

## Corporate Newsletter

### February 2011

#### Recent developments in the Netherlands

##### ■ Material changes in Dutch Securities Book-Entry Transfer Act (*Wet giraal effectenverkeer*)

On 1 January 2011 material amendments to the Securities Book-Entry Transfer Act (*Wet giraal effectenverkeer*; "WGE") came into force. The WGE deals with the holding and transferring of securities held through intermediaries. The WGE constitutes a legal basis for the book-entry transfer of securities and provides protection for investors against the risk of an intermediary's insolvency. The amendments mainly concern increasing investor protection against (the risk of) insolvency proceedings opened in respect of their securities intermediary and increasing the degree of dematerialised securities held through such intermediaries. For more details, please refer to our Client Briefing of January 2011, [Material changes in Dutch Securities Book-Entry Transfer Act](#).

##### ■ Bill on liberalisation of private company law

This Bill is pending in the Upper House since December 2009. For details of this bill, please refer to our Client Briefing of 22 December 2009 "[Flex BV adopted by Lower House](#)". The Bill has not yet been discussed in the Upper House because of a dispute between the Upper House and the Government in relation to the manner in which the Government should present consolidated texts of bills to the Upper House.

On 22 February 2011, the Legal Committee of the Upper House decided to adjourn the parliamentary proceedings with respect to this Bill until the Bill regulating the implementation of this Bill (see below) has been adopted by the Lower House. The Legal Committee further decided that the plenary discussion and voting on these Bills in the Upper House will be combined with the plenary discussion and voting on the Bill on partnerships and the Bill implementing that Bill (see below).

##### ■ Bill regulating the implementation of the Bill on liberalisation of private company law

On 5 October 2010, the Legal Committee of the Lower House published its report on the Bill. The report contains numerous questions which have to be answered by the minister. The Bill was sent to Parliament in June 2010 and regulates various (practical) aspects of the implementation of the Bill on liberalisation of private company law, such as rules on mergers and demergers and on the position of holders of depository receipts. The Explanatory Memorandum to the Bill also contains rules with respect to the tax implications of the liberalisation.

##### ■ Bill on claw back of directors' bonuses

On 22 November 2010, the Legal Committee of the Lower House published its report on this bill. The report contains numerous questions, which have to be answered by the Minister. The Bill was sent to Parliament on 21 September 2010. For a brief summary of the contents of the Bill, please refer to our [Corporate Newsletter - October 2010](#).

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### ■ Report Financial Markets Authority (AFM) regarding one-on-ones

In November 2010 the AFM issued a report entitled "[Five years of supervision of market abuse](#)". In this report the AFM provides, amongst other things, guidance on the possibility of a (board of) a listed company discussing certain topics with (a group of) shareholders.

According to the report a listed company is allowed to share information on general topics with its shareholders, including developments (opportunities and threats) in the sector in which the company operates. Save in certain limited circumstances to which specific rules apply (e.g. public tender offer or an issue of shares), the company cannot share price sensitive information.

On its website the AFM has included some further recommendations in respect of how to properly conduct one-on-ones, including:

- The listed company should publish on its website the terms and conditions under which it would be willing to engage in one-on-ones;
- Similarly professional investors should publicise under which circumstances they would contact a listed company for a one-on-one.

### ■ Value of shares held by executives frozen in takeover situations

In December 2009, an amendment was adopted by the Lower House, entailing that the value of listed shares held by a company's executives will be 'frozen' in takeover situations, i.e. that the executives have to repay to the company the difference between the share price paid in the offer and the share price at the time it was frozen. The amendment was inserted in the Bill on liberalisation of private company law (see above).

The amendment was heavily criticized by various market parties and is now pending in the Upper House. In June 2010, the Minister of Justice proposed the withdrawal of the amendment, but the parties who supported the amendment persisted. In a report of the Legal Committee of 5 October 2010, a majority of the Lower House has stated that it will continue to support this amendment.

### ■ Bill on corporate governance

In July 2009, a bill was sent to Dutch Parliament containing new and far-reaching obligations for shareholders in companies listed on a public exchange and enabling listed companies to obtain a better understanding of their shareholder base. For more details, please refer to our Client briefing of 30 July 2009 "[Legislative proposal on shareholder-company relationship sent to Dutch Parliament](#)". On 15 July 2010, the Lower House formulated a number of questions, in particular on the feasibility of the rules on identification of shareholders. The Minister will answer these questions, after which the Bill will be voted on by the Lower House. It is not expected that the Bill will take effect before the end of 2011.

### ■ Bill on management and supervision

The Bill on management and supervision, which codifies the one-tier board, was approved by the Lower House in December 2009. Please refer to our Client Briefing of 21 December 2009 "[Bill on management and supervision adopted by Dutch Lower House](#)".

The Legal Committee of the Upper House has asked a number of questions on the Bill in March 2010. By letter to the Minister of Justice dated 27 January 2011, the Chairman of the Legal Committee has asked the Minister when the Legal Committee may expect the Minister's answers.

### ■ Bill implementing the Bill on partnerships

The Bill implementing the Bill on partnerships was adopted by the Lower House in December 2009. Please refer to our Client Briefing of 28 December 2009 "[Bill on Dutch partnerships adopted by Lower House](#)". On 15 February 2011, the Legal Committee of the Upper House decided to continue the proceedings in the Upper House and to prepare a report by 29 March 2011.

The Bill on partnerships itself was adopted by the Lower House in 2004. The parliamentary proceedings in the Upper House were finished in 2007. The Legal Committee of the Upper House decided on 22 February 2011 that the plenary discussions and voting on these Bills in the Upper House will be combined with discussions and voting on the Bill on liberalisation of private company law and the Bill regulating the implementation of that Bill (see above). ■

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