DUTCH BILL IMPLEMENTING REVISED SHAREHOLDERS' RIGHTS DIRECTIVE SENT TO PARLIAMENT

On 16 October 2018, a Bill implementing the revised shareholders' directive was sent to Parliament. The objective of the revised shareholders' rights directive is to increase shareholder engagement in listed companies. Key changes relate to a company's remuneration policy, disclosure thereof and related party transactions. The directive must be implemented in Dutch law on 10 June 2019. We currently expect that the new rules must be applied as from 1 January 2020. The obligations in relation to related party transactions could also become applicable earlier in 2019, depending on the date of entering into force of the Bill. The Bill applies to companies incorporated under Dutch law (NVs and BVs) whose shares are admitted to trading on a regulated market in the European Union.

Below, the most important topics of the Bill and key changes to current legislation and market practice are explained.

REMUNERATION POLICY

The Bill provides, in line with the revised shareholders' rights directive, that the shareholders meeting should have a binding vote on the company's remuneration policy in respect of its directors. Dutch law already contained such a rule, but a number of important changes are introduced:

- the remuneration policy shall be adopted by the shareholders meeting at least once in four years, and not only in the event of significant changes as is currently the case;
- the rules on remuneration policy (and the rules on the remuneration report as set out in detail below) apply not only to members of a management board, but to the members of the supervisory board as well (and, similarly, to non-executive directors in a one-tier board structure); and
- a company will be permitted to temporarily deviate from the adopted remuneration policy, even though only in limited circumstances. A

company is only allowed to do so until a new remuneration policy has been adopted and may only deviate insofar as required to serve the long-term interests and sustainability of the company as a whole or to safeguard its continuity.

If no remuneration policy in accordance with the new rules is adopted, the company is allowed to remunerate directors in conformity with the existing policy or existing practice until a remuneration policy in accordance with the new rules is adopted by the shareholders meeting. This provision of the Bill, which applies to both listed and non-listed public companies (NVs), ensures that a remuneration granted in the absence of a remuneration policy, is not deemed invalid. According to the explanatory notes to the Bill, if a company needs to revise its remuneration policy based on the new rules, it will need to do so in the first annual general meeting following the implementation of the Bill which is ultimately in the 2020 annual general meeting.

The Bill also provides that the remuneration policy should be clear and understandable and include details on, amongst other things:

- an explanation of the way in which the remuneration policy, in particular any variable and share-based remuneration, contributes to the company's strategy, long term interests and sustainability;
- an explanation of the way in which the remuneration and employment terms of the company's employees are taken into account;
- a detailed description of the various components of the fixed and variable remuneration;
- in case of share-related remuneration: description of the vesting period and the retention period of the shares;
- a description of the duration of the agreements with directors, including pension agreements, early termination agreements and the terms and conditions for payments in case of termination;
- a description of the decision-making process for the adoption, revision and execution of the remuneration policy; and
- in case of revision of the remuneration policy, an explanation of the most important changes and of the way in which the views of the shareholders and voting results at the general meeting were taken into account.

REMUNERATION REPORT

The company must draw up a remuneration report every year, containing an overview of all remuneration paid or due to individual directors (i.e. members of both the management board and of the supervisory board, or, as the case may be, of all members of a one-tier board) in the previous financial year. The remuneration report must be provided to the shareholders meeting for a (non-binding) "advisory vote" and, unless in case of certain smaller listed companies, shall be added to the agenda for the annual general meeting as a separate item.

The remuneration report should be clear and understandable and include details on, amongst other things:

- the total amount of remuneration per component part and the ratio between fixed and variable remuneration;
- the way in which the total amount of the remuneration complies with the remuneration policy and contributes to the company's long term financial objectives;
- the annual changes in the remuneration over the past five financial years, the development of the company's financial achievements and the average remuneration of the company's employees;
- any claw back of bonuses; and
- any deviations from the remuneration policy.

RELATED PARTY TRANSACTIONS

The Bill also provides for new rules around the approval and disclosure of certain transactions entered into by a company with a related party. These rules are largely consistent with, and codify certain of, the best practices as set out in the Dutch Corporate Governance Code. Under the new rules, the company is obliged to make a public announcement in case of a material transaction with a related party if and when such transaction is not entered into in the normal course of business or under normal market terms and conditions.

To ensure consistency with a company's financial reporting, the Bill refers to (the term as used in IAS 24.9 of) the International Accounting Standards Boards for the definition of "related party".

The Bill explicitly lists (i) a company's management board members, (ii) a company's supervisory board members and (iii) a person or persons who hold more than 10% of the company's shares, as a related party. Other examples under IAS 24.9 are a person or persons who have (joint) control or significant influence over the company or who belong to the company's key management personnel.

A transaction qualifies as "material" (i) if information on the transaction qualifies as inside information (which by itself also triggers a disclosure obligation, subject to certain limited exemptions available under applicable market abuse rules), and (ii) if it is concluded between the company and a related party.

Material transactions with related parties are subject to approval by the supervisory board or, if applicable, the one-tier board.

The public announcement must be made at the moment when the transaction is concluded and has to contain information about the nature of the relationship and the name of the related party as well as the date and the value of the transaction.

The rules on related party transactions do not apply to transactions between the company and a subsidiary and transactions which are offered under the

same conditions to all shareholders if their equal treatment and the interest of the company are safeguarded.

TRANSPARENCY OBLIGATIONS WITH RESPECT TO THE LONG-TERM ENGAGEMENT POLICY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

The Bill introduces rules aimed at improving the quality of shareholder engagement through stronger transparency requirements for institutional investors and asset managers. The Bill also introduces, mostly on a "comply or explain" basis, rules on the preparation, contents and disclosure of their policies regarding shareholder engagement and investment strategy. Similar rules are introduced for proxy advisers in relation to their operations, procedures and compliance with applicable codes.

SHAREHOLDER IDENTIFICATION, TRANSMISSION OF INFORMATION AND FACILITATION OF THE EXERCISE OF SHAREHOLDERS RIGHTS

Finally, the Bill introduces rules that are aimed at further harmonising the transmission of information through cross-border chains of custodians holding the shares of listed companies on behalf of the ultimate beneficiaries (shareholders). The rules provide, amongst other things, that a listed company incorporated in the Netherlands has the right to request foreign custodians in the chain to provide information on the identity of the shareholders holding 0.5% or more in the company's share capital (whereby the mirroring legislation in the other relevant Member States will oblige such custodians to acknowledge and respond to such request). Currently, under Dutch law, custodians in the chain (only) have the obligation to provide information on the identity of the next party in the chain. The current rules will continue to apply next to the new rules applicable pursuant to the Bill. The Bill also introduces the obligation for parties in the chain of custodians to provide shareholders timely with all information necessary to exercise their voting rights and other shareholders rights. EC Regulation 2018/1212 dated 3 September 2018 contains formats for the transmission of such information.

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