

PRESS RELEASE

Code more focused on influencing behaviour in advance

Monitoring Committee presents updated Corporate Governance Code

The Hague, 10 December 2008 – **The Corporate Governance Code Monitoring Committee will today present the amended Code to the special interest groups that have requested the changes and to the Ministers of Finance, Justice and Economic Affairs. The Committee concludes that the Code should encourage proper conduct on the part of management and supervisory board members and shareholders. This is why more emphasis is to be placed on how they perform their duties in practice rather than on how they account for their actions in retrospect. The Committee considers that too much energy has been spent in complying with detailed reporting rules, while the really important issues have received insufficient attention. The decisive factor in the operation of the Code is not strict compliance with the letter of the code (box ticking) but the extent to which all concerned act in practice in accordance with the spirit of the Code.**

The main adjustments are in the areas of risk management, executive pay, shareholder responsibility, diversity in the composition of the supervisory board and corporate social responsibility. The role of the supervisory board has been strengthened, for example in relation to takeover bids. A response time has also been introduced to give the management board the opportunity to give due consideration to all interests when confronted with a shareholder proposing a different strategy. The Code has been updated at the request of the Confederation of Netherlands Industry and Employers (VNO-NCW), the Association of Securities-Issuing Companies (VEUO), the Association of Stockholders (VEB), Eumedion, the Dutch Centre of Executive and Supervisory Directors (NCD), NYSE-Euronext Amsterdam, the Federation of Dutch Trade Unions (FNV) and the National Federation of Christian Trade Unions (CNV). The Committee published a consultation document setting out its proposals for amendments in June 2008.

Amendments to the Code

The Committee has changed the Code in the following ways.

- **Greater emphasis is put on the importance of integral risk management. This starts with assessment of the risks connected with the strategy and financial structure of the company. The next stage is the design and effectiveness of an adequate internal risk management system. The process is concluded by risk reporting and accounting. The supervisory board is closely involved in the strategy stage and monitors the quality of the internal risk management and reporting.**
- **A 'response time' of 180 days is introduced for situations in which a company is confronted with a shareholder who wishes to bring about a change of strategy.**
- **Rules of conduct are introduced for the management board and supervisory board in takeover situations.**
- **In carrying out their duties the management and supervisory boards must have due regard for corporate social responsibility issues that are relevant to the enterprise.**
- **When executive pay is determined, pay differentials within the company must be taken into account. The ratio of variable to fixed remuneration must be appropriate.**
- **Variable remuneration is to be based on long-term objectives, while non-financial indicators relevant to the company should also be taken into account. Remuneration must also be in keeping with the company's risk profile.**
- **There is to be stronger control by the supervisory board over management board remuneration (by means of scenario analyses, the test of reasonableness and claw-back clauses). The transparency regulations for executive pay are simplified.**
- **The profile must set out what specific objective is pursued by the supervisory board in relation to diversity in the composition of the supervisory board. The supervisory board must account for this in its report and indicate how and within what period it expects to achieve this objective.**
- **A shareholder will be expected to act in keeping with the principle of reasonableness and fairness. This responsibility includes the exercise of voting rights.**

Jean Frijns, chairman of the Monitoring Committee, considers that the Code's basic premise, namely that the company is a long-term alliance that should take account of the interests of all stakeholders, is still valid. 'The requirement that all interests should be taken into account provides a solid basis,' he says. Sound corporate governance is important to companies not only in good times but certainly also in more difficult times. The present crisis has made painfully clear that the introduction of increasingly detailed rules and regulations and retrospective checks, particularly in the case of remuneration and risk control, has not been the right approach. The amended Code goes back to first principles and focuses on encouraging the desired behaviour in advance. This is in keeping with the principle-based character of the Code.'

On the subject of the response time Frijns remarks as follows, 'The management board is responsible for weighing the different interests when determining strategy. To discharge this responsibility it may need time in order to be able to respond adequately to proposals by shareholders for changes of strategy. It is reasonable to expect shareholders to be willing to engage in a dialogue with the management board. However, the management board should use the response time for deliberation and not as a disguised anti-takeover measure. The Committee recommends that the response time should also be laid down in legislation.'

On the subject of remuneration Jean Frijns says, 'Some strong provisions have been added to the Code. Supervisory board members now have more instruments at their disposal. Examples are the obligatory scenario analyses, the possibility of adjusting remuneration where past awards turn out unfairly in practice and the so-called claw-back power to recover from management board members variable remuneration that has been awarded on the basis of incorrect financial and other data. The Code now puts greater emphasis on encouraging the desired behaviour. Detailed rules on the remuneration report have been dropped. These tend to produce a box-ticking mentality.'

'The supervisory board is assigned a crucial role in the Code,' says Frijns. 'Not only must the supervisory board naturally work closely with the management board, but it must also be able to act as a sufficient counterweight. The Code now gives the management board more instruments for the effective exercise of its powers, for example in relation to remuneration and also takeovers. However, supervisory board members must then actually discharge this responsibility in practice. It can help if supervisory board members organise themselves in such a way that one of their number can always be contacted.'

On the subject of diversity in the composition of the supervisory board Jean Frijns remarks, 'Companies can themselves determine how ambitious they wish to be, but they must specify concrete targets in order to make clear how they intend to achieve their ambitions.'

Task and role of the Monitoring Committee

The Corporate Governance Code Monitoring Committee was established by the Minister of Finance, the State Secretary for Economic Affairs and the Minister of Justice in December 2004 to promote the use of the Code and to monitor compliance and application. Each year the Committee publishes its findings on compliance with the Code and the extent to which the Code is up to date and practicable. In May 2007 the Monitoring Committee submitted to the government its opinion on the role of shareholders and the scope of the Code. The government has largely adopted the recommendations. The Monitoring Committee's term of office ends on 14 December 2008.