Guidance on revised EU Shareholder Rights Directive implementation

The upper house of the Dutch parliament is still reviewing the bill implementing the revised European Shareholder Rights Directive (SRD). Although the deadline has expired, SRD implementation in the Netherlands is expected to resume after the parliamentary summer recess. In the meanwhile, we provide guidance on the main changes for Dutch companies listed in the EU:

Remuneration

- A remuneration policy needs to be in place for the management board and the supervisory board.
- The remuneration policies must be adopted by the general meeting at least every four years.
- The general meeting will have an annual advisory vote on the remuneration report.

Related party transactions

- Material related party transactions will require the approval of the supervisory board and will have to be disclosed ultimately at the time they are entered into.

Electronic voting

- Each shareholder who casts a vote in a general meeting should have the possibility to verify whether the vote has been validly recorded and counted.

In this edition of In context, we briefly explain each of these topics and provide some tools for your convenience.

REMUNERATION

Remuneration policies

Both the management board and the supervisory board must each have a remuneration policy in place. The key proposed changes regarding the content of the remuneration policy is that the law will provide that the remuneration policy explains how the remuneration contributes to the company’s strategy, long-term interests and sustainability of the company, and how the level of support in society was taken into account when formulating the policy.
Adoption of the remuneration policies

The remuneration policies must be adopted by the general meeting at least every four years. Furthermore, changes to the policy will also require shareholder approval. The works council must be given the opportunity to share its views and give advice on the proposed remuneration policy before it is submitted for adoption at the general meeting (this is not “advice” within the meaning of the Works Council Act). If the works council has been set up at a subsidiary of the listed company, such advice is required if a majority of the employees of the company, and the group companies, are employed within the Netherlands.

A majority of at least 75% of the votes cast at the general meeting is needed to adopt each remuneration policy. The company’s articles of association may – explicitly – set a lower majority requirement.

In principle, the company must submit the remuneration policies for adoption at the first annual general meeting that takes place after the bill’s implementation. For instance, if the bill enters into force on or before 1 January 2020, the policy must be submitted to the AGM of 2020. And, for example, if a remuneration policy already compliant with the SRD has been in force for two years when the bill enters into force it can, in principle, remain unchanged for the following two years before it has to be submitted again to the general meeting for adoption.

Advisory vote on the remuneration report

The most important proposed change regarding the remuneration report is that the general meeting will have an annual advisory vote on the report. In the remuneration report of the subsequent financial year, an explanation must be included on how the advisory vote has been taken into account. Further, the remuneration report must explain how the remuneration complies with the remuneration policy, how it contributes to the long-term performance of the company, and how financial and non-financial performance criteria were applied. The European Commission has published a draft of non-binding guidelines on the standardised presentation of the remuneration report in line with the SRD requirements.

Contrary to what was previously understood, the Minister for Legal Protection recently suggested that companies go ahead and prepare a “new style” remuneration report for the financial year 2019. Companies must also make preparations to ensure that this “new style” remuneration report can be submitted to the general meeting for an advisory vote in 2020. This is the current position on this timing aspect, but nothing is definitive yet. We will need to await further proceedings in the upper house of parliament after the summer recess.

Remuneration: action items and timing

The actions to be considered by a company are included in this graphic. If the company’s management board remuneration policy is not yet in line with the SRD and the company does not have a remuneration policy for the supervisory board, the actions to be taken are the following:

Actions to be considered
### Before convocation AGM 2020
- Review and revise MB remuneration policy, prepare SB remuneration policy.
- Prepare MB and SB remuneration reports for the 2019 financial year.
- Adopt MB and SB remuneration policies.
- Hold first advisory vote on the MB and SB remuneration reports for the 2019 financial year.

### AGM 2020
- Adopt MB and SB remuneration policies.
- Hold first advisory vote on the MB and SB remuneration reports for the 2019 financial year.

The SRD sets out the requirements for the content of the remuneration policy and remuneration report. See [this checklist where we list the requirements](#).

For guidance on frequently asked questions, please see [this Q&A](#).

### RELATED PARTY TRANSACTIONS

The bill implementing the SRD introduces statutory rules on material related party transactions. If a transaction contains price-sensitive information and is concluded between the company or a subsidiary and a related party, this transaction in principle qualifies as “material”. Material transactions with related parties entered into outside the ordinary course of business or on other than normal market terms must be approved by the supervisory board (or the one-tier board) and publicly announced, by the time the transaction is entered into.

**Exemptions**

The bill provides certain exemptions. No approval or announcement is required if it concerns:

- a transaction between the company and its subsidiary;
- remuneration of a managing director or a supervisory director;
- a transaction by credit institutions safeguarding their stability; or
- a transaction which is offered to all shareholders on the same terms.

Further, no approval is required under the SRD if the transaction has been entered into by a subsidiary and a related party of the company, but such transaction will need to be announced.

**Internal procedure**

Furthermore, 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.

Companies could consider preparing a related party transactions policy, including this internal procedure. We have prepared a draft template for this type of policy, which can be easily obtained via your regular contact person at De Brauw.

For guidance on the proposed provisions, please see [this decision tree](#).

### SHAREHOLDER IDENTIFICATION AND ELECTRONIC VOTING
The bill implementing the SRD changes existing legislation on shareholder identification and on electronic voting by shareholders at general meetings. The bill amends current Dutch law on shareholder identification (Wet giraal effectenverkeer) to align it with the new provisions of the SRD. In conformity with current law, this provides for a procedure for the company to start a process to identify those shareholders who hold 0.5% or more of the issued capital. In line with the SRD, the scope of these rules will be limited to Dutch companies with a listing on a regulated market in the European Union.

If voting at a general meeting is done electronically, the key proposed change is that companies are required to confirm receipt of that vote at the shareholder’s request. In addition, each shareholder casting a vote in a general meeting should have the possibility to verify whether the vote was validly recorded and counted by the company within three months after the general meeting. Currently, both obligations are expected to apply to general meetings held as of 3 September 2020. Please see the implementing regulation of the European Commission.