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## Dutch bill changes shareholders rights on remuneration and related party transactions

**A bill implementing the revised European Shareholders Rights Directive was recently submitted to the Dutch parliament. The directive aims to increase shareholder engagement in listed companies seated in the EU. Its implementation will result in shareholders at Dutch listed companies having more influence on executive pay. Companies will have to submit their remuneration policy to a binding vote by the general meeting at least every four years. An advisory vote on the annual remuneration report is also introduced. Furthermore, material related party transactions have to be disclosed and approved by the supervisory board. The bill also includes transparency requirements for institutional investors, asset managers and proxy advisors. Lastly, the bill will amend the current Dutch law on shareholder identification to bring this more in line with the new provisions of the directive.**

**The directive must be implemented into national law by 10 June 2019. As the Dutch bill may be amended during the parliamentary process - which we will keep you informed on - clients should await the final bill before taking any steps anticipating the new measures.**

As a starting point for implementation, the bill aims to correspond as closely as possible with existing Dutch law and self-regulation, such as the Dutch Corporate Governance Code. A draft of the bill was discussed with the Dutch State Commission on Company Law and published for consultation from 27 February until 27 March 2018. This led to changes in the text of the bill.

The key topics of the revised Shareholder Rights Directive are:

- ‘Say on pay’, describing the involvement of shareholders in matters relating to the remuneration of directors
- Related party transactions
- Identification of shareholders and facilitating the exercise of shareholder rights
- Increased transparency rules for institutional investors, asset managers and proxy advisors

The bill proposes amendments of Book 2 of the Dutch Civil Code, the Dutch Financial Markets Supervision Act (Wft) and the Dutch Securities Giro Transfer Act (Wge).

The key proposed changes with regard to remuneration, related party transactions, and identification of shareholders and electronic voting are set out below. The changes apply to Dutch listed companies, both NVs and BVs. A limited number of changes also apply to non-listed companies.

### **‘Say on Pay’**

Shareholders will be entitled to vote on the remuneration policy every four years. This requirement will have immediate effect when the bill becomes law. Companies who do not comply with this requirement will have until their general meeting in 2020 to submit their new remuneration policy for approval.

The provisions regarding the remuneration policy and the remuneration report will apply to both the management board and the supervisory board. Companies that need to prepare a new remuneration policy or revise it to comply with the new provisions, must have this policy approved at the first annual general meeting after the bill becomes law. Until such time, the company may remunerate board members according to its existing remuneration policy or its existing practice.

Under exceptional circumstances, a temporary deviation from the remuneration policy will be allowed. But only if the policy sets out the procedural conditions under which the deviation can be applied and specifies the elements of the policy that can be deviated from.

Annually, the general meeting will have an advisory vote on the remuneration report. A negative advisory vote has no impact on the remuneration already paid out. However, the company must explain in its next remuneration report how it took the previous advisory vote into account. Small and medium-sized companies will only be required to submit their remuneration report for discussion to the annual general meeting.

Two new articles in the Dutch Civil Code set out detailed requirements for the content of the remuneration policy and the remuneration report, which have to be clear and easy to understand.

The remuneration report has to outline the remuneration awarded to individual board members during the last financial year. Companies have to make their remuneration report available on their website for a period of at least ten years. The provisions regarding the remuneration report will have immediate effect. This means that the new-style remuneration report must be submitted to the first annual general meeting after the bill becomes law.

The European Commission is planning to adopt non-binding guidelines for companies to ensure an EU-wide standard presentation of information on remuneration.

### **Related party transactions**

Under current Dutch law, companies have to mention material related party transactions in the notes to their annual financial statements if these transactions have not been concluded on normal market terms. The company decides whether a transaction is material. In addition, specific provisions on related party transactions are included in the Dutch Corporate Governance Code. Furthermore, the provisions on conflict of interest are relevant for related party transactions with board members.

The bill adds new rules on related party transactions to the Dutch Civil Code. “Material” transactions with related parties entered into outside the normal course of business or on other than normal market terms, must be approved by the supervisory board (or one-tier board) and be publicly announced at the time that the transaction is entered into. No shareholder approval will be required.

If a transaction contains price-sensitive information and is concluded between the company and a related party, this transaction is “material”. One or more shareholders representing 10% of the issued capital, a managing director or a supervisory director will be deemed a related party, which is in line with the best practice provision of the Dutch Code. In the assessment, two aspects have to be taken into account: (i) the influence of the transaction on the economic decisions of the company’s shareholders, and (ii) the risk the transaction creates for the company and those shareholders who are not related parties, including minority shareholders.

The supervisory board (or one-tier board) must establish an internal procedure to periodically assess whether transactions are concluded in the ordinary course of business and on normal market terms.

In response to the advice of the Dutch State Commission on Company Law, the government is discussing the position of antitakeover foundations, such as foundations acting as an “administration office” or holding preference shares. It will depend on the circumstances of the case whether this type of foundation can be regarded as a related party with the issuance of shares in a takeover situation.

### **Identification of shareholders and electronic voting**

The bill will amend the current Dutch law on shareholder identification to bring this more in line with the new provisions of the directive. The scope of the rules on shareholder identification will be limited to Dutch companies with a listing on a regulated market in the European Union.

Shareholders who vote electronically during a general meeting must be notified by the company that their vote has been received. Shareholders may also ask the company to confirm that their vote has been validly recorded and counted by the company. They must submit this request within three months after the general meeting.