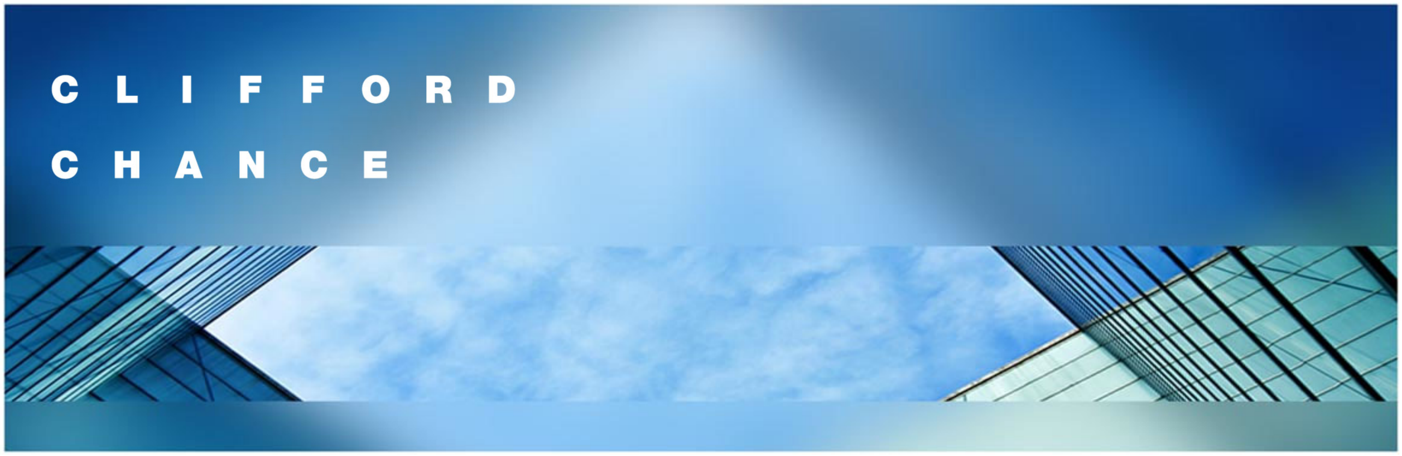

REVISION OF THE DUTCH CORPORATE GOVERNANCE CODE – KEY CHANGES

On 20 December 2022, the Monitoring Committee Corporate Governance Code (the "**Committee**") published a revised version of the Dutch Corporate Governance Code (the "**Code**") that will apply to Dutch listed companies as of 1 January 2023.

Introduction

The Code was introduced in 2003, first revised in 2008, and again in 2016. The current update was triggered by a number of important developments in relation to governance, including, in particular, the emphasis on sustainable long-term value creation and sustainable governance.

The revisions to the Code focus on the following five themes: (i) sustainable long-term value creation; (ii) the role of shareholders; (iii) diversity and inclusion; (iv) legislative developments; and (v) internal risk and compliance management.

This briefing summarises what we believe are the key amendments for each of the five themes and includes a short description of their main features, their practical implications (where relevant) and our initial assessment of these changes.

Two key principles remain unchanged: (i) the Code applies to all Dutch listed companies;[1] and (ii) the Code is based on the "comply or explain" principle, pursuant to which a company must either comply with, or explain why it deviates from, the principles and best practice provisions ("**bpp**") of the Code, whereby the boards of a company may set aside the "comply or explain" principle where it has no influence on the compliance with bpps by shareholders. Furthermore, the Code continues to take the two-tier board structure as its starting point.[2]

Timing

The revised Code will enter into force as of 1 January 2023. In terms of reporting, this means that companies should account for complying with the Code in their board report that covers the financial period starting on or after 1 January 2023. It is, however, advisable for companies to identify any required

Key changes to the Code

Sustainable long-term value creation

- To be included in the company's strategy
- Additional, specific disclosure in the board report
- Stakeholder dialogue

Diversity and inclusion (D&I)

- Extended set of diversity criteria for board composition
- Introduction of a company-wide D&I policy
- Expanded reporting

The role of shareholders

- Recognition of the company's strategy on sustainable long-term value creation
- Voting restrictions for (institutional) shareholders
- Increased focus on dialogue

Legislative updates

- Alignment of Code provisions with recent and upcoming legislation

Risk management

- Extended reporting
- Increased focus on role of internal audit

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1 Formally, to: (i) all companies whose registered offices are in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system; and (ii) all large companies, i.e. those with a balance sheet value in excess of EUR 500 million, whose registered offices are in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a multilateral trading facility or a comparable system. The Committee also acknowledges the diversification of listed companies in recent years. It specifically refers to Dutch companies with a (main) listing abroad and to Dutch special purpose acquisition companies (SPACs), and confirms all these companies are expected to adhere to the Code.

2 Even though the use of one-tier board structures has increased over the past few years, there is no separate "one-tier version" of the Code available, and the relevant companies and their advisers will have to continue to "translate" the relevant provisions into the one-tier board structure.

changes to constitutional documents, by-laws, committee charters and/or company policies as soon as possible in the course of 2023, and to perform an impact assessment, also with a view to any follow-up during the 2023 AGM season.

Key changes

Sustainable long-term value creation

The focus on sustainable long-term value creation has increased significantly over the past few years. The Committee positions sustainable long-term value creation as an important part of the company's strategy. Under the Code, companies must provide in-depth insight on how they take these sustainability related matters into account.

- *Strategy*

Companies should formulate a strategy for sustainable long-term value creation as part of their overall strategy and should set specific objectives in relation to this strategy. When developing the strategy for sustainable long-term value creation, attention should be paid, *inter alia*, to (i) providing a fair share of that value to the countries in which the company operates by paying taxes, and (ii) the impact of the company and its business in the field of sustainability, including the effects on human beings and the environment. (*bpp 1.1.1*)

With these changes, the Committee firmly cements sustainable long-term value creation as part of the Code and as part of the company's strategy.

- *Board report disclosure*

In the board report, the board should account for its vision on sustainable long-term value creation and for its strategy in order to realise this vision and objectives, the actions taken, and the results pursued and achieved, by describing (i) the impact of its products, services and activities on human beings and the environment and (ii) how stakeholders' interests are considered in that context. The requirements under (i) and (ii) do not apply to companies which prepare their reporting pursuant to the rules implementing the Corporate Sustainability Reporting Directive or similar standards required by the country where the company is listed. (*bpp 1.1.4*)

The company should, in its board report, also account for how the company's culture, underlying values and encouraged behaviour contribute to sustainable long-term value creation. (*bpp 2.5.4(ii)*)

The Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive are expected to be implemented in Dutch law in the coming years. Some bpps may well not be fully aligned with these directives or the final implementing legislation, which is something that companies should consider when deciding on whether and how to apply these bpps.

The role of shareholders

- *Shareholder engagement*

The Committee has underlined the importance of effective and lasting shareholder engagement and has further explained the relationship between companies and shareholders.

In the Code, shareholders, including institutional investors, are required to recognise the importance of a company's strategy which is focused on sustainable long-term value creation. (*Principle 4.4*) Companies should adopt a policy to facilitate an effective dialogue with stakeholders to ensure that the stakeholders' interests are considered when formulating their strategy focused on sustainable long-term value creation. (*bpp 1.1.5*) The previous version of the Code also stipulated that companies had to formulate a policy on bilateral contacts. However, the Code adds that dialogue between companies and shareholders should not only be constructive but also that a company is expected to facilitate such dialogues, unless it is not in the interests of the company. If a shareholder enters into a dialogue with the company outside the context of a shareholders' meeting, such shareholder shall, if so requested by the company, disclose its shareholding (both long and short positions, including derivatives) to the company. (*bpp 4.2.2*)

- *Shareholder voting*

As in the previous version of the Code, shareholders may exercise their voting rights as they deem fit. However, they are now expected to do so on an informed basis, meaning that they should cast a well-considered vote. Also added to this provision is that if shareholders make use of services of voting advisors, they should (i) encourage their voting advisor to enter into a dialogue with the company regarding its voting policy and (ii) ensure that their votes are cast in line with their own voting policy. (*bpp 4.3.1*)

The voting policy is replaced by the wider concept of engagement policy. Institutional investors should include in this policy their recognition of the importance of a strategy by the company focused on sustainable long-term value creation. (*bpp 4.3.5 and Principle 4.4*)

Institutional investors are from now on expected to publish an annual report on their engagement policy, addressing (i) voting conduct, (ii) most "significant votes"[3] and (iii) use of services of voting advisers. For votes against, or abstaining from voting on, a management board proposal, an explanation should be given to the company of the reasons for such voting behaviour. (*bpp 4.3.6*).

Also, in the event a shareholder's short position is larger than its long position, it should abstain from voting at the general meeting (*bpp 4.3.7*), and if the agenda for a general meeting contains one or more "significant items" (including items that are of strategic importance, or in relation to which the shareholder disagrees with the management board's proposal), any lent shares should be recalled by the shareholder before the record date. (*bpp 4.3.8*)

Diversity and inclusion

- *More than gender diversity*

The Committee acknowledges the importance of developments in Dutch law concerning a more balanced male/female ratio at board and senior management level. However, it also stresses that diversity is about more than gender alone. In this context, the updated Code introduces additional diversity characteristics and now requires that the composition of the boards and executive committee (if any) reflect a level of diversity appropriate for the company in terms of expertise, experience, competencies, other personal qualities, sex or gender identity, age, nationality and (cultural) background. (*Principle 2.1*)

[3] "Most significant votes" include (but are not limited to) (i) votes on matters that have received substantial media attention or items that are regarded – by the institutional investor – as a priority in the run-up to the annual general meeting, (ii) votes on any item (A) that is of strategic importance or (B) where the institutional investor disagrees with the recommendation of the company's management board, and (iii) votes where the institutional investor has a large holding compared to its holdings in other investee companies.

These additions should facilitate viewing issues from different perspectives and help prevent groupthink.

- *Diversity & inclusion policy*

To create an inclusive organisation with a culture in which every employee feels valued and respected, companies should have a company-wide diversity and inclusion policy ("**D&I Policy**"). The D&I Policy should, in any event, provide for concrete, suitable and ambitious targets for a better balance in gender diversity, as well as on aspects of diversity and inclusion that are relevant to the company in relation to composition of the boards, the executive committee (if any) and the "subtop".[4]

The supervisory board will adopt the D&I Policy in relation to the composition of the management board. The management board will adopt the D&I Policy in relation to the composition of the executive committee (if any), the "subtop" and all other employees, subject to prior approval by the supervisory board. (*bpp 2.1.5*)

The D&I Policy and its implementation must be accounted for in the company's corporate governance statement. This approach is in line with the requirements that follow from the 2022 "diversity legislation" as implemented in Dutch law (section 2:142b and 2:166 of the Dutch Civil Code), but the Code widens the scope of diversity aspects that must be reported on, including, for example – and to the extent feasible – the influx, promotion and exit of diverse talent in the organisation. Where targets included in relation to the composition of the boards, the executive committee (if any) or the "subtop" have not been reached, the corporate governance statement must also address the relevant reasons and the measures that will be taken to meet these targets, and within which timeframe. (*bpp 2.1.6*)

Finally, if the company has in place any employee representative body, the D&I Policy shall also be discussed in meetings between the boards and such body. (*bpp 2.5.3*)

Legislative developments

The Code also reflects certain legislative and regulatory changes, including the introduction of a statutory reflection period and new rules on the remuneration policy and reporting in Book 2 of the Dutch Civil Code. The Committee has tried, insofar as possible, to avoid overlap or conflict with existing laws and regulations and to ensure that the Code is largely complementary.

- *Response time*

The Committee acknowledges an overlap between the statutory reflection period (*wettelijke bedenktijd*) and the response time (*responstijd*) as laid down in the Code. In the explanatory notes to this bpp, it justifies the co-existence of the two provisions due to the fact that the response time can be invoked (i) earlier than the reflection period and (ii) in more situations. (*bpp 4.1.7*)

However, the Committee takes the position that the cumulative use of both the reflection period and the response time in respect of the same matter is undesirable. In that light, a carve-out is added to bpp 4.1.7 to the effect that the

[4] The "subtop" comprises employees in leadership positions as determined by the management board. The definition differs slightly from "senior management", which is a group of senior executives in leadership positions to be defined by "large" companies as part of the statutory diversity requirements that apply to "large" companies as of 1 January 2022.

response time may not be invoked if the reflection period has previously been invoked for the same matter.

- *Remuneration and reporting*

The Committee acknowledges that there is an overlap between the remuneration and reporting-related requirements in the Code and those in Dutch corporate law, but confirms that these requirements can co-exist. In practice, this means that listed companies have to comply with both sets of requirements. (*bpp 3.1.2*)

In relation to the remuneration report, the statutory requirements specific to listed companies as per the implementation of the revised Shareholder Rights Directive (2017/828/EU) have been referenced.

In addition, it has been clarified in the explanatory notes how the reporting obligation on pay ratios within the company should be understood, i.e. the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and its group companies (if consolidated with the company). Although the Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828 have not yet been published in final form, these can be used for drafting the remuneration report. (*bpp 3.4.1*)

Internal risk & compliance management

Finally, the following changes to the Code are made to strengthen the accountability chain.

- *Risk management*

When identifying and analysing the risks associated with the company's strategy and activities, all material control measures relating to strategic, operations, compliance and reporting risks should be covered. (*bpp 1.2.1*) In addition, the board should not only monitor the operation of internal risk management and control systems, but should, going forward, also monitor its design. (*bpp 1.2.3*)

- *Internal audit*

An independent third party should assess the performance of the internal audit function at least once every five years. (*bpp 1.3.2*)

- *Compliance*

When evaluating the functioning of the supervisory board, an external expert should be involved to oversee the evaluation process. Also, greater emphasis should be given to behaviour and culture. (*bpp 2.2.6*). In case any actual or suspected misconduct or irregularities are discovered by the internal audit function, it should inform the managing directors and the chairperson of the audit committee. Where this pertains to one or more managing directors, the internal audit function should directly report this to the chairperson of the supervisory board. (*bpp 2.6.4*)

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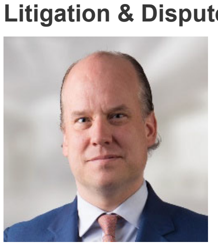

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