Dutch corporate governance code

as of 1 January 2009*)

Principles of good corporate governance and best practice provisions
Translation by the Monitoring Commissie Corporate Governance Code
(www.commissiecorporategovernance.nl/)

***)** *This Code merely provides guidelines for proper conduct. It is not an official Code issued by a governmental body with legislative powers.*

Preamble

1. The Corporate Governance Code Monitoring Committee (referred to below as the Committee) has amended the Dutch Corporate Governance Code (referred to below as the Code) of December 2003 at the request of the National Federation of Christian Trade Unions in the Netherlands (CNV), Eumedion, the Federation of Dutch Trade Unions (FNV), the Netherlands Centre of Executive and Supervisory Directors (NCD), NYSE Euronext, the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). The government has supported this request. The amended Code replaces the 2003 Code.

2. The Code applies to all companies whose registered offices are in the Netherlands and whose shares or depositary receipts for shares have been admitted to listing on a stock exchange, or more specifically to trading on a regulated market or a comparable system, and to all large companies whose registered offices are in the Netherlands (balance sheet value > € 500 million) and whose shares or depositary receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system (referred to below as listed companies).***1)*** The Code does not apply to an investment company that is not a manager within the meaning of Section 1:1 of the Financial Supervision Act (Wet op het financieel toezicht / Wft). For the purposes of the Code holders of depositary receipts issued with the cooperation of the company are treated as shareholders.

1) The Royal Decree of 23 December 2004 adopting further rules on the contents of the annual report (Bulletin of Acts and Decrees 747) is amended in this connection.

3. The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders (i.e. the general meeting of shareholders). Relations between the company and its employees (staff representatives) are regulated elsewhere. Nonetheless, the interests of the employees should be taken into account when the interests of all stakeholders are weighed in connection with compliance with the Code.

4. The principles may be regarded as reflecting the general views on good corporate governance, which enjoy wide support. They have been elaborated in the form of specific best practice provisions. These provisions create a set of standards governing the conduct of management board members, supervisory board members and shareholders. They reflect national and international best practices and may be regarded as elaborating the general principles of good corporate governance. Listed companies may depart from the best practice provisions. Departures may be justified in certain circumstances. Shareholders, the media, businesses that specialise in rating the corporate governance structure of listed companies and persons who advise on the exercise of voting rights attaching to shares should carefully assess the reason for each and every departure from the Code's provisions. Both shareholders and the management and supervisory boards should be prepared to enter into a dialogue on the reasons for any departures. The company should state each year in its annual report how it applied the principles and best practice provisions of the Code in the past year

and should, where applicable, carefully explain why a 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.

5. The Code is not an isolated set of rules, but part of a larger system, together with Dutch and European legislation and case law on corporate governance, which must be viewed in its entirety. The particular merit of the Code as an instrument of self-regulation lies above all in its influence on the behaviour of management board members, supervisory board members and shareholders. The strength of the Code is proportionate to the extent to which the company's stakeholders endorse it and try to comply with it.

6. The amendments to the Code are based on the existing legislation and case law on the external and internal relationships of listed companies and on the case law, and allow for relevant corporate governance trends since the Code's entry into force. For the sake of the Code's readability and its internal coherence the Committee has decided that any overlap between the legislation and the Code is inherent in the Code's function and need not necessarily result in amendments to the Code, also because the Code may contain provisions that supplement the statutory provisions. If a principle or best practice provision corresponds with a statutory rule, this may mean that a company or shareholder is not allowed to depart from the relevant provision, not even when reasons are given. An example is the parts of the Code dealing with the audit committee, which have been elevated to the status of statutory rule.*2)*

2) Decree of 26 July 2008 implementing Article 41 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of financial statements and consolidated financial statements, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Bulletin of Acts and Decrees 323).

7. The Code is based on the principle accepted in the Netherlands that a company is a long-term alliance between the various parties involved in the company. The stakeholders are the groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company's objects: i.e. employees, shareholders and other lenders, suppliers, customers, the public sector and civil society. The management board and the supervisory board have overall responsibility for weighing up these interests, generally with a view to ensuring the continuity of the enterprise, while the company endeavours to create long-term shareholder value.

8. The management board and the supervisory board should take account of the interests of the various stakeholders, including corporate social responsibility issues that are relevant to the enterprise. If stakeholders are to cooperate within and with the company, it is essential for them to be confident that their interests are represented. Good entrepreneurship, which includes integrity and transparency of the management board's actions, as well as effective supervision of their actions and accountability for such supervision, are essential conditions for stakeholder confidence in management and supervision. These are the two pillars on which good corporate governance is founded and which are the basis of this Code.

9. The management board is responsible for weighing up the different interests with respect to the company's strategy, while the supervisory board must oversee this process. Both these organs are accountable to the general meeting for the performance of their roles. Unlike the management board and the supervisory board, the other stakeholders of the company are not in principle guided exclusively by the interests of the company and its affiliated enterprise. For example, shareholders can give priority to their own interests with due regard for the principle of reasonableness and fairness. The greater the interest which the shareholder has in a company, the greater is his responsibility to the company, the minority shareholders and other stakeholders.

10. The above principles can cause tension between on the one hand the management and supervisory boards, which have to serve the interests of the company and are accountable for this to the general meeting and, on the other, the shareholders, who are, in principle, free to put their own

interests first. How this tension should be resolved will differ from case to case. The Code contains general rules of conduct designed to ensure the careful handling of the processes involving the management board, the supervisory board and the shareholders (in particular, the general meeting of shareholders) and to help the management board and the supervisory board weigh up the different interests correctly. Good relations between the various stakeholders are of great importance in this connection, particularly through a continuous and constructive dialogue.

11. The tension described above may become especially pronounced in takeover situations. It has been seen in practice that when various alternatives have to be compared during takeover negotiations, the highest price for the shares is often a major factor. However, decision-making should also take account of other relevant interests. Partly in view of the risk that particular interests may gain the upper hand in takeover situations, the special involvement of the supervisory board is required in cases where, for example, the shares are acquired by means of a public bid or where a company makes a substantial acquisition. This involvement does not detract from the responsibility of the management board.

12. A different sort of tension may also occur between the remuneration policy of companies and their strategy. It is important for the remuneration policy of companies to be closely aligned with the strategy and the related risks. This applies to the remuneration of both the management board and the other levels of the organisation. Remuneration policy, like the other instruments deployed by the company, can help it to achieve its objectives, but it can also seriously jeopardise such efforts. In this respect the supervisory board must play its oversight role. The supervisory board ensures that the right balance is struck for the enterprise between (a) the fixed and variable components of the remuneration and (b) the short and longer term remuneration. Ultimately, remuneration policy must serve the interests of the company and its affiliated enterprise, in other words be aimed at creating long-term value.

13. The 2003 Code was designated as a code of conduct within the meaning of Article 2:391, paragraph 5, of the Netherlands Civil Code by order in council of 30 December 2004. This means that since 1 January 2004 listed companies have been obliged to report on compliance with the Code in their annual report and to explain why any of the principles and best practice provisions intended for the management and supervisory boards are not applied. The statutory requirements to be met by this corporate governance statement are being extended in order to implement European (accounting) directives.3) For example, the chief characteristics of the internal risk management and control systems connected with the company's financial reporting process have to be included in the statement, which must be verified by the auditor. Under Section 5:86 of the Financial Supervision Act, Dutch institutional investors have been obliged from 1 January 2007 to include in their annual report or on their websites a statement about their compliance with the best practice provisions applicable to them.

3) Bill to amend Book 2 of the Netherlands Civil Code in order to implement Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the financial statements and consolidated financial statements (OJ EU L 224) (Parliamentary Papers II 2007/08, 31 508, no. 2)

14. The Code consists of this preamble, the principles, the best practice provisions and an explanation of and notes to certain terms used in the Code. The Code is divided into five chapters: (I) compliance with and enforcement of the Code; (II) the management board; (III) the supervisory board; (IV) the shareholders and the general meeting of shareholders; and (V) the audit of the financial reporting and the position of the internal audit function and the external auditor. All these chapters contain principles and best practice provisions for listed companies. Chapter IV also contains provisions for shareholders, including institutional investors and trust offices that administer shares for which depositary receipts have been issued. Chapter V contains some provisions for the external auditor.

15. The Code is based on the system in which a separate supervisory board exists alongside the management board, whether under the statutory two-tier rules (structuurregime) or otherwise. Chapter III.8 contains a number of specific provisions for companies that have a one-tier structure. In November 2008, the government presented to the Lower House of Dutch Parliament a bill containing rules for cases in which executive and non-executive directors form part of one board (one-tier board structure)4). The bill also proposes a new scheme for resolving conflicts of interest involving management and supervisory board members, which is in keeping with the provisions of the Code.

4) Bill to amend Book 2 of the Netherlands Civil Code in connection with the adjustment of the rules governing management and supervision in public and private limited companies (Parliamentary Papers II 2008/09, 31 763, no. 2)

16. The amended Code will come into force with effect from the financial year starting on or after 1 January 2009. The Committee recommends that listed companies include a chapter in their annual report on the broad outline of their corporate governance structure and compliance with the amended Code and present this chapter to the general meeting in 2010 for discussion as a separate agenda item.

PRINCIPLES AND BEST PRACTICE PROVISIONS

I. Compliance with and enforcement of the code

Principle

The management board and the supervisory board are responsible for the corporate governance structure of the company and for compliance with this code. They are accountable for this to the general meeting and should provide sound reasons for any non-application of the provisions.

Shareholders take careful note and make a thorough assessment of the reasons given by the company for any non-application of the best practice provisions of this code. They should avoid adopting a ‘box-ticking approach’ when assessing the corporate governance structure of the company and should be prepared to engage in a dialogue if they do not accept the company’s explanation. There should be a basic recognition that corporate governance must be tailored to the company-specific situation and that non-application of individual provisions by a company may be justified.

Best practice provisions

I.1 The broad outline of the corporate governance structure of the company shall be explained in a separate chapter of the annual report, partly by reference to the principles mentioned in this code. In this chapter the company shall indicate expressly to what extent it applies the best practice provisions in this code and, if it does not do so, why and to what extent it does not apply them.

I.2 Each substantial change in the corporate governance structure of the company and in the compliance of the company with this code shall be submitted to the general meeting for discussion under a separate agenda item.

II. The management board

II.1 Role and procedure

Principle

The role of the management board is to manage the company, which means, among other things, that it is responsible for achieving the company's aims, the strategy and associated risk profile, the development of results and corporate social responsibility issues that are relevant to the enterprise. The management board is accountable for this to the supervisory board and to the general meeting. In discharging its role, the management board shall be guided by the interests of the company and its affiliated enterprise, taking into consideration the interests of the company's stakeholders. The management board shall provide the supervisory board in good time with all information necessary for the exercise of the duties of the supervisory board.

The management board is responsible for complying with all relevant primary and secondary legislation, for managing the risks associated with the company activities and for financing the company. The management board shall report related developments to and shall discuss the internal risk management and control systems with the supervisory board and the audit committee.

Best practice provisions

II.1.1 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.

Explanation: II.1.1
Management board members are normally reappointed.

II.1.2 The management board shall submit to the supervisory board for approval:
a) the operational and financial objectives of the company;
b) the strategy designed to achieve the objectives;
c) the parameters to be applied in relation to the strategy, for example in respect of the financial ratios; and
d) corporate social responsibility issues that are relevant to the enterprise. The main elements shall be mentioned in the annual report.

II.1.3 The company shall have an internal risk management and control system that is suitable for the company. It shall, in any event, employ as instruments of the internal risk management and control system:
a) risk analyses of the operational and financial objectives of the company;
b) a code of conduct which should be published on the company's website;
c) guides for the layout of the financial reports and the procedures to be followed in drawing up the reports; and
d) a system of monitoring and reporting.

Explanation: II.1.3
The internal risk management and control system must be suitable for the company concerned. This gives smaller listed companies the possibility of using less comprehensive procedures.

II.1.4 In the annual report the management board shall provide:
a) a description of main risks related to the strategy of the company;
b) a description of the design and effectiveness of the internal risk management and control systems for the main risks during the financial year; and
c) a description of any major failings in the internal risk management and control systems which

have been discovered in the financial year, any significant changes made to these systems and any major improvements planned, and a confirmation that these issues have been discussed with the audit committee and the supervisory board.

Explanation: II.1.4
Pursuant to a) the company's annual report must include a description of the main risks it encounters in implementing its strategy. Rather than providing an exhaustive list of all possible risks, the company should identify the main risks it faces, i.e. strategic and operational risks, financial risks, legal and
regulatory risks and financial reporting risks. The remuneration structure of management board members and other staff can also pose an operational risk. The description should also specify the company's risk profile, in other words its risk appetite and, as far as possible, its risk sensitivity. In certain circumstances quantification of the risks identified can enhance the value of the information. The description of the main risks is in keeping with the 'risk section' prescribed in Article 2:391, paragraph 2, of the Netherlands Civil Code and the description of the essential risks under Section 5:25 (c) of the Financial Supervision Act.
As regards b) it would be logical for the management board to indicate in the description of the design and effectiveness of the internal risk management and control systems what framework or criteria (e.g. the COSO framework for internal control) it used in assessing the internal risk management and control system.

II.1.5 As regards financial reporting risks the management board states in the annual report that the internal risk management and control systems provide a reasonable assurance that the financial reporting does not contain any errors of material importance and that the risk management and control systems worked properly in the year under review. The management board shall provide clear substantiation of this.

Explanation: II.1.5
The statement can form part of the management board's report that is required in the context of Section 5:25 (c) of the Financial Supervision Act. Companies whose securities are traded on a system in the United States comparable to a regulated market or multilateral trading facility are deemed to comply with parts a) and b) if they correctly apply Section 404 of the Sarbanes-Oxley Act.

II.1.6 In the annual report, the management board shall describe the sensitivity of the results of the company to external factors and variables.

Explanation: II.1.6
This concerns a report on the sensitivity of results to external factors and variables in a general sense.

II.1.7 The management board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature within the company to the chairman of the management board or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of management board members shall be reported to the chairman of the supervisory board. The arrangements for whistleblowers shall be posted on the company's website.

II.1.8 A management board member may not be a member of the supervisory board of more than two listed companies. Nor may a management board member be the chairman of the supervisory board of a listed company. Membership of the supervisory board of other companies within the group to which the company belongs does not count for this purpose. The acceptance by a management board member of membership of the supervisory board of a listed company requires

the approval of the supervisory board. Other important positions held by a management board member shall be notified to the supervisory board.

Explanation: II.1.8
'Other important positions' (i.e. positions that should be notified to the supervisory board) include membership of the supervisory board of a large, unlisted company.

II.1.9 If the management board invokes a response time within the meaning of best practice provision IV.4.4, such period may 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 shall use the response time for further deliberation and constructive consultation. This shall be monitored by the supervisory board. The response time may be invoked only once for any given general meeting and may not apply to an item in respect of which the response time has been previously invoked or meetings where a shareholder holds at least three quarters of the issued capital as a consequence of a successful public bid.

II.1.10 If a takeover bid for the company's shares or for the depositary receipts for the company's shares is being prepared, the management board shall ensure that the supervisory board is closely involved in the takeover process in good time.

II.1.11 If the management board of a company for which a takeover bid has been announced or made receives a request from a competing bidder to inspect the company's records, the management board shall discuss this request with the supervisory board without delay.

II.2 Remuneration

Level and composition of the remuneration

Principle

The level and structure of the remuneration which the management board members receive from the company for their work shall be such that qualified and expert managers can be recruited and retained. When the overall remuneration is fixed, its impact on pay differentials within the enterprise shall be taken into account. If the remuneration consists of a fixed component and a variable component, the variable component shall be linked to predetermined, assessable and influenceable targets, which are predominantly of a long-term nature. The variable component of the remuneration must be appropriate in relation to the fixed component.

The remuneration structure, including severance pay, shall be simple and transparent. It shall promote the interests of the company in the medium and long term, may not encourage management board members to act in their own interests or take risks that are not in keeping with the adopted strategy, and may not 'reward' failing board members upon termination of their employment. The supervisory board is responsible for this. The level and structure of remuneration shall be determined by reference to, among other things, the results, the share price performance and non-financial indicators that are relevant to the company's long-term value creation.

The shares held by a management board member in the company on whose board he sits are long-term investments. The amount of compensation which a management board member may receive on termination of his employment may not exceed one year's salary, unless this would be manifestly unreasonable in the circumstances.

Best practice provisions

II.2.1 Before drawing up the remuneration policy and determining the remuneration of individual management board members, the supervisory board shall analyse the possible outcomes of the variable remuneration components and how they may affect the remuneration of the management board members.

II.2.2 The supervisory board shall determine the level and structure of the remuneration of the management board members by reference to the scenario analyses carried out and with due regard for the pay differentials within the enterprise.

II.2.3 In determining the level and structure of the remuneration of management board members, the supervisory board shall take into account, among other things, the results, the share price performance and non-financial indicators relevant to the long15 term objectives of the company, with due regard for the risks to which variable remuneration may expose the enterprise.

II.2.4 If options are granted, they shall, in any event, not be exercised in the first three years after the date of granting. The number of options to be granted shall be dependent on the achievement of challenging targets specified beforehand.

II.2.5 Shares granted to management board members without financial consideration shall be retained for a period of at least five years or until at least the end of the employment, if this period is shorter. The number of shares to be granted shall be dependent on the achievement of challenging targets specified beforehand.

II.2.6 The option exercise price may not be fixed at a level lower than a verifiable price or a verifiable price average in accordance with the trading in a regulated market on one or more predetermined days during a period of not more than five trading days prior to and including the day on which the option is granted.

II.2.7 Neither the exercise price of options granted nor the other conditions may be modified during the term of the options, except in so far as prompted by structural changes relating to the shares or the company in accordance with established market practice.

Explanation: II.2.7
Examples of structural changes are the splitting and consolidation of shares, the consequences of a merger or acquisition in which options are ‘rolled over’ to shares of the bidder, and the payment of a ‘super dividend’.

II.2.8 The remuneration in the event of dismissal may not exceed one year’s salary (the ‘fixed’ remuneration component). If the maximum of one year’s salary would be manifestly unreasonable for a management board member who is dismissed during his first term of office, such board member shall be eligible for severance pay not exceeding twice the annual salary.

Explanation: II.2.8
The fixed remuneration component means periodic pay within the meaning of Article 2:383c, paragraph 1 (a), of the Netherlands Civil Code. A redundancy scheme providing for a maximum of one year’s salary could be ‘manifestly unreasonable’ where a management board member is dismissed during his first term of office and has been in the company’s service for a long time prior to his appointment to the board. Compared to the level of the entitlement of an ‘ordinary’ employee, severance pay of one year’s salary could possibly be too low in such circumstances. This upper limit also applies to management board members who leave the company of their own free will, although in such cases it would be appropriate for no remuneration whatever to be paid. This

provision does not detract from the principle that failing policy (mismanagement or fraud) on the part of a management board member should not be rewarded.

II.2.9 The company may not grant its management board members any personal loans, guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the supervisory board. No remission of loans may be granted.

Explanation: II.2.9 / III.7.3
The words 'or the like' in any event include an acknowledgement of debt or an obligation to make payment in due course.

Determination and disclosure of remuneration

Principle

The supervisory board shall determine the remuneration of the individual members of the management board, on a proposal by the remuneration committee, within the scope of the remuneration policy adopted by the general meeting.

The report of the supervisory board shall include the principal points of the remuneration report concerning the remuneration policy of the company. This shall describe transparently and in clear and understandable terms the remuneration policy that has been pursued and give an overview of the remuneration policy to be pursued. The full remuneration of the individual management board members, broken down into its various components, shall be presented in the remuneration report in clear and understandable terms.

Best practice provisions

II.2.10 If a variable remuneration component conditionally awarded in a previous financial year would, in the opinion of the supervisory board, produce an unfair result due to extraordinary circumstances during the period in which the predetermined performance criteria have been or should have been achieved, the supervisory board has the power to adjust the value downwards or upwards.

Explanation: II.2.10
This power does not apply to new contracts only; the supervisory board has a responsibility to endeavour to include such a provision in existing contracts as well.

II.2.11 The supervisory board may recover from the management board members any variable remuneration awarded on the basis of incorrect financial or other data (clawback clause).

Explanation: II.2.11
The power of the supervisory board relates both to situations where the remuneration has been awarded but not yet received by the management board member and to situations where the remuneration has already been received. This power does not apply to new contracts only; the supervisory board also has a responsibility to endeavour to include such a provision in existing contracts as well.

II.2.12 The remuneration report of the supervisory board shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the supervisory board for the next financial year and subsequent years. The report shall explain how the chosen remuneration policy contributes to

the achievement of the long-term objectives of the company and its affiliated enterprise in keeping with the risk profile. The report shall be posted on the company's website.

Explanation: II.2.12
The phrase 'an account of the manner in which the remuneration policy has been implemented in the past financial year' means the statement referred to in Article 2:391 of the Netherlands Civil Code.
'The remuneration policy planned by the supervisory board for the next financial year and subsequent years' means the remuneration policy referred to in Article 2:135, paragraph 1, of the Netherlands Civil Code.

II.2.13 The overview referred to in best practice provision II.2.12 shall in any event contain the following information:
a) an overview of the costs incurred by the company in the financial year in relation to management board remuneration; this overview shall provide a breakdown showing fixed salary, annual cash bonus, shares, options and pension rights that have been awarded and other emoluments; shares, options and pension rights must be recognised in accordance with the accounting standards;
b) a statement that the scenario analyses referred to in best practice provision II.2.1 have been carried out;
c) for each management board member the maximum and minimum numbers of shares conditionally granted in the financial year or other share-based remuneration components that the management board may member acquire if the specified performance criteria are achieved;
d) a table showing the following information for incumbent management board members at year-end for each year in which shares, options and/or other share-based remuneration components have been awarded over which the management board member did not yet have unrestricted control at the start of the financial year:

i) the value and number of shares, options and/or other share-based remuneration components on the date of granting;
ii) the present status of shares, options and/or other share-based remuneration components awarded: whether they are conditional or unconditional and the year in which vesting period and/or lock-up period ends;
iii) the value and number of shares, options and/or other share-based remuneration components conditionally awarded under i) at the time when the management board member obtains ownership of them (end of vesting period), and
iv) the value and number of shares, options and/or other share-based remuneration components awarded under i) at the time when the management board member obtains unrestricted control over them (end of lock-up period);

Explanation: II.2.13 Parts c) and d)
'Other share-based remuneration components' in any event include stock appreciation rights and phantom stock.

e) if applicable: the composition of the peer group of companies whose remuneration policy determines in part the level and composition of the remuneration of the management board members;
f) a description of the performance criteria on which the performance-related component of the variable remuneration is dependent in so far as disclosure would not be undesirable because the information is competition sensitive, and of the discretionary component of the variable remuneration that can be fixed by the supervisory board as it sees fit;
g) a summary and account of the methods that will be applied in order to determine whether the performance criteria have been fulfilled; h) an ex-ante and ex-post account of the relationship between the chosen performance criteria and the strategic objectives applied, and of the relationship between remuneration and performance;

i) current pension schemes and the related financing costs; and
j) agreed arrangements for the early retirement of management board members.

II.2.14 The main elements of the contract of a management board member with the company shall be made public after it has been concluded, and in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed. These elements shall in any event include the amount of the fixed salary, the structure and amount of the variable remuneration component, any agreed redundancy scheme and/or severance pay, any conditions of a change-of-control clause in the contract with a management board member and any other remuneration components promised to the management board member, pension arrangements and performance criteria to be applied.

II.2.15 If a management board member or former management board member is paid severance pay or other special remuneration during a given financial year, an account and an explanation of this remuneration shall be included in the remuneration report.

II.3 Conflicts of interest

Principle

Any conflict of interest or apparent conflict of interest between the company and management board members shall be avoided. Decisions to enter into transactions under which management board members would have conflicts of interest that are of material significance to the company and/or to the relevant management board member require the approval of the supervisory board.

Best practice provisions

II.3.1 A management board member shall:
a) not enter into competition with the company;
b) not demand or accept (substantial) gifts from the company for himself or for his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree as defined under Dutch law;
c) not provide unjustified advantages to third parties to the detriment of the company; and;
d) not take advantage of business opportunities to which the company is entitled for himself or for his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree as defined under Dutch law.

II.3.2 A management board member shall immediately report any conflict of interest or potential conflict of interest that is of material significance to the company and/or to him, to the chairman of the supervisory board and to the other members of the management board and shall provide all relevant information, including information concerning his wife, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree as defined under Dutch law.

The supervisory board shall decide, without the management board member concerned being present, whether there is a conflict of interest. A conflict of interests exists, in any event, if the company intends to enter into a transaction with a legal entity:

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

iii) in which a management board member of the company has a management or supervisory position.

II.3.3 A management board member may not take part in any discussion or decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the company.

II.3.4 All transactions in which there are conflicts of interest with management board members shall be agreed on terms that are customary in the sector concerned. Decisions to enter into transactions in which there are conflicts of interest with management board members that are of material significance to the company and/or to the relevant board members require the approval of the supervisory board. Such transactions shall be published in the annual report, together with a statement of the conflict of interest and a declaration that best practice provisions II.3.2 to II.3.4 inclusive have been complied with.

III. The Supervisory Board

III.1 Role and procedure

Principle

The role of the supervisory board is to supervise the policies of the management board and the general affairs of the company and its affiliated enterprise, as well as to assist the management board by providing advice. In discharging its role, the supervisory board shall be guided by the interests of the company and its affiliated enterprise, and shall take into account the relevant interests of the company's stakeholders. The supervisory board shall also have due regard for corporate social responsibility issues that are relevant to the enterprise. The supervisory board is responsible for the quality of its own performance.

Best practice provisions

III.1.1 The division of duties within the supervisory board and the procedure of the supervisory board shall be laid down in terms of reference. The supervisory board’s terms of reference shall include a paragraph dealing with its relations with the management board, the general meeting and the central works council or works council. The terms of reference shall be posted on the company’s website.

III.1.2 The annual statements of the company shall include a report of the supervisory board. In this report the supervisory board describes its activities in the financial year and which includes the specific statements and information required by the provisions of this code.

Explanation: III.1.2
The ‘annual statements’ are the entire annual report referred to in Article 2:391 of the Netherlands Civil Code, the financial statements referred to in Article 2:361 of the Netherlands Civil Code, the other information referred to in Article 2:392 of the Netherlands Civil Code, the report of the supervisory board, key figures, multi-year figures, shareholder information and so forth.

III.1.3 The following information about each supervisory board member shall be included in the report of the supervisory board:
a) gender;

b) age;
c) profession;
d) principal position;
e) nationality;
f) other positions, in so far as they are relevant to the performance of the duties of the supervisory board member;
g) date of initial appointment; and
h) current term of office.

III.1.4 A supervisory board member shall retire early in the event of inadequate performance, structural incompatibility of interests, and in other instances in which this is deemed necessary by the supervisory board.

Explanation: III.1.4
Nonetheless, in the case of companies not having statutory two-tier status the general meeting may suspend or dismiss supervisory board members at any time. Under the provisions on companies having statutory two-tier status the general meeting of such companies may pass a resolution of no confidence in the entire supervisory board. The adoption of such a resolution implies the immediate dismissal of all the members of the board.

III.1.6 The supervision of the management board by the supervisory board shall include:
a) achievement of the company's objectives;
b) corporate strategy and the risks inherent in the business activities;
c) the design and effectiveness of the internal risk management and control systems;
d) the financial reporting process;
e) compliance with primary and secondary legislation;
f) the company-shareholder relationship; and
g) corporate social responsibility issues that are relevant to the enterprise.

III.1.7 The supervisory board shall discuss at least once a year on its own, i.e. without the management board being present, its own functioning, the functioning of its committees and its individual members, and the conclusions that must be drawn on the basis thereof. The desired profile, composition and competence of the supervisory board shall also be discussed. Moreover, the supervisory board shall discuss at least once a year without the management board being present both the functioning of the management board as an organ of the company and the performance of its individual members, and the conclusions that must be drawn on the basis thereof. The report of the supervisory board shall state how the evaluation of the functioning of the supervisory board, the separate committees and the individual supervisory board members has been carried out.

Explanation: III.1.7
This provision relates to the annual review by the supervisory board members of their own functioning and that of the management board. The aim of the review is to reflect critically on the functioning of he members of the supervisory board and management board. A periodic review can enhance the quality of the functioning of the supervisory board and the management board and help to ensure that the right choices are made when preparing appointments or reappointments of supervisory and management board members, for example in connection with the appropriate composition of the boards or the appropriate diversity in their composition. How the review is carried out is a matter for the company and may therefore differ from one company to another. The review can take place collectively, on an individual basis between the chairman and the members separately, or through the input of an external adviser. Each supervisory board member should be able to express his views confidentially during the review.

III.1.8 The supervisory board shall discuss at least once a year the corporate strategy and the main risks of the business, the result of the assessment by the management board of the design and

effectiveness of the internal risk management and control systems, as well as any significant changes thereto. Reference to these discussions shall be made in the report of the supervisory board.

III.1.9 The supervisory board and its individual members each have their own responsibility for obtaining all information from the management board and the external auditor that the supervisory board needs in order to be able to carry out its duties properly as a supervisory organ. If the supervisory board considers it necessary, it may obtain information from officers and external advisers of the company. The company shall provide the necessary means for this purpose. The supervisory board may require that certain officers and external advisers attend its meetings.

III.2 Independence

Principle

The composition of the supervisory board shall be such that the members are able to act critically and independently of one another, the management board and any particular interests.

Best practice provisions

III.2.1 All supervisory board members, with the exception of not more than one person, shall be independent within the meaning of best practice provision III.2.2.

III.2.2 A supervisory board member shall be deemed to be independent if the following criteria of dependence do not apply to him. These criteria are that the supervisory board member concerned or his wife, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree as defined under Dutch law:
a) has been an employee or member of the management board of the company (including associated companies as referred to in Section 5:48 of the Financial Supervision Act (Wet op het financieel toezicht / Wft) in the five years prior to the appointment;
b) receives personal financial compensation from the company, or a company associated with it, other than the compensation received for the work performed as a supervisory board member and in so far as this is not in keeping with the normal course of business;
c) has had an important business relationship with the company, or a company associated with it, in the year prior to the appointment. This includes the case where the supervisory board member, or the firm of which he is a shareholder, partner, associate or adviser, has acted as adviser to the company (consultant, external auditor, civil notary and lawyer) and the case where the supervisory board member is a management board member or an employee of any bank with which the company has a lasting and significant relationship;
d) 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;
e) holds at least ten percent of the shares in the company (including the shares held by natural persons or legal entities which cooperate with him under an express or tacit, oral or written agreement);
f) is a member of the management board or supervisory board - or is a representative in some other way - of a legal entity which holds at least ten percent of the shares in the company, unless such entity is a member of the same group as the company;
g) has temporarily managed the company during the previous twelve months where management board members have been absent or unable to discharge their duties.

Explanation: III.2.2
Part d) relates to what are termed ‘cross-links’. A supervisory board member of listed company A

who is a member of the management board of listed company B is not deemed to be independent if a management board member of company A is also a supervisory board member of company B.

III.2.3 The report of the supervisory board shall state that, in the board's view, best practice provision III.2.1 has been fulfilled, and shall also state which supervisory board member is not considered to be independent, if any.

III.3 Expertise and composition

Principle

Each supervisory board member shall be capable of assessing the broad outline of the overall policy. Each supervisory board member shall have the specific expertise required for the fulfilment of the duties assigned to the role designated to him within the framework of the supervisory board profile. The composition of the supervisory board shall be such that it is able to carry out its duties properly. The supervisory board shall aim for a diverse composition in terms of such factors as gender and age. A supervisory board member shall be reappointed only after careful consideration. The profile referred to above shall also be applied in the case of a reappointment.

Best practice provisions

III.3.1 The supervisory board shall prepare a profile of its size and composition, taking account of the nature of the business, its activities and the desired expertise and background of the supervisory board members. The profile shall deal with the aspects of diversity in the composition of the supervisory board that are relevant to the company and shall state what specific objective is pursued by the board in relation to diversity. In so far as the existing situation differs from the intended situation, the supervisory board shall account for this in the report of the supervisory board and shall indicate how and within what period it expects to achieve this aim. The profile shall be made generally available and shall be posted on the company's website.

Explanation: III.3.1
The Code provides that the composition of the supervisory board should be such that the members are able to act independently of one another, the management board and any particular interests. In addition to expertise and personal involvement, independence is a crucial requirement for the proper functioning of a supervisory board. An important means of promoting independent action of the supervisory board is to ensure the diversity of its composition in terms of such factors as age, gender, expertise, social background or nationality.

III.3.2 At least one member of the supervisory board shall be a financial expert with relevant knowledge and experience of financial administration and accounting for listed companies or other large legal entities.

III.3.3 After their appointment, all supervisory board members shall follow an induction programme, which, in any event, covers general financial, social and legal affairs, financial reporting by the company, any specific aspects that are unique to the company and its business activities, and the responsibilities of a supervisory board member. The supervisory board shall conduct an annual review to identify any aspects with regard to which the supervisory board members require further training or education during their period of appointment. The company shall play a facilitating role in this respect.

III.3.4 The number of supervisory boards of Dutch listed companies of which an individual may be a member shall be limited to such an extent that the proper performance of his duties is assured; the

maximum number is five, for which purpose the chairmanship of a supervisory board counts double. III.3.5 A person may be appointed to the supervisory board for a maximum of three 4-year terms.

III.3.6 The supervisory board shall draw up a retirement schedule in order to avoid, as far as possible, a situation in which many supervisory board members retire at the same time. The retirement schedule shall be made generally available and shall be posted on the company's website.

III.4 The chairman of the supervisory board and the company secretary

Principle

The chairman of the supervisory board shall ensure the proper functioning of the supervisory board and its committees, and shall act on behalf of the supervisory board as the main contact for the management board and for shareholders regarding the functioning of the management and supervisory board members. In his capacity of chairman, he shall ensure the orderly and efficient conduct of the general meeting.

The chairman of the supervisory board is assisted in his role by the company secretary.

Best practice provisions

III.4.1 The chairman of the supervisory board shall ensure that:
a) the supervisory board members follow their induction and education or training programme;
b) the supervisory board members receive in good time all information which is necessary for the proper performance of their duties;
c) there is sufficient time for consultation and decision-making by the supervisory board;
d) the committees of the supervisory board function properly;
e) the performance of the management board members and supervisory board members is assessed at least once a year;
f) the supervisory board elects a vice-chairman; and;
g) the supervisory board has proper contact with the management board and the works council (or central works council).

III.4.2 The chairman of the supervisory board may not be a former member of the management board of the company.

III.4.3 The supervisory board shall be assisted by the company secretary. The company secretary shall ensure that correct procedures are followed and that the supervisory board acts in accordance with its statutory obligations and its obligations under the articles of association. He shall assist the chairman of the supervisory board in the actual organisation of the affairs of the supervisory board (information, agenda, evaluation, training programme, etc.). The company secretary shall, either on the recommendation of the supervisory board or otherwise, be appointed and dismissed by the management board, after the approval of the supervisory board has been obtained.

Explanation: III.4.3
The activities of the company secretary need not be limited to the provision of support for the supervisory board. He may also work for the management board. The secretary need not necessarily be an employee of the company. The work may also be carried out by, say, a lawyer appointed for this purpose.

III.4.4 The vice-chairman of the supervisory board shall deputise for the chairman when the occasion arises. By way of addition to best practice provision III.1.7, the vicechairman shall act as contact for individual supervisory board members and management board members concerning the functioning of the chairman of the supervisory board.

III.5 Composition and role of three key committees of the supervisory board

Principle

If the supervisory board consists of more than four members, it shall appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. The function of the committees is to prepare the decision-making of the supervisory board. If the supervisory board decides not to appoint an audit committee, remuneration committee or selection and appointment committee, best practice provisions III.5.4, III.5.5, III.5.8, III.5.9, III.5.10, III.5.14, V.1.2, V.2.3, V.3.1, V.3.2 and V.3.3 shall apply to the entire supervisory board. In its report, the supervisory board shall report on how the duties of the committees have been carried out in the financial year.

Best practice provisions

III.5.1 The supervisory board shall draw up terms of reference for each committee. The terms of reference shall indicate the role and responsibility of the committee concerned, its composition and the manner in which it discharges its duties. The terms of reference may provide that a maximum of one member of each committee may not be independent within the meaning of best practice provision III.2.2. The terms of reference and the composition of the committees shall be posted on the company's website.

III.5.2 The report of the supervisory board shall state the composition of the committees, the number of committee meetings and the main items discussed. III.5.3 The supervisory board shall receive from each of the committees a report of its deliberations and findings.

Audit committee

III.5.4 The audit committee shall in any event focus on supervising the activities of the management board with respect to:
a) the operation of the internal risk management and control systems, including supervision of the enforcement of relevant primary and secondary legislation, and supervising the operation of codes of conduct;
b) the provision of financial information by the company (choice of accounting policies, application and assessment of the effects of new rules, information about the handling of estimated items in the financial statements, forecasts, work of internal and external auditors, etc.);
c) compliance with recommendations and observations of internal and external auditors;
d) the role and functioning of the internal audit function;
e) the policy of the company on tax planning;
f) relations with the external auditor, including, in particular, his independence, remuneration and any non-audit services for the company;
g) the financing of the company; and
h) the applications of information and communication technology.

III.5.5 The audit committee shall act as the principal contact for the external auditor if he discovers irregularities in the content of financial reporting.

III.5.6 The audit committee may not be chaired by the chairman of the supervisory board or by a former member of the management board of the company.

III.5.7 At least one member of the audit committee shall be a financial expert within the meaning of best practice provision III.3.2.

III.5.8 The audit committee shall decide whether and, if so, when the chairman of the management board (chief executive officer), the chief financial officer, the external auditor and the internal auditor, should attend its meetings.

III.5.9 The audit committee shall meet with the external auditor as often as it considers necessary, but at least once a year, without management board members being present.

Remuneration committee

III.5.10 The remuneration committee shall in any event have the following duties:
a) making a proposal to the supervisory board for the remuneration policy to be pursued;
b) making a proposal for the remuneration of the individual members of the management board, for adoption by the supervisory board; such proposal shall, in any event, deal with: (i) the remuneration structure and (ii) the amount of the fixed remuneration, the shares and/or options to be granted and/or other variable remuneration components, pension rights, redundancy pay and other forms of compensation to be awarded, as well as the performance criteria and their application; and;
c) preparing the remuneration report as referred to in best practice provision II.2.12.

Explanation: III.5.10
The remuneration committee's duty to make proposals for the remuneration policy to be pursued means that it has initial responsibility for formulating the basic remuneration policy principles. This involves determining such matters as the performance criteria, the use and composition of any peer group, the ratio of fixed to variable and short-term to long-term remuneration, the ratio of the chairman's remuneration to that of the other management board members and the ratio of the remuneration of the management board to that of other grades within the company. The remuneration committee also checks whether the existing remuneration policy is still up to date and, if necessary, makes proposals for changes. In carrying out its duties the remuneration committee may make use of the services of a remuneration consultant, but it always remains responsible itself for making proposals for the remuneration policy to be pursued and taking whatever initiatives are necessary for this purpose.

III.5.11 The remuneration committee may not be chaired by the chairman of the supervisory board or by a former member of the management board of the company, or by a supervisory board member who is a member of the management board of another listed company.

III.5.12 No more than one member of the remuneration committee may be a member of the management board of another Dutch listed company.

III.5.13 If the remuneration committee makes use of the services of a remuneration consultant in carrying out its duties, it shall verify that the consultant concerned does not provide advice to the company's management board members.

Selection and appointment committee

III.5.14 The selection and appointment committee shall in any event focus on:
a) drawing up selection criteria and appointment procedures for supervisory board members and

management board members;
b) periodically assessing the size and composition of the supervisory board and the management board, and making a proposal for a composition profile of the supervisory board;
c) periodically assessing the functioning of individual supervisory board members and management board members, and reporting on this to the supervisory board;
d) making proposals for appointments and reappointments; and;
e) supervising the policy of the management board on the selection criteria and appointment procedures for senior management.

III.6 Conflicts of interest

Principle

Any conflict of interest or apparent conflict of interest between the company and supervisory board members shall be avoided. Decisions to enter into transactions under which supervisory board members would have conflicts of interest that are of material significance to the company and/or to the relevant supervisory board members require the approval of the supervisory board. The supervisory board is responsible for deciding on how to resolve conflicts of interest between management board members, supervisory board members, major shareholders and the external auditor on the one hand and the company on the other.

Best practice provisions

III.6.1 A supervisory board member shall immediately report any conflict of interest or potential conflict of interest that is of material significance to the company and/or to him, to the chairman of the supervisory board and shall provide all relevant information, including information concerning his wife, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree as defined under Dutch law. If the chairman of the supervisory board has a conflict of interest or potential conflict of interest that is of material significance to the company and/or to him, he shall report this immediately to the vice-chairman of the supervisory board and shall provide all relevant information, including information concerning his wife, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree as defined under Dutch law.

The supervisory board member concerned may not take part in the assessment by the supervisory board of whether a conflict of interest exists. A conflict of interest exists in any event if the company intends to enter into a transaction with a legal entity:

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

III.6.2 A supervisory board member may not take part in a discussion and/or decisionmaking on a subject or transaction in relation to which he has a conflict of interest with the company.

III.6.3 All transactions in which there are conflicts of interest with supervisory board members shall be agreed on terms that are customary in the sector concerned. Decisions to enter into transactions in which there are conflicts of interest with supervisory board members that are of material

significance to the company and/or to the relevant supervisory board members require the approval of the supervisory board. Such transactions shall be published in the annual report, together with a statement of the conflict of interest and a declaration that best practice provisions III.6.1 to III.6.3 inclusive have been complied with.

III.6.4 All transactions between the company and legal or natural persons who hold at least ten percent of the shares in the company shall be agreed on terms that are customary in the sector concerned. Decisions to enter into transactions in which there are conflicts of interest with such persons that are of material significance to the company and/or to such persons require the approval of the supervisory board. Such transactions shall be published in the annual report, together with a declaration that best practice provision III.6.4 has been observed.

III.6.5 The terms of reference of the supervisory board shall contain rules on dealing with conflicts of interest and potential conflicts of interest between management board members, supervisory board members and the external auditor on the one hand and the company on the other. The terms of reference shall also stipulate which transactions require the approval of the supervisory board. The company shall draw up regulations governing ownership of and transactions in securities by management or supervisory board members, other than securities issued by their 'own' company.

III.6.6 A delegated supervisory board member is a supervisory board member who has a special duty. The delegation may not extend beyond the duties of the supervisory board itself and may not include the management of the company. It may entail more intensive supervision and advice and more regular consultation with the management board. The delegation shall be of a temporary nature only. The delegation may not detract from the role and power of the supervisory board. The delegated supervisory board member remains a member of the supervisory board.

III.6.7 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, shall resign from the supervisory board.

III.7 Remuneration

Principle

The general meeting shall determine the remuneration of supervisory board members. The remuneration of a supervisory board member is not dependent on the results of the company.

Best practice provisions

III.7.1 A supervisory board member may not be granted any shares and/or rights to shares by way of remuneration.

III.7.2 Any shares held by a supervisory board member in the company on whose board he sits are long-term investments.

III.7.3 The company may not grant its supervisory board members any personal loans, guarantees or the like unless in the normal course of business and after approval of the supervisory board. No remission of loans may be granted.

Explanation: II.2.9 / III.7.3
The words ‘or the like’ in any event include an acknowledgement of debt or an obligation to make payment in due course.

III.8 One-tier management structure

Principle

The composition and functioning of a management board comprising both members having responsibility for the day-to-day running of the company (executive directors) and members not having such responsibility (nonexecutive directors) shall be such that proper and independent supervision by the latter category of members is assured.

Best practice provisions

III.8.1 The chairman of the management board may not also be or have been an executive director.

III.8.2 The chairman of the management board shall check the proper composition and functioning of the entire board.

III.8.3 The management board shall apply chapter III.5 of this code. The committees referred to in chapter III.5 shall consist only of non-executive management board member.

III.8.4 The majority of the members of the management board shall be non-executive directors and are independent within the meaning of best practice provision III.2.2.

IV. The shareholders and the general meeting of shareholders

IV.1 Powers

Principle

Good corporate governance requires the fully-fledged participation of shareholders in the decision-making in the general meeting. It is in the interest of the company that as many shareholders as possible take part in the decisionmaking in the general meeting. The company shall, in so far as possible, give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.

The general meeting should be able to exert such influence on the policy 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. Management board resolutions on a major change in the identity or character of the company or the enterprise shall be subject to the approval of the general meeting.

Best practice provisions

IV.1.1 The general meeting of shareholders of a company not having statutory two tier status (structuurregime) may pass a resolution to cancel the binding nature of a nomination for the appointment of a member of the management board or of the supervisory board and/or a resolution

to dismiss a member of the management board or of the supervisory board by an absolute majority of the votes cast. It may be provided that this majority should represent a given proportion of the issued capital, which proportion may not exceed one third. If this proportion of the capital is not represented at the meeting, but an absolute majority of the votes cast is in favour of a resolution to cancel the binding nature of a nomination, or to dismiss a board member, a new meeting may be convened at which the resolution may be passed by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

IV.1.2 The voting right attaching to financing preference shares shall be based on the fair value of the capital contribution. This shall in any event apply to the issue of financing preference shares.

Explanation: IV.1.2
This provision is intended to apply to future issues of financing preference shares. However, the management board and supervisory board may agree with the holders of the existing financing preference shares to adjust the present control of the financing preference shares.

IV.1.3 If a serious private bid is made for a business unit or a participating interest and the value of the bid exceeds the threshold referred to in Article 2:107a, paragraph 1 (c), of the Netherlands Civil Code, and such bid is made public, the management board of the company shall, at its earliest convenience, make public its position on the bid and the reasons for this position.

Explanation: IV.1.3
A private bid is not deemed to be 'serious' if it is clear that the bidder does not have sufficient financial resources to finance the bid or if no right-thinking and sensible shareholder would wish the management board to accept the bid, for example because the bid price does not reflect the true value or the market value of the business unit or the participating interest.

IV.1.4 The policy of the company on additions to reserves and on dividends (the level and purpose of the addition to reserves, the amount of the dividend and the type of dividend) shall be dealt with and explained as a separate agenda item at the general meeting.

IV.1.5 A resolution to pay a dividend shall be dealt with as a separate agenda item at the general meeting.

IV.1.6 Resolutions to approve the policy of the management board (discharge of management board members from liability) and to approve the supervision exercised by the supervisory board (discharge of supervisory board members from liability) shall be voted on separately in the general meeting. Compliance with the Code shall be accounted for as part of the annual report.

IV.1.7 The company shall determine a registration date for the exercise of the voting rights and the rights relating to meetings.

Explanation: IV.1.7
A bill introducing a compulsory registration period of 21 days before the start of the general meeting has been submitted to implement Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies.5) (Bill to amend Book 2 of the Netherlands Civil Code and the Financial Supervision Act in order to implement Directive 2007/36/EC of the European Parliament and of the Council of the European Union of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (Parliamentary Papers II 2008/09, 31 746, no. 2).

IV.1.8 The chairman of the general meeting is responsible for ensuring the proper conduct of business at meetings in order to promote a worthwhile discussion at the meeting.

IV.2 Depositary receipts for shares

Principle

Depositary receipts for shares are a means of preventing a (chance) majority of shareholders from controlling the decision-making process as a result of absenteeism at a general meeting. Depositary receipts for shares may not be used as an anti-takeover measure. The management of the trust office shall issue proxies in all circumstances and without limitation to the holders of depositary receipts who so request. The holders of depositary receipts thus authorised can exercise the voting right at their discretion. The management of the trust office shall have the confidence of the holders of depositary receipts.

Depositary receipt holders shall have the possibility of recommending candidates for the management of the trust office. The company may not disclose to the trust office information which has not been made public.

Best practice provisions

IV.2.1 The management of the trust office shall enjoy the confidence of the depositary receipt holders and operate independently of the company which has issued the depositary receipts. The trust conditions shall 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.

IV.2.2 The managers of the trust office shall be appointed by the management of the trust office. The meeting of holders of depositary receipts may make recommendations to the management of the trust office for the appointment of persons to the position of manager. No management board members or former management board members, supervisory board members or former supervisory board members, employees or permanent advisers of the company should be part of the management of the trust office.

IV.2.3 A person may be appointed to the management of the trust office for a maximum of three 4-year terms.

IV.2.4 The management of the trust office shall be present at the general meeting and shall, if desired, make a statement about how it proposes to vote at the meeting.

IV.2.5 In exercising its voting rights, the trust office shall be guided primarily by the interests of the depositary receipt holders, taking the interests of the company and its affiliated enterprise into account.

IV.2.6 The trust office shall report periodically, but at least once a year, on its activities. The report shall be posted on the company's website.

IV.2.7 The report referred to in best practice provision IV.2.6 shall, in any event, set out:
a) the number of shares for which depositary receipts have been issued and an explanation of changes in this number;
b) the work carried out in the year under review;
c) the voting behaviour in the general meetings held in the year under review;
d) the percentage of votes represented by the trust office during the meetings referred to at c);
e) the remuneration of the members of the management of the trust office;
f) the number of meetings held by the management and the main items dealt with in them;
g) the costs of the activities of the trust office;

h) any external advice obtained by the trust office;
i) the positions of the managers of the trust office; and
j) the contact details of the trust office.

IV.2.8 The trust office shall, without limitation and in all circumstances, issue proxies to depositary receipt holders who so request. Each depositary receipt holder may also issue binding voting instructions to the trust office in respect of the shares which the trust office holds on his behalf.

IV.3 Provision of information to and logistics of the general meeting

Principle

The management board or, where appropriate, the supervisory board shall provide all shareholders and other parties in the financial markets with equal and simultaneous information about matters that may influence the share price.

The contacts between the management board on the one hand and press and analysts on the other shall be carefully handled and structured, and the company may not engage in any acts that compromise the independence of analysts in relation to the company and vice versa.

The management board and the supervisory board shall provide the general meeting in good time with all information that it requires for the exercise of its powers.

If price-sensitive information is provided during a general meeting, or the answering of shareholders' questions has resulted in the disclosure of pricesensitive information, this information shall be made public without delay.

Best practice provisions

IV.3.1 Meetings with analysts, presentations to analysts, presentations to investors and institutional investors and press conferences shall be announced in advance on the company's website and by means of press releases. Provision shall be made for all shareholders to follow these meetings and presentations in real time, for example by means of webcasting or telephone. After the meetings, the presentations shall be posted on the company’s website.

IV.3.2 Analysts' reports and valuations may not be assessed, commented upon or corrected, other than factually, by the company in advance.

IV.3.3 The company may not pay any fee(s) to parties for the carrying out of research for analysts' reports or for the production or publication of analysts' reports, with the exception of credit rating agencies.

IV.3.4 Analysts meetings, presentations to institutional or other investors and direct discussions with the investors may not take place shortly before the publication of the regular financial information (quarterly, half-yearly or annual reports).

IV.3.5 The management board and the supervisory board shall provide the general meeting with all requested information, unless this would be contrary to an overriding interest of the company. If the management board and the supervisory board invoke an overriding interest, they must give reasons.

IV.3.6 The company shall place and update information which is relevant to the shareholders and which it is required to publish or deposit pursuant to the provisions of company law and securities

law applicable to it, in a separate section of the company's website. IV.3.7 The agenda of the general meeting shall list which items are for discussion and which items are to be voted upon.

IV.3.8 A resolution for approval or authorisation to be passed by the general meeting shall be explained in writing. In its explanation the management board shall deal with all facts and circumstances relevant to the approval or authorisation to be granted. The notes to the agenda shall be posted on the company's website.

IV.3.9 Material amendments to the articles of association of the company and resolutions for the appointment of management board members and supervisory board members shall be submitted separately to the general meeting.

IV.3.10 The report of the general meeting shall be made available, on request, to shareholders no later than three months after the end of the meeting, after which the shareholders shall have the opportunity to react to the report in the following three months. The report shall then be adopted in the manner provided for in the articles of association.

IV.3.11 The management board shall provide a survey of all existing or potential anti-takeover measures in the annual report and shall also indicate in what circumstances it is expected that these measures may be used.

IV.3.12 The company shall give shareholders and other persons entitled to vote the possibility of issuing voting proxies or voting instructions, respectively, to an independent third party prior to the general meeting.

IV.3.13 The company shall formulate an outline policy on bilateral contacts with the shareholders and publish this policy on its website.

IV.4 Responsibility of shareholders

Responsibility of institutional investors

Principle

Institutional investors shall act primarily in the interests of the ultimate beneficiaries or investors and have a responsibility to the ultimate beneficiaries or investors and the companies in which they invest, to decide, in a careful and transparent way, whether they wish to exercise their rights as shareholder of listed companies.

Best practice provisions

IV.4.1 Institutional investors (pension funds, insurers, investment institutions and asset managers) shall publish annually, in any event on their website, their policy on the exercise of the voting rights for shares they hold in listed companies.

IV.4.2 Institutional investors shall report annually, on their website and/or in their annual report, on how they have implemented their policy on the exercise of the voting rights in the year under review.

IV.4.3 Institutional investors shall report at least once a quarter, on their website, on whether and, if so, how they have voted as shareholders at the general meeting.

Responsibility of shareholders

Principle

Shareholders shall act in relation to the company, the organs of the company and their fellow shareholders in keeping with the principle of reasonableness and fairness. This includes the willingness to engage in a dialogue with the company and their fellow shareholders.

Best practice provisions

IV.4.4 A shareholder shall exercise the right of putting an item on the agenda only after he consulted the management board about this. 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 through the dismissal of one or more management or supervisory board members, the management board shall be given the opportunity to stipulate a reasonable period in which to respond (the response time). This shall also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to Article 2:110 of the Netherlands Civil Code. The shareholder shall respect the response time stipulated by the management board within the meaning of best practice provision II.1.9.

IV.4.5 A shareholder shall vote as he sees fit. A shareholder who makes use of the voting advice of a third party is expected to form his own judgment on the voting policy of this adviser and the voting advice provided by him.

Explanation: IV.4.5
In so far as a shareholder uses the services of a voting adviser before exercising his voting right, it is logical that he should check that the adviser provides balanced advice based on fair consideration of all the issues.

IV.4.6 If a shareholder has arranged for an item to be put on the agenda, he shall explain this at the meeting and, if necessary, answer questions about it.

V. The audit of the financial reporting and the position of the internal audit function and the external auditor

V.1 Financial reporting

Principle

The management board is responsible for the quality and completeness of publicly disclosed financial reports. The supervisory board shall ensure that the management board fulfils this responsibility.

Best practice provisions

V.1.1 The preparation and publication of the annual report, the financial statements, the quarterly and/or half-yearly figures and ad hoc financial information require careful internal procedures. The supervisory board shall supervise compliance with these procedures.

V.1.2 The audit committee shall determine how the external auditor should be involved in the content and publication of financial reports other than the financial statements.

V.1.3 The management board is responsible for establishing and maintaining internal procedures which ensure that all major financial information is known to the management board, so that the timeliness, completeness and correctness of the external financial reporting are assured. For this purpose, the management board ensures that the financial information from business divisions and/or subsidiaries is reported directly to it and that the integrity of the information is not compromised. The supervisory board shall ensure that the internal procedures are established and maintained.

V.2 Role, appointment, remuneration and assessment of the functioning of the external auditor

Principle

The external auditor is appointed by the general meeting. The supervisory board shall nominate a candidate for this appointment, while both the audit committee and the management board advise the supervisory board. The remuneration of the external auditor, and instructions to the external auditor to provide nonaudit services, shall be approved by the supervisory board on the recommendation of the audit committee and after consultation with the management board.

Best practice provisions

V.2.1 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 shall for this purpose attend and be entitled to address this meeting.

Explanation: V.2.1
The presence of the external auditor at the general meeting does not detract from the general duty of the management board and the supervisory board to render account to the general meeting or their duty to provide all requested information to the general meeting (unless there is an important reason for not doing so). The external auditor can be questioned only in respect of his audit and audit report. Primary responsibility for the content of the financial statements rests with the management board. It follows that the external auditor should participate in the preparation of the general meeting. The Committee refers to NIVRA Guideline 780N on the position of the external auditor in the general meeting.

V.2.2 The management board and the audit committee shall report their dealings with the external auditor to the supervisory board on an annual basis, including his independence in particular (for example, the desirability of rotating the responsible partners of an external audit firm that provides audit services, and the desirability of the same audit firm providing non-audit services to the company). The supervisory board shall take this into account when deciding its nomination for the appointment of an external auditor, which nomination shall be submitted to the general meeting.

V.2.3 At least once every four years, the supervisory board and the audit committee shall conduct a thorough assessment of the functioning of the external auditor within the various entities and in the different capacities in which the external auditor acts. The main conclusions of this assessment shall

be communicated to the general meeting for the purposes of assessing the nomination for the appointment of the external auditor.

V.3 Internal audit function

Principle

The internal auditor shall operate under the responsibility of the management board.

Best practice provision

V.3.1 The external auditor and the audit committee shall be involved in drawing up the work schedule of the internal auditor. They shall also take cognizance of the findings of the internal auditor.

V.3.2 The internal auditor shall have access to the external auditor and to the chairman of the audit committee.

V.3.3 If there is no internal audit function, the audit committee shall review annually the need for an internal auditor. Based on this review, the supervisory board shall make a recommendation on this to the management board in line with the proposal of the audit committee, and shall include this recommendation in the report of the supervisory board.

V.4 Relationship and communication of the external auditor with the organs of the company

Principle

The external auditor shall, in any event, attend the meeting of the supervisory board at which the financial statements are to be adopted or approved. The external auditor shall report his findings in relation to the audit of the financial statements to the management board and the supervisory board simultaneously.

Best practice provisions

V.4.1 The external auditor shall in any event attend the meeting of the supervisory board, at which the report of the external auditor with respect to the audit of the financial statements is discussed, and at which financial statements are to approved or adopted. The external auditor shall receive the financial information underlying the adoption of the quarterly and/or half-yearly figures and other interim financial reports and shall be given the opportunity to respond to all information.

V.4.2 When the need arises, the external auditor may request the chairman of the audit committee for leave to attend the meeting of the audit committee.

V.4.3 The report of the external auditor pursuant to Article 2:393, paragraph 4, of the Netherlands Civil Code shall contain the matters which the external auditor wishes to bring to the attention of the management board and the supervisory board in relation to the audit of the financial statements and the related audits. The following examples can be given:

A. With regard to the audit:

• information about matters of importance to the assessment of the independence of the external auditor;
• information about the course of events during the audit and cooperation with internal auditors and/or any other external auditors, matters for discussion with the management board, a list of corrections that have not been made, etc.

B. With regard to the financial figures:

• analyses of changes in shareholders' equity and results, which do not appear in the information to be published, and which, in the view of the external auditor, contribute to an understanding of the financial position and results of the company;
• comments regarding the processing of one-off items, the effects of estimates and the manner in which they have been arrived at, the choice of accounting policies, when other choices were possible, and special effects of such policies;
• comments on the quality of forecasts and budgets.

C. With regard to the operation of the internal risk management and control systems (including the reliability and continuity of automated data processing) and the quality of the internal provision of information:

• points for improvement, gaps and quality assessments;
• comments about threats and risks to the company and the manner in which they should be reported in the particulars to be published;
• compliance with articles of association, instructions, regulations, loan covenants, requirements of external supervisors, etc

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Recommendations to the legislator

1. To facilitate compliance with the Code, the Committee recommends to the legislator that this Code be designated by order in council (pursuant to Article 2:391, paragraph 5, of the Netherlands Civil Code) as a code of conduct that obliges listed companies to include a statement in their annual report on compliance with the principles and best practice provisions and that replaces the 2003 Code.

2. The Committee recommends that a new Monitoring Committee be appointed to monitor compliance with the Code and ensure that its provisions are up to date and practicable. The Committee considers that the terms of the decree of 6 December 2004 establishing the Monitoring Committee can be maintained.

3. The Committee has taken note of the draft bill introduced following its advisory report dated May 2007. The Committee would observe that it is evidently difficult to formulate the shareholder obligation of notification of intentions in such a way as to actually achieve what is intended, and that such an obligation also entails risks. The Committee considers that a response time is in fact a different way of ensuring that shareholders provide transparency to the company about their intentions. To increase the legal certainty and effectiveness of the response time and to comply with Directive 2007/36/EC*6)*, the Committee recommends that the basic principle that the management board, when confronted with requests from one or more shareholders to add items to the agenda that could alter the company's strategy, must be given sufficient time to take a considered decision on

this, should be embedded in legislation. This principle is elaborated in the Code in best practice provision II.1.9.

6) Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies (OJ EU L 184/17).

4. The Committee recommends that the legislator examine whether it is possible to amend the Dutch bidding rules in such a way that a company is not subject to takeover speculation for longer than necessary. Consideration could be given in this connection to the possibility of making an addition to the Public Bids Decree (Besluit openbare biedingen) giving a bidder (or prospective bidder) the choice in the case of takeover speculation of announcing within a given period either that it intends to make a bid or that it has decided against doing so. In the latter case the party concerned should not be able to make any further bid for the company for some considerable time (i.e. the requirement of 'put up or shut up').

5. The Monitoring Committee notes that various special interest groups have identified problems in the present squeeze-out procedures and have proposed solutions for them. The Committee recommends that the legislator take note of these views. The Committee does not believe that it is part of its remit to distil a recommendation to the legislator from all these different opinions.

Account of the Committee's work

Background and objective of the Committee

1. In the spring of 2008 the National Federation of Christian Trade Unions (CNV), Eumedion, the Federation of Dutch Trade Unions (FNV), the Netherlands Centre of Executive and Supervisory Directors (NCD), NYSE Euronext, the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW) requested the Monitoring Committee to update the 2003 Dutch Corporate Governance Code. The government endorsed this request.

Developments since the introduction of the Code in 2003

2. Since the introduction of the Code, developments have occurred at national and international level in the areas of legislation, codes and case law and in the market. As regards legislation, the changes to Book 2 of the Netherlands Civil Code, parts of the Financial Supervision Act (Wet op het financieel toezicht) and the Financial Reporting (Supervision) Act (Wet toezicht financiële verslaggeving) are of special importance. In recent years the Enterprise Division of the Amsterdam Court of Appeal and the Supreme Court of the Netherlands issued important rulings on the relationship between the stakeholders of a company. The Code also plays a role in the social debate on corporate governance. Over the years various arguments have been put forward for extending the Code to cover new themes, the most notable of which are diversity / position of women and corporate social responsibility. In addition, levels of executive pay have caused social indignation in some cases.

3. The activities of some shareholders and the foreign takeovers of leading Dutch companies have also prompted social debate. Since the Code came into force in 2004, Dutch listed companies have increasingly come under the influence of the market for corporate control (mergers and acquisitions). The shares of large Dutch listed companies in particular are to a great extent in the hands of foreign shareholders. Many companies – sometimes under pressure from the market – have dismantled their anti-takeover mechanisms, for example by abolishing certain forms of

depositary receipts. Shareholders have adopted a more active approach and exercised their rights to a greater extent. Dutch listed companies have become acquainted with (relatively) new types of shareholder: private equity parties, hedge funds and sovereign funds. In some cases this has resulted in disputes between management board (and supervisory board) and shareholders on corporate strategy. These disputes resulted in rulings by the Enterprise Division of the Amsterdam Court of Appeal and the Supreme Court of the Netherlands.

4. The procedures and functioning of management and supervisory boards have evolved since the introduction of the Code. Risk control has become more important, an ever larger proportion of executive pay is performance-related and awarded in the form of options and/or shares and the work of the supervisory board has intensified and become more specialised, partly due to the establishment of various committees within the supervisory board.

5. The principal aim of the 2003 Code was to restore confidence in the private sector, partly in response to accounting scandals. The emphasis was on accountability and transparency. It has emerged that detailed transparency regulations can be instrumental in creating a 'box-ticking' mentality and making the available information even more opaque, particularly in the field of executive pay. This is why the Committee puts even more emphasis in the amended Code on influencing the behaviour of management board members, supervisory board members and shareholders. The principles and best practice provisions are designed to encourage the desired behaviour. In this way the Committee intends to promote real discussion within and between the different organs of a company. The Committee is aware that the Code assigns a heavy responsibility to the supervisory board. This is partly why the Committee considers it desirable for supervisory board members to establish a form of structured consultation. This should enable them to exchange ideas and information and serve as a point of contact for third parties. The Committee calls on supervisory board members to develop initiatives in this respect.

The proposed amendments

6. On 4 June 2008, the Committee published its proposals for updating the Code. Interested parties could comment on the proposals until 15 September 2008. The Committee received a total of 32 reactions from special interest groups, listed companies, accountancy and law firms and private individuals. In addition to these reactions the Committee held two meetings with experts and representatives of various groups to discuss the proposals in more detail. The Committee wishes to thank all of them for their contributions to the debate and for their commitment to the subject matter. Their comments have led to amendments to the wording of the principles and best practice provisions, thereby helping to improve the Corporate Governance Code and, as the Committee expects, to further broaden the base of support for the Code.

General tenor of the comments

7. In general the respondents were broadly in favour of the Committee’s proposals. Some respondents considered that various proposals were too detailed and not in keeping with the principle-based nature of the Code, particularly in relation to executive pay. The Committee considers that the strength of the Code lies in its principle-based nature. As existing provisions of the Code have failed to produce the desired results to a sufficient extent, particularly as regards executive pay, the Committee has now strengthened and at the same time simplified the wording of the principles. The Committee believes that the aim should be to encourage those concerned to adopt the desired behaviour. There is a perceived need for more detailed best practice provisions in some respects in order to provide more guidance for those concerned.

8. Some respondents also pointed to the undesirability of an overlap between the Code and existing or future legislation. The point was made on behalf of shareholders that the sheer volume of rules and regulations would curb the influence of shareholders. As against this, some respondents argued that the proposals relating to the relationship between a company and its shareholders did not go far enough and requested additional recommendations to the legislator in this field. One respondent asked that more attention be given to takeover situations. The Committee deals with the relationship between the Code and existing and future legislation in section 6 of the preamble.

9. One respondent asked the Committee to try to avoid including social themes in the Code. In the respondent's view, social themes are not directly connected with corporate governance, such as detailed rules on executive pay, diversity and corporate social responsibility. Other respondents considered that the proposals did not go far enough to safeguard the company as a long-term alliance of interests, or wished greater emphasis to be placed on the role of employees (and their representatives) or more attention to be given to integrity. The Committee believes that the fact that the Code is seen as a way of solving issues identified in society is a testament to its strength. The Committee considers that the Code is first and foremost a corporate governance code. The principles and best practice provisions should safeguard and promote good management and supervision of listed companies. In the Committee's view, the amendments reflect widely held views on corporate governance.

10. One respondent drew attention to the inherent tension in the stakeholder model between, on the one hand, the rule that when taking decisions the management and supervisory boards should be guided by the interests of the company and its stakeholders and, on the other, the fact that these boards are accountable for their actions to shareholders, who are themselves entitled to put their own interests first. The Committee deals with this issue in sections 10 and 11 of the preamble.

11. Another respondent requested that the scope of the Code should not be limited to listed companies but extended to cover all businesses of a given size and social impact. The Committee held consultations on the scope of the Code in 2007. In its advisory report of May 2007, the Committee recommended to the legislator that compliance with the Code should not be made legally compulsory for trading in shares of small and medium-sized enterprises on alternative trading systems. The Committee sees no reason to reopen the debate on the scope of the Code.

Developments since the amendments proposed in June 2008

12. A global credit crisis that also affects the Netherlands has developed since the amendments were proposed in June 2008. The Dutch government has become a provider of capital to financial institutions and has agreed to appoint supervisory board members having specific powers. The Committee considers that the Code applies in these cases too.

13. Foreign governments have also taken measures affecting the financial sector. On 13 October 2008, the British Financial Services Authority (FSA) wrote a letter to the Chief Executive Officers of the companies under its supervision concerning their pay policy in the light of concerns that inappropriate remuneration schemes might have contributed to the credit crisis. The FSA stated that some remuneration schemes could have given incentives to staff to pursue risky policies, undermining the impact of systems designed to control risk, to the detriment of the companies, their shareholders and stakeholders and, ultimately, the taxpayer. Although the FSA did not wish to concern itself with levels of executive pay, it did wish to ensure that companies brought their remuneration policy into line with sound risk management and control principles and with their established risk profile. The FSA identified what it termed 'good practices' and 'bad practices' in remuneration policy, for example as regards the measurement of performance for the calculation of

bonuses, the composition of the remuneration, deferred performance-related pay and the process, and called on businesses to modify their schemes and adopt good practices.

14. The Committee considers that it would be sensible for all listed companies to review their remuneration policy in the light of the latest developments, not only as regards executive pay but also as regards their entire organisation. In section 12 of the preamble and principle II.2, the Committee therefore addresses the relationship between remuneration policy and risk control (as regards executive pay see also points 28 to 36 below).

15. In May 2008, the State Secretary for Economic Affairs established a committee under the chairmanship of Mr A. Burgmans to direct a study into the relationship between corporate social responsibility and corporate governance. This committee presented its findings to the State Secretary on 6 November 2008. Its report contains specific recommendations for supplementing the Code with passages about corporate social responsibility issues relevant to the enterprise.

16. The Monitoring Committee has held consultations about these recommendations with special interest groups and experts. The Committee considers that the recommendations represent a valuable addition to the Code and are a logical elaboration of the Dutch corporate governance model. This is why the Committee has adopted the recommendations in the preamble and the Code, with the exception of the recommendation concerning institutional investors. In the Committee's view, this is beyond the scope of the Code.

Preamble

17. The Committee has updated the 2003 preamble while preserving its essence. The preamble has been supplemented by passages that reflect views and ideas that have evolved since 2003 and some of which have already been discussed in previous reports. Section 3 expressly states that the Code does not deal with relations between the company and its employees. Obviously, the interests of the employees should be taken into account.

18. The Committee deals with the overlap between the Code and existing and future legislation in section 6 of the preamble. For the sake of the Code's readability and its internal coherence the Committee has decided that any overlap between the legislation and the Code is inherent in the Code's function and need not necessarily result in amendments to the Code, also because the Code may contain provisions that supplement the statutory provisions. In so far as a principle or best practice provision corresponds with a statutory rule, this may mean that a company or shareholder is not allowed to depart from the relevant provision, not even when reasons are given.

19. Section 7 contains the essence of the Dutch corporate governance model and has been left unchanged by the Committee. The same applies to section 8, which deals with confidence in management and supervision.

20. In section 9 the Committee considers the relationship between the management and supervisory boards on the one hand and shareholders on the other in relation to corporate strategy. Reference is also made to the responsibility of shareholders with respect to the principle of reasonableness and fairness that stakeholders must observe towards each other. Sections 10 and 11 deal with the tension between, on the one hand, the duty of the management and supervisory boards to take account of all interests and, on the other, the right of the shareholders to put their own interests first. This applies in particular in takeover situations.

Recommendations to the legislator

21. Wide support has been expressed for amended the Dutch bidding rules to include the ‘put up or shut up’ principle. Some respondents have also identified problems concerning squeeze-out procedures and proposed solutions. However, the Committee believes that formulating a recommendation for the legislator on the basis of the different solutions that have been proposed is beyond its remit.

22. There has also been a widely expressed wish to regulate the response time by law. The Committee has acted on this wish by recommending – as an addition to the provision of the Code – that the basic principle that the management board, when confronted with requests from one or more shareholders that could alter the company’s strategy, must be given sufficient time to take a considered decision on this, should be embedded in legislation.

23. In other respects the Committee sees no wide support for other recommendations to the legislator.

Commentary on individual chapters

Chapter 1 - Compliance with and enforcement of the Code

24. In view of the reactions during the consultation round, the Committee has moved the part of principle IV.4 that relates to non-application of the provisions of the Code, including the proposed amendments, to principle I.

Chapter II – The management board

Internal risk management

25. In view of the reactions during the consultation round, the Committee has expressed more emphatically in principle II.1 and best practice provision II.1.4 the importance of the management board’s responsibility for determining the strategy-related risk profile and the risk management based on it.

26. The Committee realises that the ‘in control’ statement in best practice provision II.1.5 goes further than the requirements under European directives. However, it believes that the ‘in control’ statement has resulted in an increased company focus on risk control and has improved the quality of the reporting. The responsibilities of those concerned are more clearly defined as a result of the ‘in control’ statement. The compliance reports show that the great majority of listed companies issue an ‘in control’ statement. The Committee therefore considers that the ‘in control’ statement serves a useful function. In the light of the reactions during the consultation round the Committee has dropped the forward-looking statement.

Response time

27. In view of the reactions during the consultation round the Committee has modified the response time in various ways. First of all, a distinction is made between the conduct of the management and supervisory boards on the one hand and that of the shareholders on the other. The response time is therefore now mentioned in two places in the Code, namely in best practice provisions II.1.9 and IV.4.4. Second, it is stated explicitly that no more than 180 days may elapse between the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda and the day of the general meeting. This includes the statutory period of 60 days for having items put on the agenda. Third, clarity has been provided that the response time may be invoked only once in relation to one and the same item. The possibility of invoking a response time is also excluded in a situation where a shareholder holds 75 per cent or more of the share capital following a successful public bid. In addition to the provisions of the Code, the Committee recommends to the legislator that the basic principle that the management board, when confronted with requests from one or more shareholders that could alter the company's strategy, must be given sufficient time to take a considered decision on this, should be embedded in legislation.

Role of the management board and the supervisory board in takeovers

28. In view of the reactions during the consultation round, the Committee has dropped the proposed chapter VI on takeovers. The essence of the proposed chapter is expressed by best practice provisions II.1.10 and II.1.11, which deal with the role of the management board and the supervisory board in takeovers. As the proposed chapter VI has been dropped, the proposed provision on the fairness opinion has also been cancelled. The Committee believes that there is still no clear practice on this point that qualifies as best practice. Nonetheless, in the opinion of the Committee, this does not affect the responsibility of the management and supervisory boards to assess the bid on its merits and advise the shareholders accordingly.

Remuneration of management board members

29. The reactions during the consultation round reflected general support for the Committee's proposals on executive pay. One respondent also advocated that the variable part remuneration component should be capped. Another respondent pointed out that much attention had been paid to the level and transparency of the remuneration, while the nature of the performance criteria and the question whether the structure of the remuneration was consistent with the stakeholder model had been given little consideration. In addition, in the debate on the causes of the credit crisis, many people have pointed to the adverse consequences of ill-conceived remuneration systems on the risk attitudes of the management board and senior executives. An example was the letter from the FSA of 13 October 2008 referred to in point 13 above. 3 0. Principle II.2 on the level and composition of the remuneration provides that the remuneration structure, including severance pay, should be such that it promotes the interests of the company in the medium and long term, does not encourage management board members to act in their own interests and does not 'reward' failing board members upon termination of their employment. The Committee considers that this principle is paramount and implicitly reflects the link between remuneration and the company's strategy and interests. The Committee has extended this principle to include an explicit reference to the risk attitude of management board members. Principle II.2 on the level and composition of the remuneration has also been supplemented. When the overall remuneration of the management board members is fixed, its impact on pay differentials within the company should be taken into account. In this way the remuneration process can be subjected to an internal brake that counters any possible leapfrog effect. The right balance should exist between the variable and fixed components of the remuneration. The level and structure of the remuneration should be determined by reference not only to existing factors such as the development of results and share price performance but also to non-financial indicators that are relevant to the company's long-term value creation. The principle concerning the determination and disclosure of remuneration emphasises the importance

of clarity and simplicity. The references to statutory requirements and powers have also been dropped for this reason.

31. The Committee notes that the management board remuneration structure may infringe principle II.2 in various ways. First of all, the variable remuneration may be focused too much on the short term. Second, the remuneration may be structured in such a way that management board members do not run any real risk of losing all or part of their variable remuneration if their decisions prove ill-judged in the medium or long term. The Committee believes that the amended Code offers supervisory boards and shareholders sufficient ways of combating these risks.

32. The Committee's amendments provide supervisory boards with instruments for improving the quality of decision-making on remuneration and the transparency of the remuneration structure. The basic concept is that management board members should earn their remuneration on the basis of performance, but that it is ultimately for the supervisory board to determine how much it would be reasonable for a management board member to earn, taking account of all the circumstances. The active involvement of the shareholders is also essential in this connection.

Level and composition of the remuneration

33. The Committee has introduced three new best practice provisions governing the level and composition of the remuneration. Best practice provision II.2.1 provides that before determining the remuneration of management board members, the supervisory board should analyse the possible outcomes of the variable remuneration components. The supervisory board then determines the level and structure of the remuneration by reference to the scenario analyses carried out, taking account not only of results and share price but also of non-financial indicators relevant to the company's long-term objectives. The provisions on options and shares have also been simplified.

Determination and disclosure of remuneration

34. It was pointed out during the consultation round that principle II.2 is unclear and opaque. The Committee recognises that the principle refers to various documents in connection with the disclosure of remuneration policy: the notes to the financial statements, the report of the supervisory board and the remuneration report. The remuneration report contains a more detailed description of the remuneration policy than the report of the supervisory board does. Partly in response to the reactions on this point, the Committee has simplified the principle and the related best practice provisions. Best practice provision II.2.13 (old) has been combined with best practice provision II.2.12. Best practice provision II.2.12 also provides that the remuneration report should indicate how the remuneration policy contributes to the achievement of the longterm objectives, in keeping with the risk profile.

Powers of the supervisory board to adjust the remuneration

35. In view of the reactions during the consultation round, the Committee has introduced separate best practice provisions giving effect to the 'ultimate remedy' power of the supervisory board and the claw-back clause (II.2.11 and II.2.10 respectively). It has also been stated more clearly that the supervisory board should endeavour to have these powers recorded not only in new contracts with management board members but also in existing contracts.

Content of the remuneration report

36. In view of the reactions during the consultation round, the Committee has made clear in best practice provision II.2.13 b) that although the scenario analyses themselves need not be published, the remuneration report should confirm that the analyses have been carried out. In general the respondents reacted favourably to the remuneration table introduced in best practice provision II.2.13 d). For the sake of clarity the provision states the table relates only to management board members holding office at year-end. In response to a comment from a respondent, the Committee has brought best practice provision II.2.13 g) into line with its previous recommendation in 2005. Parts have also been deleted or combined. Disclosure of the main elements of the remuneration contract

37. As it was pointed out in reactions during the consultation round that the term 'immediately' is imprecise, the Committee has replaced it in II.2.14 by the wording 'in any event no later than the date of the notice calling the general meeting where the appointment of the management board member will be proposed'. In the Committee's opinion, the point is that shareholders should be able to take this information into account when considering how to vote on appointments to the board.

Chapter III – The supervisory board

Diversity

38. Some respondents expressed general support for the manner in which the Committee had worded the provisions on diversity in the Code. A few advocated the inclusion of a target figure in the Code. The Committee has included an explicit provision that companies are expected to apply and disclose a specific objective in relation to diversity. The Committee believes that there is wide support for this amendment,

Maximum of five supervisory board memberships

39. The reactions during the consultation round led the Committee to wonder whether best practice provision III.3.4 should be amended. The Committee considers that this provision has been successful in promoting diversity within supervisory boards. While the Committee acknowledges that the provision is of a somewhat arbitrary nature, it nonetheless considers it is still worthwhile. The idea underlying this provision is also that supervisory board members should make sufficient time available for the performance of their duties, as is apparent from the words 'to such an extent that the proper performance of his duties is assured'.

Position of the chairman of the supervisory board

40. Partly in response to the reactions during the consultation rounds, the Committee has simplified principle III.4 on the role of the chairman of the supervisory board in order to clarify his key responsibilities. The Committee has also extended these responsibilities by adding that the chairman is the person to be contacted by shareholders on matters relating to the functioning of members of the management and supervisory boards.

Duties of remuneration committee

41. In view of the reactions in the consultation round the Committee has dropped the proposed provisions III.5.12 (a) and III.5.12 (b). The idea behind these provisions was to emphasise that the remuneration committee itself should take the initiative in proposing the remuneration policy to be

pursued and should not rely unduly on the remuneration consultant. Upon reflection the Committee considers that it is not necessary to record this expressly in the Code.

Chapter IV - The shareholders and the general meeting of shareholders

Report on compliance with the Code

42. In view of the reactions during the consultation round, the Committee has clarified in best practice provision IV.1.5 that compliance with the Code should be accounted for as part of the annual report. This ensures that the items are dealt with in the right order and, in so far as the compliance remains largely unchanged, need not be included as a separate agenda item every year. Nonetheless, shareholders are free to ask questions about matters relating to the Code in the general meeting.

Decision-making in the general meeting

43. In view of the reactions during the consultation round, the Committee has qualified best practice provision IV.1.7 concerning the responsibility of the chairman for the proper conduct of business at meetings. It is now provided that the chairman of the general meeting is responsible for ensuring the proper conduct of business at meetings in order to promote a worthwhile discussion at the meeting.

44. In view of the reactions during the consultation round, the Committee has added two new best practice provisions in order to improve the provision of information to shareholders about the agenda. Best practice provision IV.3.7 states that agenda should list which items are for discussion and which are to be voted upon. Best practice provision IV.3.9 states that material amendments to the articles of association and resolutions for the appointment of management and supervisory board members should be submitted separately to the general meeting.

Responsibility of shareholders

45. Principle IV.4 no longer focuses exclusively on institutional investors. The principle is subdivided into responsibility of institutional investors and responsibility of shareholders. In addition, part of the second paragraph of principle IV.4 (old) has been moved to principle I.1. Principle IV.4 on the responsibility of shareholders expresses the fact that shareholders are also bound by the principle of reasonableness and fairness, including the willingness to enter into a dialogue with the company and fellow shareholders. If the dialogue fails to produce a result, shareholders are naturally entitled to exercise their statutory rights (right to put items on the agenda and right to call an extraordinary meeting of shareholders) in order to express the views they have on the strategy.

46. The Committee considers that the increase in the powers of the general meeting in the 2003 Code was prompted by the need to strengthen the checks and balances within the company and improve the quality of corporate governance. It is now apparent that an increase in shareholder rights has also resulted in greater emphasis being put on the interests of shareholders both individually and collectively. The Committee considers that requiring shareholders to act in accordance with the principle of reasonableness and fairness will help to strengthen the checks and balances within the company.

47. Institutional investors are a special category of shareholders, who act primarily in the interests of the ultimate beneficiary owners or investors. As such, they are obliged vis-à-vis these ultimate

beneficiary owners or investors, and the listed companies in which they invest, to decide in a careful and transparent manner whether they wish to exercise their rights as shareholder in these companies. Owing to this special position, best practice provisions IV.4.1 to IV.4.3 (inclusive) relate exclusively to institutional investors.

Chapter V - The audit of the financial reporting and the position of the internal audit function and the external auditor

48. The reactions to the consultation round included suggestions for the internal audit function to be given a higher profile in the Code. In the Committee's view, every listed company should, in principle, have an internal auditor under best practice provision V.3.1. The Committee has amended principle V.3 to record categorically that the internal auditor operates under the responsibility of the management board. The Committee believes it is necessary to prevent a situation in which an internal auditor is regarded as an outsider in his own company. The audit committee, in particular its chairman, is responsible for communication between the audit committee and the internal auditor. This is apparent from best practice provisions V.3.1 and III.5.4. In addition, a new best practice provision V.3.2 explicitly states that in carrying out his duties an internal auditor should have access to the external auditor and the chairman of the audit committee. The Committee has noted in its compliance reports that local listed companies in particular are likely not to have an internal audit function. The Committee has therefore provided in V.3.3 that if there is no internal audit function, the audit committee should review annually whether there is a need for an internal auditor. Based on this review, the supervisory board makes a recommendation to the management board and includes a note of this in its report. Finally, in the light of the reactions in the consultation round, the term 'internal accountant' has been replaced by 'internal auditor'.

COMPOSITION OF CORPORATE GOVERNANCE CODE MONITORING COMMITTEE

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Former asset management director and member of the board of the ABP Pension Fund

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Professor of Auditing at the University of Groningen
Partner at PricewaterhouseCoopers Accountants NV

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Ms Kitty Roozemond
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