

CORPORATE GOVERNANCE COMMITTEE PRESENTS DEFINITE DUTCH CORPORATE GOVERNANCE CODE

The Hague, 9 December.- **The Dutch corporate governance code presented today marks a step towards the restoration of public confidence in the honesty, integrity and transparency of the conduct of affairs within Dutch listed companies.**

This is what the Corporate Governance Committee writes in its account of its work that ended on Tuesday, 9 December 2003, with the presentation of the code in The Hague to the Minister of Finance, Mr G. Zalm, and the State Secretary of Economic Affairs, Mrs C. van Gennip. To ensure the proper working of the code, the legislator must also make a contribution in such fields as proxy voting and cross-border voting by shareholders. Furthermore, the committee suggests that the legislator should address anti-takeover measures and the regulations as comprised in the statutory two-tier system (structure regime) as these both impede good corporate governance. The committee proposes the creation of a 'standing committee' that will be responsible for regularly updating the code and thereby keeping Dutch corporate governance on an internationally accepted level.

To secure a position among the international leaders in the field of corporate governance, the Netherlands had to make a few large strides. "The checks and balances within Dutch business and industry had grown rather lop-sided over the years, thus severely eroding the confidence in corporate management." The management board and the board chairman had become too dominant, the supervisory board was no longer perceived to be adequately responding to abuses, and the shareholders' meeting was not able to function as correcting mechanism. "A rigorous and robust code was therefore necessary to help bridge the confidence gap". The intention now is for the government and parliament to designate the currently presented code as the official code of conduct through an Order in Council. Companies may depart from the code but must explain and account for this to their shareholders.

Compared to the draft presented in July, the definite code contains, in addition to many textual changes, a limited number of substantive changes that were made in response to the reactions. The most important are:

- the provision that the variable component of management board members' remuneration may not exceed a maximum of 50% of the total remuneration has been deleted and replaced with the provision that the remuneration report must provide a motivated explanation of the fixed-variable ratio;
- a hardship clause has been built into the maximum severance pay of one-year's salary;
- the investment restrictions for management board and supervisory board members have been deleted. Instead, the definite code includes a provision stipulating that listed companies must draw up rules for investments by management board and supervisory board members. Transactions in securities issued by Dutch listed companies must be reported to the compliance officer;
- the maximum of five supervisory board memberships exclusively applies to Dutch listed companies;
- the most important elements of a contract concluded between a management board member and the company must be published immediately rather than delaying disclosure until the annual report;

- only a large supervisory board (i.e. more than four members) is obliged to appoint audit, remuneration and selection and appointment committees. Smaller supervisory boards must fulfil the roles of the committees as full boards.
- former management board members of a company cannot become the chairman of the supervisory board of the same company;

In an explanation to the definite code, Mr M. Tabaksblat, chairman of the committee, said that the in-depth, wide-ranging and sometimes strong debate has led to a fully-fledged code that can count on a broad base of support within society. “The corporate culture in the Netherlands is changing. In some cases action has been taken ahead of the code’s entry into force. So even prior to its adoption, the code is already having an influence.” Tabaksblat noted that there is some belief in self-regulation appeared to have arisen where initially sceptical voices had claimed that the entire code needed to be made law because it ‘lacked teeth’.

The number of reactions to the draft code totalled 257, including some that were as brief as a single sentence while others were more extensive, the longest stretching to 95 pages. The final result is a code that is made up of 21 principles, 113 best practice provisions and 15 recommendations to the legislator and ‘standard setters’.

“Management board and supervisory board members will have to learn to live with a greater degree of transparency in their decision-making”, Tabaksblat commented. He also observed that institutional investors are increasingly exercising their responsibility towards the ultimate beneficiaries or investors and towards the companies in which they invest. “The participation of institutional investors in, for instance, shareholder meetings is essential to the success of the new corporate governance structure”.

Tabaksblat emphasised that legislative changes were also necessary to restore trust and confidence. The law must provide for proxy voting so that more shareholders can vote on board proposals in shareholder meetings. Furthermore, in order to improve the checks and balances, it is important for the law to stipulate that anti-takeover measures used in ‘wartime’ must be withdrawn after a limited period, and may not be used to protect the position of the management board and supervisory board members.

The committee holds that regulations as comprised in the statutory two-tier system (structure regime) hamper the objective to strengthen the checks and balances within listed companies and are difficult to explain to the international community. For this reason, the committee suggests an amendment of the law.

The new code enters into force on 1 January 2004. The committee expects the listed companies to give a concrete indication in their annual reports for 2003 as to how they intend to apply the code and to raise this issue at the shareholder meetings in 2004 (on the year 2003). Official reporting should then take place for the first time in 2005. Furthermore, the Committee acknowledges that existing contractual arrangements with management board members can not always be brought in line with the code and that the continuity of decision-making should not be jeopardised by the immediate application of code provisions on the appointment of management board members and the permitted number of supervisory board memberships.

According to Tabaksblat it is now up to the companies themselves to apply the code. “The code must be taken up seriously. For only then will a meaningful effort be made to restore the loss of confidence.”

The code was unanimously adopted by the committee, comprising experts from business & industry, academics, auditors, institutional investors, private shareholders and the stock exchange. The full text of the code can be found on the website of the committee: www.commissiecorporategovernance.nl.

The Corporate Governance Committee has the following composition:

Morris Tabaksblat (Chairman)
Rients Abma (Secretary)
Marco Knubben (Deputy Secretary)
Frederik van Beuningen
Jaap Glasz
Gilles Izeboud
Jan Kalff
Peter de Koning
George Möller
Rob Pieterse
Peter Paul de Vries
Arie Westerlaken
Jaap Winter

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