

Proposal for amendment of provisions on one-tier boards in the Dutch corporate governance code

On 3 August 2016, the corporate governance committee (the "Committee") published a proposal (the "Proposal") for amendment of the provisions on one-tier boards in the Dutch Corporate Governance Code (the "Code") and clarification on the application of the Code to one-tier boards. Interested parties are invited to comment on the Proposal before 29 September 2016.

The Proposal consists of (i) an introduction; (ii) proposed amendments to the current provisions of the Code on one-tier boards (including explanatory notes); and (iii) further guidance on how to apply the Code to one-tier boards.

It is envisaged that the proposed amendments will be incorporated in the revised Code, a draft of which was published on [11 February](#) of this year. The Committee states that it will publish the final text of the revised Code after this summer. The revised Code is expected to be effective as from 1 January 2017 which means that qualifying companies should apply the revised Code to their financial years starting on or after 1 January 2017.

Proposed amendments

The Proposal does not contain major amendments to the provisions on one-tier boards in the current Code.

The principal aim of the Proposal is to clarify how the revised Code, given its two-tier orientation, can be applied to companies with a one-tier board.

The proposed amendments and clarifications include:

- The composition of a one-tier board should safeguard adequate and independent supervision by the non-executive members.
- The independence requirements in the Code for supervisory board members also apply to the non-executive board members.

- The independence requirements in the Code for the chairman of the supervisory board also apply to the chairman of the one-tier board.
- The chairman of the one-tier board is primarily responsible for the leadership and the effectiveness of the board and the committees.
- The non-executive board members have to account for their supervision in the past financial year.
- One of the executive directors should be appointed as the CEO. The CEO shall lead the day-to-day management of the company and its business.

Guidance

The Proposal also contains further guidance on how the Code may be applied to companies with a one-tier board. The Committee states that this guidance may be published in a separate document.

The guidance consists of the following paragraphs:

- Collective responsibility and the division of tasks;
- Approval by the majority of non-executive board members;
- Committees;
- Responsibility of non-executive board members;
- Effective management and supervision; and
- Remuneration.

The above paragraphs include the following guidance:

- Where the Code assigns a supervisory role to the supervisory board in a two-tier system, it should be read as assigning such a role to non-executives in a one-tier board.
- The audit committee, remuneration committee and selection committee should be composed entirely of non-executive members of the board. The chairman of a one-tier board may not also act as the chairman of such committees.
- The Code assigns tasks pertaining to remuneration of members of the management board and nominations for their appointment, to the supervisory board. In a one-tier board, these tasks are to be assigned to the non-executive members of the board.
- The Code provides that certain important management board decisions require the approval of the supervisory board. In a one-tier board, the Committee deems it "conceivable" that such decision-making will be assigned to the non-executive members of the board instead of the entire board. In these cases, it may be provided that such decisions require the approval of the majority of the non-executive members of the board. An example is approval of strategy.
- Companies have discretion as to how the non-executive members of the board account for their supervision in the preceding financial year.

They may give this account in the management report or in a separate report.

- Companies have discretion as to whether committees should report to the entire board or only to the non-executive members of the board.
- The appointment terms for management board members apply to executive members of the board whereas those for supervisory board members apply to non-executive members of the board. Companies have discretion as to how the corresponding application of the provisions on the evaluation of board members is performed.

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