakelijkheid* or "W.A."); (ii) excluded liability (*uitgesloten aansprakelijkheid* or "U.A."); or (iii) limited liability (*beperkte aansprakelijkheid* or "B.A."). The selected liability arrangement should be mentioned in each specific Coop's statutory name. In deviation of a BV and an NV, a Coop does not have shareholders and shares, but has members and memberships.

A business that does not seek to make profit distributions can also be organised in the form of a foundation (*stichting*). A foundation is not allowed to have any shares or memberships. In addition, a foundation is in most cases not allowed to make a profit distribution. A publicly traded company, itself most often an NV, may use a foundation in relation to the implementation of an anti-takeover measure. Smaller family controlled non-publicly traded, companies may use a foundation for participation plans for family members or other investors in an effort to limit the loss of family control.

Under Dutch law, there are also several types of legal trading forms without legal personality. Most well-known is the general partnership (*vennootschap onder firma* or "VOF") which is commonly used for joint ventures. The joint venture partners will exercise control and they will be jointly and severally liable for debts of the VOF.

This chapter will predominantly focus on the BV and the NV, unless stipulated otherwise.

### 1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

Dutch corporate law is primarily found in the Dutch Civil Code ("DCC"). Topics covered in the DCC for the BV and the NV are: (i) the shares; (ii) the capital of the company; (iii) the general meeting of shareholders; (iv) the management board and supervision on the management board; (v) the so-called "large company regime" (*structuurregime*, as described in question 3.1 below); and (vi) the balanced allocation of seats among men and women for boards of certain BVs and NVs. The majority of these topics are incorporated by reference for the Coop. The law applicable to legal trading forms without legal personality are addressed in the Dutch commercial code (*Wetboek van Koophandel*). European legal entities (e.g., the *societas Europaea* or "SE") are not addressed in this chapter, albeit that if an SE is domiciled in the Netherlands, the rules applicable to NVs will largely apply *mutatis mutandis* to such an SE.

In addition, the DCC contains legislation for all legal entities regarding the company's annual accounts. Pursuant to these provisions, publicly traded companies in the Netherlands must disclose compliance with a code of conduct in its annual accounts on a comply-or-explain basis. This so-called Corporate Governance Code ("Code") comprises of principles and best practice standards. The provisions laid down in the Code are not legally binding. In case a company deviates from the Code, it should say so and explain why a provision is not applied.

The articles of association (the "Articles") of a company may be another source of corporate governance rules applicable to the specific company. The Articles may contain clauses that deviate from the DCC if the DCC allows doing so. Generally, the Articles may state that a supermajority is required for corporate resolutions identified therein.

### 1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

In 2016, a revised Code was published. Publicly traded Dutch companies are to follow this new Code on a comply-or-explain basis in their 2017 annual accounts (i.e., as of 2018). The revised Code has given a central role to long-term value creation, and the introduction of "culture" as a component of effective corporate governance.

Another trend is the increase in more active shareholder engagement in the Netherlands. Recent examples include (i) shareholder engagement on an unsolicited public bid on AkzoNobel (by PPG), (ii) discussions that led to a bid price increase with respect to Qualcomm's bid for NXP Semiconductors, and (iii) shareholder involvement on discussions regarding Ahold Delhaize (i.e., the continued validity of Ahold Delhaize's anti-takeover device). These developments have caused debates in the Dutch parliament. In October 2017, the Dutch coalition government proposed to take measures aimed to shift influence from shareholders for boards to focus on long-term sustainable value creation. To this end, the coalition government published a draft bill in December 2018

dealing with the possibility of invoking a 250-day cooling-off period by the board of a listed NV when facing proposal by activist shareholders, or as part of a non-solicited public bid approach, in which changes are sought to board composition.

**1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?**

Dutch corporate law states that the executive management board ("Management Board") members must act in the best interest of the company, including its business and its stakeholders as a whole, including the company's shareholders and its employees, suppliers and customers, among others.

The Dutch corporate governance principles are primarily based on a stakeholders model. This means predominantly that sustainable value creation for all stakeholders is promoted in the Netherlands. According to the Code, the Management Board must develop, with adequate involvement of the supervisory board (if any), a vision aimed at long-term value creation and formulate an appropriate strategy. In addition, Dutch publicly traded companies must disclose in their management reports the relevant company's values and the manner in which these are implemented at the company and the effectiveness of, and compliance with, the company's code of conduct. A recent burst of action by activist shareholders in the Netherlands appears to have shown both the resilience of the Dutch stakeholder model and the limits thereof as imposed by the Dutch courts and (*de facto*) international institutional shareholders.

## 2 Shareholders

**2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?**

Neither the Board, nor the GM may exceed the boundaries of its powers under the law and the Articles. The determination of the company's strategy is the sole discretion of the Management Board under the supervision of the supervisory board, if any. Also, shareholders are, in principle, not allowed to request precatory votes such as an advisory voting item or a poll. The Management Board, however, is accountable to the GM with respect to the company's strategy.

In principle, shareholders do have the right to dismiss Management Board members. In addition, if shareholders do not agree with the company's strategic direction, shareholders may request the Enterprise Chamber at the Amsterdam Court of Appeals to start an enquiry procedure as further described in question 2.5 below.

**2.2 What responsibilities, if any, do shareholders have as regards to the corporate governance of the corporate entity/entities in which they are invested?**

In principle, shareholders are obliged to fully pay up the issued capital on the shares they own (which is typically done immediately upon issuance). It may be agreed that the nominal value, or part of it, must first be deposited after a certain period of time or after the company has called its capital. As of 2012, a BV may have shares that do not have a nominal value. In that case, shares do not need to be fully paid-up and shareholders are not necessarily required to pay a minimal amount.

A BV's Articles may impose additional obligations on shareholders of a BV. Such obligations may include (in the case of a BV) obligations of a contractual nature such as an obligation to finance the company if certain conditions are met, or the obligation to accept or supply certain goods or services under pre-set conditions.

**2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have as regards to such meetings?**

After the end of a company's fiscal year, the company should have its annual GM. In this GM, shareholders will resolve on the adoption of the company's annual accounts. Shareholders may also decide to extend the deadline for adoption. Typically, boards will propose to shareholders a release of liability of the board towards the company with respect to the performance of its duties over the past fiscal year, to be adopted immediately following adoption of the annual report. Any such release will be solely based on, and be limited to the information disclosed in, the annual report. If the company's Articles provide for annual director elections, these will typically be done during the annual GM. On an annual basis many companies will also obtain from shareholders a delegation to buy back shares as well as a limited delegation to issue new shares. In addition, an extraordinary GM may be held to resolve on various matters belonging to shareholders.

Dutch law also allows for GMs of holders of a certain class of shares if such GM of holders of a certain class of shares is provided for in the Articles. Special rights may be awarded to the GM of holders of a certain class of shares, such as (for instance) the preparation of binding nominations for the appointment of Management Board members.

In principle, a GM is called by the Management Board, or by the supervisory board. The Articles may also grant such right to others. Holders of shares or depositary receipts issued for shares are allowed to, in person or by means of a written proxy, attend and speak during a GM and may exercise their voting rights. Shareholders of a BV that, alone or jointly, hold more than 1% of the issued capital, may request that an item be put on the agenda, provided that the request is made no later than the thirtieth day prior to the date of the GM and that it does not conflict with a substantial interest of the company. Shareholders of an NV may do so as well, if they, alone or jointly, hold more than 3% of the issued capital, provided that such request is made no later than the sixtieth day prior to the date of that GM. A company's Articles may provide for a lower threshold.

Shareholders that, alone or jointly, hold more than 10% of the issued capital may be authorised by the court at their request to convene a GM. Such request shall be denied if it does not appear that shareholders have written to the Management Board and supervisory board requesting a GM and stating the exact matters to be considered, and the Management Board or supervisory board has not taken the necessary steps so that the GM could be held within six weeks of the request.

Pursuant to the DCC, the Management Board must provide all information to the GM that it requires to fulfil its role. This right pertains to shareholders jointly since shareholders should, in principle, be treated equally. In this respect, the DCC states that equal rights and obligations are attached to all shares in proportion to their amount, unless provided otherwise in the Articles. However, each individual shareholder has the right to be provided with all the required information if it submits an individual request during a GM. The Management Board may refuse a request for information if there is a compelling corporate reason for not providing the information.

**2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?**

In principle, shareholders are not liable for acts or omissions of the corporate entity. However, if a shareholder acts as *de facto* director of the company, the *de facto* director may be liable. As a general rule, the involvement as a shareholder in the day-to-day management of the company and the internal decision-making process must be substantial before liability might arise.

According to Dutch case law, a shareholder may also be liable for the debts of its subsidiaries. Such liability, if any, depends on specific circumstances including the interwovenness (*vereenzelviging*) of the group companies, combined with the subsidiaries' risk management of operations that may lead to a duty of care of the parent towards the creditors of its subsidiaries. A parent may also be liable for the debts of its subsidiaries if the difference between the parent and its subsidiary is minimal and that difference can be eliminated in thought.

Although this will not easily lead to liability, shareholders are to interact within the company in line with general principles of reasonableness and fairness, and *vice versa*. This may include a limitation on a major(ity) shareholder's ability to (ab)use its powers when such (ab)use might lead to disproportionate damage to minority shareholders. In addition, the new EU shareholder rights directive II has to be implemented by 10 June 2019 in the Netherlands. The directive facilitates the exercise of shareholder rights and encourages shareholder engagement. For example, institutional investors should publicly disclose how their investment strategy contributes to the medium to long-term performance of their assets, as further described under question 2.7 below.

**2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?**

The Enterprise Chamber at the Amsterdam Court of Appeals (the "EC") is a specialised court that deals with disputes within companies. Shareholders who, alone or jointly, hold more than a certain statutory threshold may request the EC to start enquiry proceedings. Generally, the statutory thresholds that holders of shares or depositary receipts issued for shares of a BV or an NV are required to hold is at least 10% of all issued and outstanding shares up to a maximum of EUR 225,000 in nominal value. If a Dutch company is listed on a regulated market and the issued capital exceeds EUR 22.5 million, holders of shares or depositary receipts issued for shares, should solely or jointly represent at least 1% of the issued capital. The Articles of a company may set a lower threshold.

An enquiry proceeding is an investigation into potential mismanagement concerning the capital or governance of the company. If the EC judges an enquiry is justified, the EC can take a broad range of temporary actions. If, after completion of the enquiry, the EC holds that mismanagement has in fact occurred, it can take similar actions and other remedies to ensure proper management on a more permanent nature.

The right to call a GM can be enforced in the district court. Although it is possible to hold board members liable in tort, such action are relatively rare and derivative suits are not possible under Dutch law.

**2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?**

According to the Dutch Financial Supervision Act ("DFSA"), a shareholder who, directly or indirectly, obtains or loses capital or voting rights in a listed company which exceeds or falls below a certain threshold, must, without delay, notify the Dutch Authority for the Financial Market ("AFM") of its holdings and the relevant change. The threshold values for the purpose of this obligation are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75%, and 95%.

Shareholders that hold 100% of the company's capital must be so registered in the Dutch trade register. In addition, proposed European Union legislation that aims to prevent money laundering may impact the identification of ultimate beneficiary owners ("UBOs") under a fourth and a proposed fifth anti-money laundering directive. According to this (proposed) legislation, UBOs may be natural persons that, amongst other things, (indirectly) hold more than 25% in the capital of a company, hold more than 25% of the voting rights in the GM, or have actual control in the company. The fourth directive should have been implemented in Dutch legislation by 26 June 2017, but the Netherlands have suspended implementation awaiting the fifth directive.

**2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?**

Shareholders are currently not required by Dutch law to disclose their intentions, plans or proposals with respect to the company in which they are invested. However, the EU shareholder rights directive II is being implemented in the Netherlands. According to this directive, institutional investors and asset managers must develop and disclose shareholders engagement policies on their website on a comply-or-explain basis. Their investment strategy must be transparent, including the way in which it contributes to the medium- to long-term performance of the institutional investor's portfolio or fund.

**2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?**

As described under question 1.3 above, shareholder engagement in the Netherlands has become more active in recent years. This has led to a draft bill in connection with the invocation of a 250-day cooling-off period. In short, the Management Board of a listed NV may invoke a statutory cooling-off period if: (i) shareholders request the consideration of a proposal to appoint, suspend or dismiss one or more board members; or (ii) a public bid has been announced without agreement on that bid having been reached, provided in both cases, however, that the request is substantially contrary to the interest of the company and its business. During the 250-day cooling-off period, shareholders may not appoint, suspend or dismiss board members, unless such dismissal, appointment or suspension has been put on the agenda of a GM by the company as a voting item. The draft bill is criticised, however, and developments will become clearer over the months to come. Other than this, shareholder activism is not specifically regulated in the Netherlands at this time.

## 3 Management Body and Management

### 3.1 Who manages the corporate entity/entities and how?

Dutch law allows for a one-tier board governance structure, or a two-tier board governance structure. A one-tier board structure may consist of only executive directors or both executive and non-executive directors in a single corporate body. When a two-tier board structure is applied, the company's Articles will provide for a Management Board consisting of executive directors, and a supervisory board consisting of non-executive directors (also called supervisory directors) in two separate corporate bodies. In a one-tier board structure, the Articles may provide for non-executive directors sitting on the same board jointly with the company's executive directors.

The company is required to install a supervisory board, or appoint non-executive directors, if the company files a statement that it qualifies as "Large" according to the DCC for three consecutive years. Such a statement must be filed, if (i) according to the company's balance sheet, the total issued capital plus its reserves amounts to EUR 16 million, (ii) the company (or a dependent company) has established a works council pursuant to a legal obligation to do so, and (iii) the company and its dependent companies together normally employ at least one hundred employees in the Netherlands. Certain full or partial exemptions may apply if, amongst other things, the company is considered a financial holding company whereby the majority of the employees work outside the Netherlands, or the company virtually exclusively renders certain management and financing services to its group.

The Management Board manages the corporate entity subject to limitations as set out in the company's Articles. However, the Articles may stipulate that certain Management Board resolutions are subject to prior shareholder or non-executive approval. If the company qualifies as a Large company, certain board resolutions are mandatorily subject to approval of the non-executive directors.

The Management Board should consist of at least one member. Both natural persons and legal entities can be Management Board members. The Articles may provide further criteria, which a Management Board member has to qualify for. A Management Board member of a company that is considered large for accounting purposes may not be appointed if that person is a supervisory board member or non-executive director at more than two other companies, or that person is the chairman of the supervisory board or the chairman of the board in a one-tier structure.

Separately, bigger companies tend to install an executive committee. An executive committee is not a corporate body and is only referred to in the Code. According to the Code, an executive committee is a committee that is closely involved in the decision-making of the Management Board, and that, in addition to Management Board members, may also include members of senior management.

### 3.2 How are members of the management body appointed and removed?

Management Board members are first appointed in the deed of incorporation of the company. Afterwards, Management Board members are appointed and dismissed by a resolution of the GM. According to the DCC, a normal majority in the GM is required for appointments, suspensions or dismissals. The Articles of a company may state that a larger majority is required. However, it is not permitted that a larger majority needed for the suspension or dismissal of a member of the Management Board requires more than two-thirds of the votes cast, where two-thirds represent more than 50% of the issued and outstanding capital.

If a company is a Large company, the company must install a supervisory board, or appoint non-executives on its Management Board. Executive Management Board members in a Large company are appointed by the supervisory board or by the non-executive directors for a two-tier or one-tier board structure, respectively, which appointment may not be limited by a binding nomination.

Although it is not a constitutive requirement for the validity of the appointment or dismissal, the appointment or dismissal of a Management Board member should be registered with the Dutch trade register.

### 3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

A Management Board member may have an employment agreement, or management agreement with the company. A company may agree with a Management Board member that he, she or it is not entitled to any compensation. Termination of board membership by a company's GM will automatically lead to termination of the employment relationship between the company and the director concerned (without prejudice to any agreed upon severance payments).

According to the DCC, the GM determines the remuneration of Management Board members of a BV, unless the Articles provide otherwise. An NV should have a remuneration policy that is set by the GM. The draft regulation for implementing the EU shareholder rights directive II allows that the remuneration report for small and medium-sized NVs are to be submitted to the GM as a discussion item. In addition, if the NV has a works council, the works council has the right to present its views on the policy before the policy is proposed to the GM.

According to the Code, a publicly traded Dutch company should install a remuneration committee if the supervisory board consists of more than four members. The remuneration committee should draw up a clear and understandable proposal to the supervisory board as a whole concerning the remuneration policy to be pursued with regard to the Management Board. The supervisory board should present the policy to the GM for adoption. The supervisory board determines the remuneration of the individual Management Board members, within the limits of the remuneration policy adopted by the GM. The GM may award remuneration to the supervisory board members or non-executive directors.

Management Board members may be granted certain types of bonuses. Bonuses may include profit-sharing programmes, or share-option arrangements linked to certain targets. If a bonus has been paid based on incorrect information about the achievement of the targets, the company has the power to claim repayment of the bonus in whole, or in part.

### 3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Management Board members are, in principle, not required to disclose their interests in securities held. However, if a company is listed in the Netherlands, Management Board members and supervisory board members should disclose their shares and voting

rights and changes in these share holdings and voting rights where these concern (rights to acquire) shares in their company and in affiliated issuers to the AFM. In addition, any manager of the company should disclose transactions that have been performed by them in shares or debt instruments of the company or derivatives or other financial instruments linked thereto to the AFM. The AFM keeps registers of the above filings, which are publicly available on the website of the AFM.

### 3.5 What is the process for meetings of members of the management body?

The chairman of the Management Board or any director may generally call a Management Board meeting at its own initiative. The notice shall be given in writing, or e-mail and must be delivered timely prior to the date of the meeting, in such a manner that the Management Board members are able to properly prepare for the meeting. The Articles may contain requirements with respect to the notice of or the agenda of the Management Board meeting. In principle, the meetings of the Management Board will be held at the company's head office, or at such other location as may be agreed by the Management Board. The meetings shall be conducted in a language which the Management Board decides.

At a Management Board meeting, resolutions can be adopted by a majority of votes cast at the meeting, unless the Articles prescribe a higher majority or a quorum. Resolutions of the Management Board may also be adopted outside of a meeting if the Articles provide so. As set out in this chapter, certain resolutions may be subject to prior approval of the GM or another corporate body.

The secretary of the Management Board must prepare minutes of the meeting reflecting the discussions held and decisions made during the meeting. These minutes may be prepared in English and are circulated by the secretary following the Management Board meeting.

### 3.6 What are the principal general legal duties and liabilities of members of the management body?

The main responsibilities of the Management Board include: (i) managing the general course of affairs of the company and its business, including the company's strategy; (ii) bookkeeping and the proper administration of the company's records; (iii) preparing and filing the company's annual accounts in a timely manner; (iv) representing the company; and (v) approving dividend distributions (the latter subject to definitive approval by the GM).

Management Board members are required to have at least such level of expertise as may be expected from a diligent board member in a similar situation. Management Board members do have discretionary room in managing the company.

Article 2:9 DCC lays down rules for the liability of a Management Board member to the company if this member has performed its duties improperly. Generally, a serious reproach (*ernstig verwijt*) is required for personal liability of a Management Board member to arise. Management Board members are jointly and severally liable. A Management Board member has the opportunity to exculpate himself if he cannot be reproached for the relevant shortcoming and if he has not been negligent in acting to prevent the consequences of improper management.

In case of insolvency of the company, the bankruptcy trustee may hold a Management Board member liable for the entire deficit in bankruptcy if the Management Board has manifestly performed its duties improperly. If the company has not timely filed its annual accounts or has not properly kept the company's administration, this results in (i) a presumption of improper performance of duties by Management Board members, including *de facto* Management Board members, and (ii) a rebuttable presumption that such improper performance played a significant role in causing the bankruptcy during a three-year window.

### 3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

As described in question 1.3 above, the main corporate governance challenge for Management Boards in the Netherlands these days appears to be the more active levels of shareholder engagement in recent years.

### 3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

The GM can discharge a Management Board member of director liability. Such discharge has a limited effect. Discharge only relates to facts and circumstances that were known to the shareholders at the time the discharge was granted.

A general exoneration of a Management Board member by the company beforehand for causing loss or damage as a result of serious mismanagement is not allowed. A company can enter into an agreement with a Management Board member for the payment of legal defence costs and to indemnify against other liabilities in case a Management Board member is otherwise held liable. It is also quite typical to lay down a general board indemnification in the company's Articles. In addition, directors' and officers' insurance contracts are typically in place.

### 3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

As described in question 2.1 above, determining the company's strategy belongs to the powers and duties of the Management Board. However, if the Management Board of an NV (i) plans to sell the business, or a substantial part thereof to a third party, (ii) the company enters into or terminates a long-term cooperation with another legal entity that has a substantial impact on the company, or (iii) the company acquires or divests an interest having a value of at least one-third of the amount of its assets, prior approval of the GM is required. In addition, if a works council has been set up by a BV or NV, the works council in some strategic cases has the right to be consulted or works council approval is required. As noted above, in performing its duties the board is ultimately subject to shareholder oversight.

## 4 Other Stakeholders

### 4.1 What, if any, is the role of employees in corporate governance?

In principle, if a company continuously employs at least 50 employees, it should install a works council. The works council has a right to advice on certain topics. These topics include, amongst other things, a significant reduction, expansion or other change in the company's activities, a significant change in the company's

organisation, or a significant reduction, expansion, or other change in the company's activities. In addition, approval of the works council is required for, amongst other things, any arrangement relating to working conditions, absenteeism, or the company's reintegration policy. If the company qualifies as Large, the supervisory board shall nominate and propose persons recommended by the works council for one-third (rounded down) of the number of members of the supervisory board.

### 4.2 What, if any, is the role of other stakeholders in corporate governance?

There is no active role for other stakeholders in corporate governance. However, when determining its policy, the company should take the interests of all stakeholders into account at any time.

### 4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

As described in question 1.3 above, culture is considered an effective component of corporate governance. In addition, certain social corporate governance aspects need to be disclosed as described in question 5.2 below.

## 5 Transparency and Reporting

### 5.1 Who is responsible for disclosure and transparency?

According to the DCC, the Management Board must prepare its annual accounts within five months after the end of the company's financial year. After preparation, the GM must adopt the annual accounts within two months. After adoption, the annual accounts need to be publicly filed with the Dutch trade register within eight days after adoption. In special circumstances, the GM may extend the preparation period by explicit resolution thereto for up to five months. In any event, the annual accounts have to be filed with the Dutch trade register within 12 months after the end of the company's financial year. If an NV is listed on a regulated market (i.e., a market regulated in the European Economic Area), its annual accounts must be prepared within four months. This term may not be extended. Other disclosures are predominantly the responsibility of the Management Board.

### 5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

According to the DCC, if a company is considered large for accounting purposes, the company should also address non-financial indicators in its annual reporting. Disclosure should include (i) a brief description of the company's business model, (ii) a description of policies pursued regarding environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters, (iii) principal risks related to those matters, and (iv) non-financial key performance indicators relevant to the particular business of the company.

If a Dutch company is listed on a regulated market, it should announce the calling of a GM on its website and therewith disclose, among other things, (i) the agenda, (ii) time and place of the GM, (iii) the procedure to attend the GM, and (iv) the explanatory notes. After such GM is held, the company should also disclose the voting results.

### 5.3 What is the role of audit and auditors in such disclosures?

The company shall give instructions for the audit of the annual accounts to a registered accountant, an accountant-administrator, or a statutory auditor. If a legal person is a public interest organisation (*oob*) such as a listed company, the appointment shall be notified to the AFM. The accountant shall examine whether the annual accounts provide the required true and fair view. There is no obligation to audit the annual accounts of smaller entities as determined in accounting legislation.

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Alexander Kaarls, who is Head of Houthoff's Corporate/M&A practice, has a practice that focuses on corporate and securities laws, with a particular focus on cross-border mergers, acquisitions and capital markets transactions. He also regularly advises clients on corporate governance, joint venture, securities laws compliance, and general cross-border matters. Alexander has been ranked as the Netherlands' 'leading M&A lawyer' by the Dutch M&A website and database OverFusies several times (based on total deal value) and he represented leading participants in most of the contested public takeover situations that have taken place in the Netherlands over the past 20 years.

Alexander has authored and co-authored articles published in, among others, the *International Financial Law Review*, the *International Comparative Legal Guide to: Mergers & Acquisitions*, the *International Law Practicum*, the *European Lawyer*, *Advocatenblad* (the Netherlands Bar periodical) and *Maandblad voor Vermogensrecht* (a leading Dutch periodical on contract law).

Alexander is a member of the Netherlands Bar (since 1993) and the California Bar (since 2002). He joined Houthoff in 2004, after spending 10 years practicing with Skadden, Arps, Slate, Meagher & Flom LLP in London, Brussels and Palo Alto (California).

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Duco Poppema is a lawyer in Houthoff's Corporate/M&A practice group. He specialises in public and private M&A transactions and capital markets transactions, including initial public offerings (IPOs). He also gives advice to listed and non-listed companies on ongoing obligations and corporate governance matters. Duco graduated from Leiden University with a Master's degree in corporate law in 2016. He graduated from University College London (UCL) with a Master's degree in management with an emphasis on finance in 2017. He was admitted to the Bar in Amsterdam in 2018.

HOUTHOFF

Houthoff is a leading Netherlands-based law firm with over 310 lawyers worldwide. Focusing on complex transactions and dispute resolution matters, the firm typically advises domestic and international corporations, financial institutions, private equity houses and governments on a wide variety of matters, including those that may have key strategic impact or present the most significant challenges to the organisation. In addition to its offices in Amsterdam and Rotterdam, Houthoff has offices in London, Brussels and New York, and representatives in Singapore, Houston and Tokyo. On cross-border matters, the firm frequently works jointly with leading New York and London-based firms, as well as major firms in other global economic centres. The firm's attorneys seek to deliver proactive, efficient and cost-effective advice of the highest quality in a timely manner, every day. Houthoff has strong ties with clients in emerging markets, including China and Brazil.

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