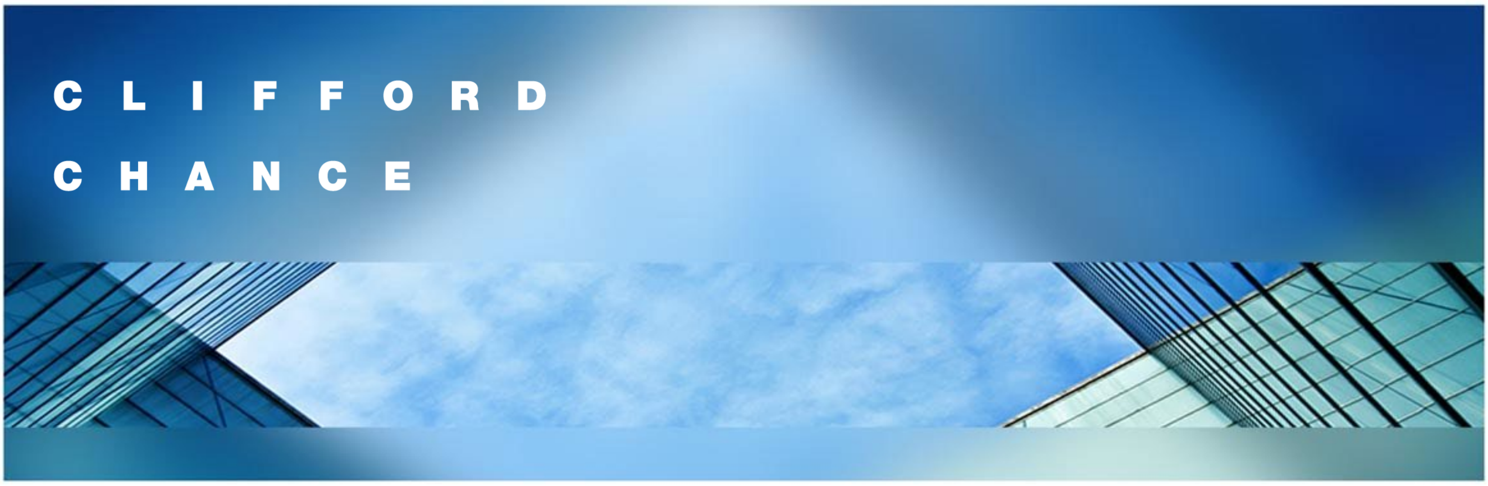

STATUTORY QUOTAS AND TARGETS TO IMPROVE GENDER BALANCE WITHIN DUTCH LARGE COMPANY BOARDS

Last week, the bill introducing 1) a statutory diversity quota for supervisory boards (or the non-executive members of a one-tier board) of companies with a stock listing in The Netherlands (see paragraph 1 below), and 2) diversity related goal setting and reporting obligations for so-called 'large companies' (see paragraph 2 below) was adopted by the Dutch House of Representatives; which is an important milestone in the enactment process of the bill.

The bill now has been sent to the Dutch Senate; the enactment is expected in 2021.

Key issues

- On 11 February last, the Dutch House of Representatives adopted the bill providing for a statutory diversity quota for companies with a stock-listing in the Netherlands
- Also 'large companies' must set ambitious and appropriate goals to promote gender diversity for its top management and sub top
- The bill has now been sent to the Dutch Senate; the enactment is expected in 2021

1. Statutory diversity quota (*ingroeiquotum*)

Based on the proposed new law, companies with a stock listing in the Netherlands should take account of the statutory quota requirements for any new appointments to their supervisory boards (or non-executive directors in case of a one-tier board). Supervisory boards (or the number of non-executive directors) need to become gender-balanced (*see below for examples depending on the size of the board*); to achieve this, new appointments that do not contribute to a gender-balanced supervisory board (or number of non-executive directors) will be void.

- Exceptions to the above principle are as follows:
  - Reappointments within 8 years from the year of first appointment remain possible; as supervisory board members/non-executive directors are often appointed for a four-year term, in practice this means that supervisory board members in their first term at the date of enactment of the bill can be reappointed for another term even if this appointment is not compliant with the statutory diversity quota.
  - Deviation is also possible under exceptional circumstances (as defined in the law) and for a maximum duration of two years. The explanatory notes to the bill specify that such deviation under exceptional circumstances can e.g. be invoked with a view to the long-term interests or sustainability of the company as a whole or to guarantee its viability. If e.g. the majority of the supervisory board members resign unexpectedly, or if a company in distress needs to urgently appoint a

new supervisory or non-executive board member and does not have the time or means for an extensive search.

- The statutory diversity quota amounts to at least one-third of the number of supervisory board members or non-executive board members. The explanatory notes to the bill state that the gender-balance that the bill aims for will depend on the size of the supervisory board (or the total number of non-executive directors). The following examples are given:

Number of members supervisory board/ non-executive members one-tier board	When deemed 'balanced' according to the (explanatory notes to) the bill
3	one man/ one woman
4	two men and two women
5	two men and two women
6	one third (33%) or half (50%)
7	three men and three women
8	three eights (37,5%) or half (50%)
9	one third (33%) or four ninth (44%)

(Obviously, the obligations do not apply for a supervisory board consisting of one member)

- The law concerning the statutory diversity quota will take effect per the date on enactment. There will not be a transitional period.

2. Diversity related goal setting and reporting obligations for large companies

- Additionally, the bill introduces a reporting obligation for 'large companies' (regardless whether these have a stock listing) towards the Dutch Social and Economic Council (*Sociaal Economische Raad, SER*). On 25 January last, it was clarified that if the bill will become law in 2021, these reporting obligations will only become effective in 2022 for the first time.
- So called 'large companies' (NVs (public companies) and BVs (private companies)) must set ambitious and appropriate goals in the form of a target number to promote gender diversity in the management board, supervisory board and for categories of senior management that are to be determined by the company itself. These goals should be supported by a plan and relevant companies will have to report to the SER annually on actual numbers and progression made. A standard format for such reporting will be developed. For large companies with a stock listing this is in addition to both the best practice provisions on diversity in the Corporate Governance Code and the reporting requirements on its diversity policy in the director's report (*bestuursverslag*). The explanatory notes to the bill provide that these reporting requirements will be aligned with those of the bill. The proposal is in line with the 2019 advisory report by the SER.
- In accordance to Dutch accounting law (*jaarrekeningenrecht*), a company qualifies as 'large' when it meets at least two or all three of the following requirements during two consecutive balance sheet dates:

  1. the value of the assets of the company according to the balance sheet (based on acquisition and manufacturing price) is or exceeds €20,000,000;

2. the net turnover for the financial year is or exceeds €40,000,000;
3. the average number of employees during the financial year consists of at least 250.

According to the SER's 2019 advisory report, approximately 5,000 companies qualify as such large companies in the Netherlands.

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