



May 2017

The Revised Dutch Corporate Governance Code

A revised Corporate Governance Code, published by the Dutch Corporate Governance Code Committee, has taken effect on 1 January 2017, which means that all Dutch companies listed at a regulated market need to comply with its provisions in all their reporting over 2017 and onwards.

Highlights of the New Code

Stricter Reporting Requirements

In the new Code, companies must explain how they have applied the Code, not only how they have deviated from it. Deviations from the Code must be explained in more detail. In the event that deviations last longer than one year, companies must indicate when they will start or resume to apply the Code and a description must be given of any alternative measures taken.

Long-Term Value Creation Now a Central Feature

The management board (**MB**) must formulate its view on long-term value creation and convert it into a strategy. Whilst developing the strategy, the supervisory board (**SB**) must be engaged early. All the steps leading to this strategy – the view of the MB, the strategy itself, and the realisation – must be explained in the management report. The SB must explain its involvement in developing and supervising the realisation of the strategy in the SB report.

Culture

Culture was introduced as a theme in the new Code. The MB is now responsible for focusing on long-term value creation under supervision of the SB. The MB must adopt values and propagate these values through leading by example. In the management report, the MB must explain its values, incorporation thereof, and compliance with the code of conduct.

Expansion of Rules Reporting Misconduct

The rules governing the reporting of misconduct were expanded in the new Code. The MB must now inform the SB of any material misconduct. If the MB is involved, the SB may initiate its own investigation. When the external auditor discovers an instance of misconduct or irregularity, it must inform the chairperson of the audit committee.

Risk Management and Internal Control

The MB is responsible for establishing the company's risk appetite, which entails that the risk management and internal control systems must be integrated into the company's work processes and be familiar to employees. When monitoring its effectiveness, the MB must give attention to the 'lessons learned.' The in-control statement must be expanded to state, among others, that (i) the preparation of the financial reporting on a going concern basis is justified, and (ii) the relevant material risks and uncertainties regarding the company's continuity (for the coming year) have been included in the management report.

Role of the Internal Audit Department (IAD) Strengthened

In case of absence of an IAD, the audit committee must annually review the necessity of an IAD and the existence of adequate alternative measures. The SB report must include the conclusions (and recommendations, if any) from such review. The head of the IAD is appointed and removed by the MB, with advice from the audit committee, and is subject to approval of the SB. Its performance must be reviewed annually by the MB, with input from the audit committee. The work schedule of the IAD must be submitted to the MB and SB for approval, after being coordinated with the external auditor. The IAD must have (i) sufficient resources to implement the work schedule, and (ii) direct access to the audit committee, the external auditor, and all relevant information. The IAD must report investigation results in full to the MB, in summary to the audit committee, and inform the external auditor.

Addition of Various New Provisions Regarding MB

Each member of the MB must have the specific expertise that is necessary to perform his/her duties. Additionally, the MB must conduct an annual self-assessment and participate in a training programme.

Executive Committee

In the new Code, no specifications were given for an executive committee, but the MB's expertise and proper performance of its duties must at all times be secured. Its role, duties, and composition must be set out in the management report. The reasons for instituting an executive committee and how its interaction will be structured with the SB must also be included in the management report.

Clarification of the SB's Role

The new Code contains several new provisions to clarify the role of the SB. For example, the SB must draw up a diversity policy for the MB. Also, more room was created to appoint major shareholders ($\geq 10\%$) or their representatives to the SB without violating the independence requirements. However, the chairperson of the SB must be independent. To ensure compliance, a company secretary who undertakes work for both the SB and the MB must report any conflict of loyalties to the SB chairperson.

The term of appointment of the SB has been shortened to two, four-year terms with an option to reappoint for two years and then for an additional two years. The reasons for reappointment after eight years must be explained in the SB report. If a member of the SB decides to resign early, the company must issue a press release stating the reasons (this also applies to early resignation by a member of the MB or the early resignation of the external auditor).

Rules on Remuneration

In the new Code, the rules on remuneration are simplified and rules requiring publication of remuneration are partially deleted. Members of the MB must now give the remuneration committee input regarding their own remuneration. Remuneration of members of the SB must be in line with the time spent and responsibilities of their role. Severance pay is limited to one year's salary and may not be awarded if a member of the MB terminates its agreement early or is guilty of seriously culpable or negligent conduct.

Clarification of How One-Tier Board Must Apply Code

The independence requirements for non-executive directors are the same as those for members of the SB. The chairperson of the board is independent and not a former executive director. Non-executive directors must account for how they have performed their duties in report (analogous to the SB report).

Three Action Points

As can be read above, the new Code has made some significant changes. To ensure compliance with the new Code in 2017, the following points require action:

- > *Update the rules of procedure of the SB and the MB*
Certain changes in the new Code may have to be incorporated in your rules of procedure of the SB and the MB. In particular, think of the shortened maximum term of appointment for members of the SB and changes in the independence requirements.
- > *Evaluate procedures and policy*
It is advisable to evaluate current processes and policies following the new Code. Particularly consider the new provisions on (i) the functioning of the IAD, (ii) risk management systems, and (iii) the reporting of irregularities.
- > *Implement reporting changes*
The management report must be expanded in a few respects. The remuneration report may be simplified, while the comply-or-explain and in-control statements must be sharpened.

This *GT Alert* was prepared by the **Greenberg Traurig's Amsterdam Corporate Department***. It does not purport to be exhaustive or deal specific. Questions about this information can be directed to:

- > [Thédoor Melchers](#) | +31 (0) 20.301.7325 | melcherst@gtlaw.com
- > [Hans Urlus](#) | +31 (0) 20.301.7324 | urlush@gtlaw.com
- > Or your [Greenberg Traurig](#) Attorney

*Special thanks to Nicole Bouwens[‡] for her valuable contribution to this Alert.

[‡]Not admitted to the practice of law.

Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +03.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[¤] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
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