

Corporate law changes in the Netherlands

Declaration of no objections requirement abolished as from 1 July 2011 and new rules regarding corporate governance and supervision in the Netherlands

A. Abolishment of declaration of no objections

As from 1 July 2011 it will no longer be required to obtain a declaration of no objections from the Dutch Ministry of Justice for, *inter alia*, the incorporation or the amendment of the articles of association of a public limited liability company (“**N.V.**”) or a private limited liability company (“**B.V.**”). As a consequence of this abolishment, both the incorporation and the amendment of the articles of association of N.V.’s and B.V.’s will be easier and can take place within a shorter timeframe.

B. New rules regarding corporate governance and supervision in the Netherlands

1. Introduction

The Senate of the Netherlands has adopted a legislative proposal (the “**Proposal**”) to amend Book 2 of the Dutch Civil Code regarding the rules on corporate governance and supervision relating to N.V.’s and B.V.’s. The Proposal is scheduled to enter into force on 1 January 2012.

2. One-tier governance model

Up to date, the one tier governance model – which combines executive and supervisory duties within one management body – is only open for the European PLC or Societas Europaea (SE) and the European Cooperative Society (ECV) under Dutch law. The implementation of the Proposal will open the possibility to use the one-tier governance model also in respect of the N.V. and the B.V. As a consequence thereof, it will be possible to divide the management responsibilities between executive directors and non-executive directors. This division can be arranged in the articles of association of the respective company, but also in any other written document. There are, however, certain limitations. One of these limitations is that executive directors are excluded from (i) the position of chairman of the board, (ii) taking resolutions regarding the appointment of non-executive directors and (iii) determining their own remunerations.

3. Conflict of interests

The Proposal will also have consequences for the current regulations relating to conflict of interest situations. A director is not authorised to participate in discussions or to take resolutions, if such director has interests which conflict – directly or indirectly – with the interests of the company. If, in case of a conflict of interests, all directors are excluded from the decision-making process, the supervisory board, or in case there is no supervisory board, the general meeting of shareholders is entitled to take the resolution. The Proposal leaves room to deviate from these rules in the articles of association.

4. Limitation of the number of supervisory board memberships and diversity

In line with the Dutch corporate governance code, the Proposal contains limitations on the number of board positions and supervisory board memberships (or other supervisory positions) that can be exercised by a natural person in large legal entities. Any foundation, N.V. or B.V. that meets at least 2 of the following requirements qualifies as a large legal entity: (i) the value of its assets pursuant to the balance sheet based on the costs of acquisition and manufacturing amounts EUR 17,500,000 or more, (ii) the net turn-over of a book year amounts EUR 35,000,000 or more and/or (iii) the average number of employees during a book year amounts to 250 or more. Group entities and foundations with a religious, social-welfare, or cultural background are not taken into account. A director of a large legal entity is only entitled to have two supervisory board memberships (or other supervisory positions) in other large legal entities, it being understood that none of these positions could be a chairmanship. For members of a supervisory board, this number is limited to five (a chairmanship is permitted, but will count twice).

The Proposal furthermore prescribes that large N.V.'s and B.V.'s must strive for a balanced division of seats between women and men in the management board and the supervisory board. Such endeavours need to be clearly reflected and emphasized in (i) the nomination process and appointment of directors and members of the supervisory board and (ii) in the profile of the supervisory board. Pursuant to the Proposal, there is a balance if at least 30 per cent. of the seats in the board of directors and the supervisory board is taken by each gender. This protocol is subject to the principle of "apply or explain". Corporations who do not meet the numerical requirements are held to (i) include their reasoning in their annual reports and (ii) indicate how they intend to balance the division of the seats in the future.

In case the company qualifies as a 'listed corporation', it will no longer be possible to qualify the legal relationship between a director and such company as an employment contract. This Proposal will not affect existing employment contracts.

5. Current provisions in the articles of association

It may be possible that the changes contained in the Proposal will limit or overrule any currently applicable provisions of the articles of association of N.V.'s and B.V.'s, or themselves will be limited in their scope by the provisions of the articles of association. Consequently, a review of the articles of association of N.V.'s and B.V.'s is advisable since depending on the circumstances amendments may be required.

Colophon

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