The Dutch

CORPORATE GOVERNANCE CODE

ENGLISH TRANSLATION

Monitoring Committee
CORPORATE GOVERNANCE CODE

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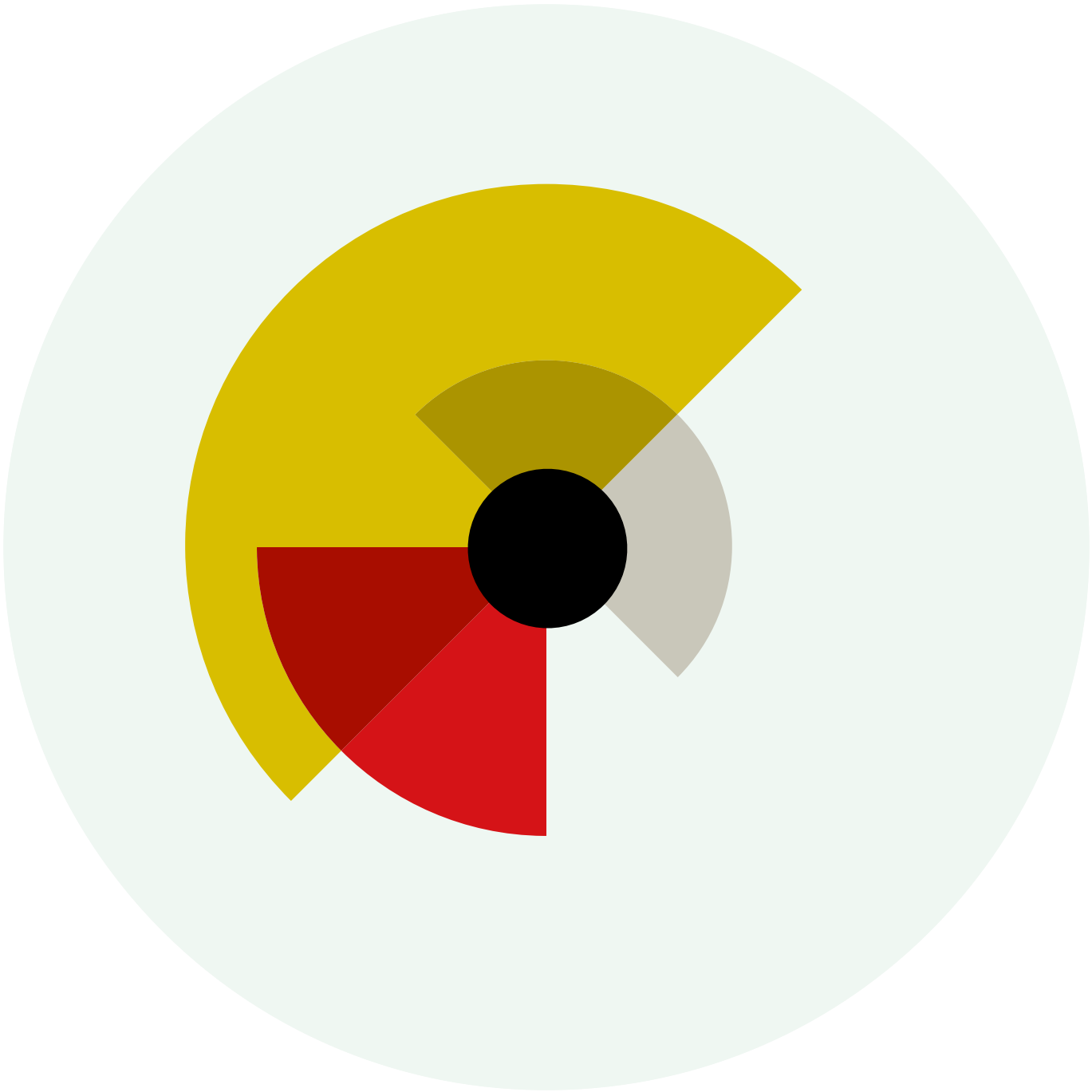


PREAMBLE

Focusing on the governance of listed companies, the Dutch Corporate Governance Code (referred to below as the Code) provides guidance for effective collaboration and management. Governance is about management and control, about responsibility and influence, and about supervision and accountability. The purpose of the Code is to facilitate – together with or in relation to other laws and regulations – a sound and transparent system of checks and balances within Dutch listed companies and, to that end, to regulate relations between the management board, the supervisory board and the general meeting/shareholders. Compliance with the Code contributes to confidence in the good and responsible management of companies and their integration into society.

The Code was first adopted in 2003 and was amended in 2008, 2016 and 2022. The Code has been amended by the Corporate Governance Code Monitoring Committee (referred to below as the Committee) at the request of the National Federation of Christian Trade Unions in the Netherlands (CNV), Eumedion, Euronext NV, the Association of Stockholders (VEB), the Association of Securities-Issuing Companies (VEUO) and the Confederation of Netherlands Industry and Employers (VNO-NCW). Ongoing developments, the spirit of the times and overlaps with legislation were reasons to amend the Code. The present Code is an updated version of the 2022 Code, with guidelines regarding the management statement on the effectiveness of internal risk management and control systems.

Scope

The Code applies to:

i. all companies with registered offices in the Netherlands whose shares or depositary receipts for shares have been admitted to trading on a regulated market or a comparable system; and
ii. all large companies with registered offices in the Netherlands (balance sheet value > € 500 million) whose shares or depositary receipts for shares have been admitted to trading on a multilateral trading facility or a comparable system.

For the purposes of the Code, holders of depositary receipts issued with the collaboration of the company are equated with shareholders. The Code does not apply to an investment company or an undertaking for collective investment in transferable securities that is not a manager ("beheerder") within the meaning of Section 1:1 of the Financial Supervision Act (Wet op het financieel toezicht, Wft).

Contents of the Code

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the general meeting/shareholders. The principles and provisions are aimed at defining responsibilities for sustainable long-term value creation, risk control, effective management and supervision, remuneration and the relationship with shareholders (including the general meeting of shareholders) and stakeholders. The principles may be regarded as reflecting widely held general views on good corporate governance. The principles have been expressed in the form of best practice provisions. These provisions contain standards for the conduct of management board members, supervisory board members and shareholders. They reflect best practices and supplement the general principles of good corporate governance. Companies may depart from these best practice provisions, provided that the give justification. The conditions for such departures are explained below under "Compliance with the Code".

The relationship between the company and its employees (and employee representatives) with regard to employee participation, is governed inter alia by the Works Councils Act (Wet op de ondernemingsraden, WOR). If properly applied, the Works Councils Act sufficiently safeguards the relationship between the company and its employees (and employee representatives). In addition to the legal provisions, this relationship is addressed in the Code in those provisions which relate to culture and the contact between the supervisory board and the employee participation body.

Underlying notions

The Code is based on the notion that a company is a long-term alliance between the various stakeholders of the company. Stakeholders are groups and individuals who, directly or indirectly, influence – or are or could be influenced by – the attainment of the company's objectives: employees, shareholders and other lenders, suppliers, customers and other stakeholders. The management board and the supervisory board have responsibility for weighing up these interests, generally with a view to ensuring the continuity of the company and its affiliated enterprise. The company strives to create sustainable value over the long term. If stakeholders are to collaborate within and with the company, they need to be confident that their interests are duly taken into consideration. Good entrepreneurship and effective supervision are essential conditions for stakeholder confidence in management and supervision. This includes integrity and transparency of the management board's actions and accountability for the supervision by the supervisory board. The effect of the Code is determined not by the extent to which it is complied with to the letter, but rather by the extent to which all stakeholders are guided by the spirit of the Code.

Shareholders and institutional investors

Shareholders can give priority to their own interests, as long as they act in keeping with the principles of reasonableness and fairness in relation to the company, its corporate bodies and their fellow shareholders. This includes the willingness to engage with the company and fellow shareholders. The greater the interest which the shareholder has in a company, the greater is his responsibility to the company, fellow shareholders and other stakeholders. Institutional investors are responsible to the ultimate beneficial owners for the careful and transparent assessment of how to exercise their rights as shareholders of companies.

Relation to legislation

The Code was formed through self-regulation. It was made by, and is intended for, the parties addressed by the Code. Self-regulation means that parties draw up their own rules, without government intervention, to which they then commit by implementing, enforcing and updating them. Self-regulation supplements government regulation. The Code should be viewed in the context of Dutch and European legislation and case law on corporate governance. The particular merit of the Code as an instrument of self-regulation lies in the fact that the Code focuses more on the behaviour of management board members, supervisory board members and shareholders.

The amendments to the Code are based on the applicable legislation and case law on the external and internal relations of companies, and take into account relevant corporate governance trends. When formulating the principles and best practice provisions, overlaps with legislation have been avoided as much as possible. For the sake of the Code's readability and its internal coherence, some overlap between legislation and the Code is unavoidable, if only because the Code may supplement legal provisions.

One-tier governance structure

The Netherlands traditionally works with a dualistic governance model (i.e. a two-tier governance structure). The Code is focused on this model. In companies with a two-tier governance structure, management and supervision are divided between two corporate bodies: the management board and the supervisory board. Chapter 5 pertains to companies with a one-tier governance structure. Companies with a one-tier governance structure have a single board of directors comprising executive and non-executive directors. In this situation, the latter supervise the former, and there is no supervisory board. Non-executive directors and executive directors have joint management responsibility. It is important that independent supervision by non-executive directors is sufficiently ensured.

More diverse group of listed companies

The group of listed companies that fall within the scope of the Code is becoming increasingly diverse. For example, the number of listed companies having their primary listing abroad has increased and the number of special purpose acquisition companies (SPACs) has also risen in recent years. All these companies are expected to comply with the Code.

In the case of SPACs, some of the provisions of the Code only become relevant when the SPAC has made an acquisition. However, there are also various provisions that are relevant before the SPAC has made an acquisition, such as principle 2.7 and the underlying best practice provisions on preventing conflicts of interest.

Explanatory note

The Code does not apply to investment institutions or undertakings for collective investment in transferable securities which are members of a group under central management, where this central management falls within the scope of the Code.

COMPLIANCE WITH THE CODE

The management board and the supervisory board are responsible for the corporate governance of the company and for compliance with this Code. Compliance with the Code is based on the "comply or explain" principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the principles and best practice provisions. The management board and the supervisory board account for compliance with the Code in the general meeting, and provide a substantive and transparent explanation for any departures from the principles and best practice provisions.

The broad outline of the company's corporate governance is set out each year in a separate chapter of the management report or published on the company's website, partly based on the basis of the principles stated in this Code. Here the company explicitly states the extent to which it complies with the principles and best practice provisions stipulated in this Code and, where it does not comply, why and to what extent it departs from them.
Importantly, the explanation for any departures should in any event include the following elements:

i. how the company departed from the principle or best practice provision;
ii. the reasons for the departure;
iii. if the departure is of a temporary nature and continues for more than one financial year, an indication of when the company intends to comply with the principle or the best practice provision again; and
iv. where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the purpose of the principle or best practice provision, or a clarification of how the measure contributes to good corporate governance of the company.

Shareholders, businesses that specialise in rating the corporate governance of listed companies and proxy voting advisers, should carefully assess the reason for each and every departure from the Code's principles and best practice provisions. Shareholders as well as the management board and supervisory board, should be prepared to engage with each other to discuss the reason why a principle or best practice provision was not applied. It is up to the shareholders to call the management board and the supervisory board to account for compliance with the Code. The guiding principle is that corporate governance requires a tailor-made approach and deviations from the Code may be justified. Companies and shareholders share responsibility for good self-regulation according to the "comply or explain" principle so that it can serve as an effective alternative to legislation.

CHAPTER 1.
SUSTAINABLE LONG-TERM VALUE CREATION

Principle 1.1 Sustainable long-term value creation

The management board is responsible for the continuity of the company and its affiliated enterprise and for sustainable long-term value creation by the company and its affiliated enterprise. The management board takes into account the impact the actions of the company and its affiliated enterprise have on people and the environment and to that end weighs the stakeholder interests that are relevant in this context. The supervisory board monitors the management board in this regard.

Explanatory note

The management board is responsible for creating long-term value in a sustainable manner taking into account the effects of the actions of the company and its affiliated enterprise on people and the environment. Long term sustainability is the key consideration when determining strategy and making decisions, and stakeholder interests are taken into careful consideration. As is generally the case in the performance of duties by management board members, this responsibility does not entail an obligation of result. There is no prescription of what the outcome of the balancing of relevant interests and external consequences should be in specific cases. Moreover, the responsibility that management board members may be expected to exercise in the performance of their duties should not be equated with liability, which requires that serious blame can be attributed to the management board member.

"Sustainable"/"sustainability" in this context refers to the balance between the social, environmental and economic aspects of doing business, also known as the three P's: people, planet and profit. For the interpretation of the people and planet aspect, environmental, social and governance factors are important, among others, as set out in the Article 19ter of Directive 2013/34/EU, in the form in which that Article is inserted in that Directive as a result of the proposal for amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 as Corporate Sustainability Reporting (CSRD).

Sustainability is an extensive subject which is in a transition phase worldwide. In addition to the CSRD, the European Council has adopted a directive on corporate sustainability due diligence and amending Directive (EU) 2019/1937 (CSDDD). Standards for sustainability reporting are still under development. For example, the European Financial Reporting Advisory Group (EFRAG) developed European Sustainability Reporting Standards (ESRS) and the International Sustainability Standards Board (ISSB) of the IFRS Foundation is developing global standards. These standards will influence the sustainability efforts expected of enterprises. Other regulations that can serve as a guide to the interpretation of the concept of sustainability include:

- *the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct adopted in 2018, which provides guidance for companies with international chain responsibility;*
- *the UN Guiding Principles on Business and Human Rights and the UN Global Compact;*
- *the reporting standards of the Task Force on Climate-related Financial Disclosure.*

The management board is expected to monitor and take into account relevant developments in this area.

Sustainable long-term value creation also requires awareness and anticipation of developments in new technologies and changes to business models and associated risks, including cybersecurity, supplier and chain dependencies, data protection and ethically responsible use of new technologies (e.g. 'Responsible AI').

Maintaining sufficient awareness of the broader context in which the enterprise affiliated with the company operates contributes to continued success, and is the company interest. There may be situations in which a focus on the sustainable long term is no longer relevant for a company, for example in the event of a bankruptcy or takeover and the company's reason for existing ceases. In these cases, the company should comply with the Code by explaining why sustainable long-term value creation is not or no longer a priority to be pursued.

Stakeholders *are groups and individuals who directly or indirectly influence or are (or may be) influenced by the attainment of the company's objectives: employees, shareholders and other lenders, suppliers, customers and other stakeholders.*

1.1.1 Strategy for sustainable long-term value creation

The management board should develop a view on sustainable long-term value creation by the company and its affiliated enterprise and formulate a strategy in line with this. The management board should formulate specific objectives in this regard. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy.

When developing the strategy, attention should in any event be paid to the following:

i. the strategy's implementation and feasibility;
ii. the business model applied by the company and the market in which the company and its affiliated enterprise operate;
iii. opportunities and risks for the company;
iv. the company's operational and financial goals and their impact on its future position in relevant markets;
v. the interests of the stakeholders;
vi. the impact of the company and its affiliated enterprise in the field of sustainability, including the effects on people and the environment;
vii. paying a fair share of tax to the countries in which the company operates; and
viii. the impact of new technologies and changing business models.

Explanatory note

Appropriate strategy

Sustainability is an important aspect of the development of a vision on sustainable long-term value creation and an appropriate strategy for the enterprise. It is important that the development of the vision, strategy and concrete objectives take into account the actual or (potential) impact of the company and its affiliated enterprise on people and the environment and the actual or (potential) impact of sustainability issues on the company and its affiliated enterprise (double materiality). Companies are also expected to consider the interests of stakeholders and to provide insight into the way in which they fulfil the above expectations. This could be achieved through the use of the following framework, which is set out in the Code:

- *as part of the development of a vision on sustainable long-term value creation and a strategy in line with this, companies take into account sustainability aspects of the business, including the (potential) effects of the actions of the company and its affiliated enterprise on people and the environment and the (potential) impact of sustainability issues on the company and its affiliated enterprise. Specific objectives are formulated in this regard (best practice provision 1.1.1);*
- *companies should enter into a dialogue with relevant stakeholders about the sustainability aspects of the strategy and its implementation (best practice provision 1.1.5);*
- *the management report should account for the vision on sustainable long-term value creation, the strategy to realise this and the objectives formulated to that end, the effects of the company on people and the environment, how the interests of stakeholders have been taken into account and the extent to which the stated objectives have been achieved (best practice provision 1.1.4).*

Tax

The way in which companies deal with the payment of taxes should also be part of a vision and strategy aimed at sustainable long-term value creation. Globally, for several years now attention has been focused on distributing tax revenues from cross-border corporate activities in a way that is acceptable to all countries rather than shifting corporate profits to low or no tax countries. Companies are expected to contribute to this by paying a fair share of taxes in the countries in which they actually conduct their business and generate profits.

1.1.2 Involvement of the supervisory board

The management board should engage the supervisory board early on in formulating the strategy for realising sustainable long-term value creation. The management board accounts to the supervisory board for the strategy and the explanatory notes to that strategy.

Explanatory note

"Formulating the strategy" also encompasses making material changes to the strategy.

1.1.3 Role of the supervisory board

The supervisory board should supervise the manner in which the management board implements the strategy for sustainable long-term value creation. The supervisory board should regularly discuss the strategy, the implementation and the principal risks associated with it. In the report drawn up by the supervisory board, an account is given of its involvement in the establishment of the strategy setting, and the way in which it monitors its implementation.

1.1.4 Reporting by the management board

In the management report, the management board should provide a more detailed explanation of its view on sustainable long-term value creation and the strategy to realise this and describe the contributions made to it in the past financial year. In addition, it describes the formulated objectives, what effects the company's products, services and activities have had on people and the environment, how the interests of stakeholders have been considered, what action has been taken in that context and the extent to which the set objectives have been attained. The management board should report on both short- and the long-term developments.

The second sentence of this best practice provision is not applicable if the company reports in accordance with the requirements laid down in Dutch legislation pursuant to the CSRD or comparable standards applicable to the company in respect of its listing outside the Netherlands.

Explanatory note

The management report should provide information on the effects of the actions of the company and its affiliated enterprise on people and the environment at least by means of a qualitative description. In order to increase the understanding of the effects and comparability with the financial information/ reporting, it is recommended that the effects be quantified and expressed in monetary terms where possible.

1.1.5 Dialogue with stakeholders

To ensure that the interests of the relevant stakeholders of the company are considered when the sustainability aspects of the strategy are determined, the company should draw up an outline policy for effective dialogue with those stakeholders. The relevant stakeholders and the company should be prepared to engage in a dialogue. The company should facilitate this dialogue unless, in the opinion of the management board, this is not in the interests of the company and its affiliated enterprise. The company should publish the policy on its website.

Explanatory note

It is up to the management board to draw up a policy for a dialogue with the relevant stakeholders at least with regard to the sustainability aspects of the strategy. The management board is also expected to devote attention in its policy to the way in which the company's employee participation body forms part of this dialogue and how this relates to the other consultations between the management board, the supervisory board and the employee participation body. It is assumed that not every stakeholder of the company can be regarded as equally relevant to every sustainability aspect of the strategy and that it is up to the management board of the company to determine on a case-by-case basis who the relevant stakeholders are; hence there is no intention to create a right of dialogue with the company for the stakeholders. It is up to the management board to determine whether such dialogue is in the interest of the company and its affilitated enterprise.

Principle 1.2 Risk management

The company should have adequate internal risk management and control systems in place. The management board is responsible for identifying and managing the risks associated with the company's strategy and activities.

Explanatory note

The risks to be identified and managed under Principle 1.2 comprise both internal and external risks which the company may face.

The internal risk management and control systems should be tailored to the company in question. This allows smaller listed companies to use less extensive procedures.

1.2.1 Risk assessment

The management board should identify and analyse the risks associated with the strategy and activities of the company and its affiliated enterprise. The identification and analysis should cover in any case the strategic, operational, compliance and reporting risks. The management board is responsible for establishing the risk appetite, and also the measures that are put in place in order to counter the risks been taken.

Explanatory note

Examples of strategic, operational, compliance and reporting risks include risks such as climate change, social inequality, tax risks, fraud risks, money laundering risks and information and communication technology risks (including cybersecurity, supplier and supply chain dependencies, data protection and risks associated with new technologies and changing business models, as in the ethically responsible use of new technologies (e.g. Responsible AI)).

With regard to strategic risks, a distinction can be made between the decision-making process on the strategy and its implementation. The risk management and control systems do not oversee the decision-making on the strategy. Risks associated with the implementation of the strategy translate into operational, compliance and reporting risks. Without prejudice to the necessary robustness of the strategy determination, many strategic risks cannot be managed because they are wholly or partly outside the company's sphere of influence.

1.2.2 Implementation

Based on the risk assessment, as referred to in best practice provision 1.2.1, the management board should design, implement and maintain adequate internal risk management and control systems. To the extent relevant, these systems should be integrated into the work processes within the company and its affiliated enterprise, and should be familiar to those whose work they are relevant to.

1.2.3 Monitoring of design and operation

The management board should monitor the design and operation of the internal risk management and control systems and should carry out a systematic assessment of their design and operation at least once a year. Attention should be paid to observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the external auditor. Where necessary, improvements should be made to internal risk management and control systems.

Principle 1.3 Internal audit function

The task of the internal audit function is to assess the design and operation of the internal risk management and control systems. The management board is responsible for the internal audit function. The supervisory board oversees the internal audit function and maintains regular contact with the person fulfilling this function.

1.3.1 Appointment and dismissal

The management board both appoints and dismisses the senior internal auditor. Both the appointment and the dismissal of the senior internal auditor should be submitted to the supervisory board for approval, along with the recommendation of the audit committee.

1.3.2 Assessment of the internal audit function

The management board should assess annually the way in which the internal audit function fulfils its responsibility, after consultation with the audit committee. An independent third party should assess the performance of the internal audit function at least every five years.

1.3.3 Internal audit plan

The internal audit function should draw up an audit plan after consultation with the management board, the audit committee and the external auditor. The audit plan should be submitted to the management board and then to the supervisory board for approval. In the internal audit plan, attention should be paid to interaction with the external auditor.

1.3.4 Performance of work

The internal audit function should have sufficient resources to execute the internal audit plan and have access to information that is important for the performance of its work. The internal audit function should have direct access to the audit committee and the external auditor. Records should be kept of how the audit committee is informed by the internal audit function.

1.3.5 Reports of findings

The internal audit function should report the audit results to the management board and the audit committee, and inform the external auditor. The findings of the internal audit function should, at least, include the following:

i. any flaws in the effectiveness of the internal risk management and control systems;
ii. any findings and observations with a material impact on the risk profile of the company and its affiliated enterprise; and
iii. any failings in the follow-up of recommendations made by the internal audit function.

The internal audit function should report hierarchically to a member of the management board, preferably to the CEO.

Explanatory note

The internal audit function's reporting of the findings to the audit committee does not have to be identical to its reporting to the management board. It is up to the internal audit function and the audit committee to enter into agreements on this.

1.3.6 Absence of an internal audit department

If there is no separate department for the internal audit function, the supervisory board will assess annually whether adequate alternative measures have been taken, partly on the basis of a recommendation issued by the audit committee, and will consider whether it is necessary to establish an internal audit department. The supervisory board should include the conclusions, along with any resulting recommendations and alternative measures, in the report of the supervisory board.

Explanatory note

The basic principle is that companies should establish their own internal audit department to undertake the internal audit function. In the event of a departure from this principle, for example if the size of the company is not appropriate, outsourcing may be a suitable alternative. In case of outsourcing, the supervisory board and the audit committee will remain involved in the performance of the internal audit function, as stipulated in best practice Provisions 1.3.1 to 1.3.5 inclusive.

Principle 1.4 Risk management accountability

The management board should render account of the effectiveness of the design and the operation of the internal risk management and control systems.

Explanatory note

The management board is responsible for continuous monitoring of the design and operating effectiveness of the internal risk management and control systems and assesses their effectiveness at least once a year, reporting on it in the management report. In view of the inherent practical limitations associated with internal risk management and control systems, the determination of the design and operating effectiveness of these systems will not be able to provide absolute assurance that all possible risks have been fully identified and mitigated at all times. The management board's statement on risk management therefore does not provide absolute assurance, but declares about management of material risks in line with the board's strategy and risk appetite.

1.4.1 Accountability to the supervisory board

The management board should discuss the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3 inclusive with the audit committee, and render account of this to the supervisory board.

1.4.2 Reporting on risk management

In the management report, the management board should render account of:

i. the execution of the risk assessment, with a description of the principal risks facing the company in relation to its risk appetite, as referred to in best practice provision 1.2.1;
ii. the design and operation of the internal risk management and control systems on operational, compliance and reporting risks during the past financial year and which frameworks were used;
iii. its assessment of the effectiveness of the internal risk management and control systems in relation to operational, compliance and reporting risks for the past financial year;
iv. any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the audit committee and the supervisory board; and
v. the sensitivity of the results of the company to material changes in external factors.

Explanatory note

On the basis of best practice provision 1.4.2, the management board should describe in the management report, the design, operation and the assessment of the effectiveness of the internal risk management and control systems. Pursuant to section i, the company's annual report should include a description of the main risks it encounters in carrying out its tasks. The description should relate not only to reporting risks, but to all types of risks as referred to in best practice provision 1.2.1. Rather than providing an exhaustive list of all possible risks, the company should identify the main risks it faces. The description of the main risks in section i is in keeping with the risk section prescribed in Article 2:391 of the Dutch Civil Code and the description of the essential risks under Section 5:25(c) of the Financial Supervision Act.

With regard to best practice provision 1.4.2, section ii, it would be logical for the management board indicate, in the description of the design, operating effectiveness and assessment of the internal risk management and control systems, which reference or standards framework (e.g. the COSO framework for internal control) has been used. It is also expected that the management board clearly explains how it has assessed the operating effectiveness of the internal risk management and control systems.

1.4.3 Statement by the management board

The management board should state in the management report, with clear substantiation:

i. that the report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems;
ii. that the systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
iii. that these systems provide at least limited assurance that sustainability reporting is free from material misstatements;
iv. what level of certainty these systems provide that operational and compliance risks are effectively managed;
v. that, based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and
vi. that the report states the material risks, as referred to in best practice provision 1.2.1, and the uncertainties, to the extent that they are relevant to the expectation of the company's continuity for a period of twelve months after the preparation of the report.

Explanatory note

Pursuant to best practice provision 1.4.3, the management board should make a statement confirming that it has provided sufficient insight into the operational, compliance and reporting risks, including risks that will be relevant to the continuity of the company. This includes both material shortcomings that have been identified and material risks and uncertainties that can reasonably be foreseen at the time at which the statement is issued and the broad impact of these material risks and uncertainties on the company. Sections i and vi of the management board's statement are not limited to financial reporting risks. The statement is therefore in line with the internal risk management and control systems, which are similarly not limited to financial reporting risks.

With regards to section iii, it is obvious to seek connection with the introduction of the CSRD. The CSRD and the associated ESRS contain a comprehensive framework of standards and a detailed timeline for their implementation. It is obvious that the reporting about the internal risk management and control systems with regard to sustainability reporting risks in line with the CSRD, for the time being assumes the provision of limited assurance. The management board is free to indicate that the internal risk management and control systems with regard to sustainability information provide reasonable assurance that the sustainability reporting does not contain any material misstatements.

Section iv is about the management board self-indicating the level of certainty that the risk management and internal control systems provide about effectively managing the operational and compliance risks, considering the company's risk appetite and the choice made in designing the internal risk management and control systems. In this context, the word 'certainty' is not to be read as the term 'assurance' used in auditing, nor is it intended that companies should apply a fixed framework for this. Nor is 'effectiveness' connected to the similar wording in American legislation (i.e. the Sarbanes-Oxley Act). Companies can explain the terminology used in their statement or in the explanation thereof.

It is possible that the management board will conclude that certain risks cannot be effectively managed by their nature, or that the effectiveness of the aforementioned systems cannot be determined. An example is compliance with laws and regulations, where the company is partly dependent on the behaviour of its employees worldwide, while their behaviour cannot reasonably be continuously controlled or fully embedded in procedures. To comply with this provision, the management board can declare this and explain.

As noted in the explanatory note to Principle 1.4, internal risk management and control systems are inextricably restricted. It is therefore logical that the statement that the management board also includes in the management reporting based on best practice provision 1.4.3: (a) the responsibilities of the management board with regard to the internal risk management and control systems, (b) the objectives of these systems, (c) the characteristics of these systems, and (d) the inherent limitations of these systems.

Principle 1.5 Role of the supervisory board

The supervisory board should supervise the policies carried out by the management board and the general affairs of the company and its affiliated enterprise. In so doing, the supervisory board should also focus on the effectiveness of the company's internal risk management and control systems and the integrity and quality of the financial and sustainability reporting.

1.5.1 Duties and responsibilities of the audit committee

The audit committee undertakes preparatory work for the supervisory board's decision-making regarding the supervision of the integrity and quality of the company's financial and sustainability reporting and the effectiveness of the company's internal risk management and control systems, as referred to in best practice provisions 1.2.1 to 1.2.3 inclusive as well as 1.4.1 to 1.4.3. It focuses among other things on the supervision of the management board with regard to:

i. relations with, and compliance with, recommendations by the internal and external auditors and any other external party involved in auditing the sustainability reporting;
ii. the funding of the company; and
iii. the company's tax policy.

Explanatory note

The majority of the audit committee's duties already arise out of the relevant legislation and are not repeated in the Code. Specific reference is made to Article 39 of the EU Statutory Audits Directive (European Audit Directive 2006/43/ EC).[1] *This article has been implemented in Dutch legislation: Article 2 (2) of the Decree of 26 July 2008.* [2] *The requirements for the composition and available expertise in relation to the preparation and auditing of the financial statements are also included in Article 2 of this decree.*

In some cases, especially in companies operating in the financial sector, a risk committee is established in addition to the audit committee. Article 39 (4) of the above directive stipulates that, if another body has been designated to perform the functions of the audit committee, the management report must state which body carries out those functions and how that body is composed.

Various companies have set up a committee in addition to the audit committee to deal with sustainability issues relating to the company. Such a committee is often referred to as a sustainability committee or corporate responsibility committee. If a company has established such a committee, the preparation of the decision-making for the supervision of the integrity and quality of the sustainability reporting can also be carried out by such a committee instead of the audit committee.

1.5.2 Attendance of the management board, internal auditor and external auditor at audit committee consultations

The chief financial officer, the internal auditor and the external auditor should attend the audit committee meetings, unless the audit committee determines otherwise. The audit committee should decide whether and, if so, when the chairman of the management board should attend its meetings.

1.5.3 Audit committee report

The audit committee should report to the supervisory board on its deliberations and findings. This report must, at least, include the following information:

i. the methods used to assess the effectiveness of the design and operation of the internal risk management and control systems referred to in best practice provisions 1.2.1 to 1.2.3 inclusive;
ii. the methods used to assess the effectiveness of the internal and external audit processes;
iii. material considerations concerning financial and sustainability reporting; and
iv. the way in which the material risks and uncertainties, referred to in best practice provisions 1.4.2 and 1.4.3, have been analysed and discussed, along with a description of the most important findings of the audit committee, and the way if substantiating the statement meant in provision 1.4.3.

1 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Directives 78/660/EEC and repealing Directive 84/253/ EEC (OJ L 157 of 9 June 2006, p. 87). Directive 2006/43/EC has been amended with Directive 2014/56/EU of 16 April 2014 (OJEU 2014, L 158).

2 Decision of 26 July 2008 implementing Article 41 of Directive No. 2006/43/EC of the European Parliament and of the Council of the European Union of 17 May 2006 on statutory audits of annual accounts and audited annual accounts, amending Council Directives Nos. 78/660/EEC and 83/349/EEC and repealing Council Directive No. 84/253/EEC (Bulletin of Acts and Decrees ('Staatsblad')) 2008, 323).

Explanatory note

If the company has established a separate committee that deals with sustainability issues relating to the company, this committee may report to the supervisory board on the committee's deliberations and findings and the material considerations with regard to sustainability reporting, instead of the audit committee.

1.5.4 Supervisory board

The supervisory board should discuss the items reported on by the audit committee on the basis of best practice provision 1.5.3.

Principle 1.6 Appointment and assessment of the functioning of the external auditor

The supervisory board should submit the nomination for the appointment of the external auditor to the general meeting and should supervise the external auditor's functioning.

1.6.1 Functioning and appointment

The audit committee should report annually to the supervisory board on the functioning of, and the developments in, the relationship with the external auditor. The audit committee should advise the supervisory board regarding the external auditor's nomination for appointment/reappointment or dismissal, and should prepare the selection of the external auditor. The audit committee should give due consideration to the management board's observations during the aforementioned work. Also on this basis, the supervisory board should determine its nomination for the appointment of the external auditor to the general meeting.

1.6.2 Informing the external auditor about its functioning

The supervisory board should give the external auditor a general idea of the content of the reports relating to its functioning.

1.6.3 Engagement

The audit committee should submit a proposal to the supervisory board for the external auditor's engagement to audit the annual accounts. The management board should play a facilitating role in this process. In formulating the terms of engagement, attention should be paid to the scope of the audit, the materiality to be applied and the remuneration for the audit. The supervisory board should resolve on the engagement.

1.6.4 Accountability

The main conclusions of the supervisory board regarding the external auditor's nomination and the outcomes of the external auditor selection process should be communicated to the general meeting.

1.6.5 Departure of the external auditor

The company should publish a press release in the event of the early termination of the relationship with the external audit firm. The press release should explain the reasons for this early termination.

Principle 1.7 Performance of the external auditor's work

The audit committee and the external auditor should discuss the audit plan and the findings of the external auditor based on the work the external auditor has undertaken. The management board and the supervisory board should maintain regular contact with the external auditor.

1.7.1 Provision of information to the external auditor

The management board should ensure that the external auditor will receive all information that is necessary for the performance of his work in a timely fashion. The management board should give the external auditor the opportunity to respond to the information that has been provided.

1.7.2 Audit plan and external auditor's findings

The external auditor should discuss the draft audit plan with the management board before presenting it to the audit committee. The audit committee should discuss annually with the external auditor:

i. the scope and materiality of the audit plan and the principal risks of the annual reporting identified by the external auditor in the audit plan; and
ii. based also on the documents from which the audit plan was developed, the findings and outcomes of the audit work on the annual accounts and the management letter.

1.7.3 Publication of financial reports

The audit committee should determine whether and, if so, how the external auditor should be involved in the content and publication of financial reports other than the annual accounts.

1.7.4 Consultations with the external auditor outside the management board's presence

The audit committee should meet with the external auditor as often as it considers necessary, but at least once per year, without the presence of the management board.

1.7.5 Examination of discussion points arising between the external auditor and the management board

The supervisory board should be permitted to examine the most important points of discussion arising between the external auditor and the management board based on the draft management letter or the draft audit report.

1.7.6 External auditor's attendance of supervisory board meetings

The external auditor should in any event attend the meeting of the supervisory board at which the report of the external auditor on the audit of the annual accounts is discussed.

CHAPTER 2.
EFFECTIVE MANAGEMENT AND SUPERVISION

Principle 2.1 Composition and size

The management board, the supervisory board and the executive committee (if any) should be composed in such a way as to ensure a degree of diversity appropriate to the company with regard to expertise, experience, competencies, other personal qualities, sex or gender identity, age, nationality and cultural or other background.

Explanatory note

A diverse composition of the management board, the supervisory board and the executive committee (if applicable) contributes to effective management and supervision. Diversity of opinions, dissent as well as teamwork and cohesion are essential preconditions for a valuable discussion. Diversity in expertise, experience, competences, personal qualities, age, sex or gender identity, nationality and cultural or other background results in different perspectives which in turn can help to prevent groupthink.

2.1.1 Profile

The supervisory board should prepare a profile, taking account of the nature and the activities of the enterprise affiliated with the company.
The profile should address:

i. the desired expertise and background of the supervisory board members;
ii. the desired diverse composition of the supervisory board, referred to in best practice provision 2.1.5;
iii. the size of the supervisory board; and
iv. the independence of the supervisory board members.

The profile should be posted on the company's website.

2.1.2 Personal information

The following information about each supervisory board member should be included in the report of the supervisory board:

i. sex or, if desired by the person concerned, gender identity;
ii. age;
iii. nationality;
iv. principal position (if appropriate);
v. other positions, insofar as they are relevant to the performance of the duties of the supervisory board member;
vi. date of initial appointment; and
vii. current term of office.

2.1.3 Executive committee

If the management board works with an executive committee, the management board should take account of the checks and balances that are part of the two-tier system. This means, among other things, that the management board's expertise and responsibilities are safeguarded and the supervisory board is informed adequately. The supervisory board should supervise this while paying specific attention to the dynamics and the relationship between the management board and the executive committee.

In the management report, account should be rendered of :

i. the choice to work with an executive committee;
ii. the role, duty and composition of the executive committee; and
iii. how the contacts between the supervisory board and the executive committee have been given shape.

Explanatory note

The term "executive committee" refers to a committee which is closely involved in the decision-making of the management board, and which, in addition to members of the management board, may also include members of senior management. Best practice provision 2.1.3 and those other provisions that mention the term "executive committee" also apply in cases where a term other than executive committee is being used, but the function is essentially the same.

2.1.4 Expertise

Each supervisory board member and each management board member should have the specific expertise required for the fulfilment of his duties. Each supervisory board member should be capable of assessing the broad outline of the overall management.

Explanatory note

Our society is undergoing a transformation in terms of both sustainability and digitisation. In order to steer this transformation in the right direction, the management board and the supervisory board must have in-depth knowledge and experience in order to develop these dimensions in the company and to monitor their quality. Sustainability and digitisation are not separate or supporting processes, but go to the heart of the company's strategy and business operations. Companies are free to choose whether or not to appoint a specific digitisation and sustainability officer and/or a specific management board member with knowledge in this area. Such an appointment does not dispense the other members of the management board and supervisory board from close involvement in these themes. As the aforementioned transformations are so far-reaching, it is the duty of every member of the management board and supervisory board to make the relevant considerations. It is important to pay attention to this in the composition of the management board and the supervisory board, as well as in the periodic training and education provided under best practice provision 2.4.6.

The requirement that the supervisory board has financial expertise is enshrined in law. Pursuant to the EU Statutory Audits Directive 2006/43/ECEC [3],at least one member of the audit committee must have expertise in the preparation and auditing of annual accounts. This article has been implemented in Dutch legislation Article 2(3) of the Decree of 26 July 2008.[4]

3 Same footnote 1.
4 Same footnote 2.

2.1.5 Policy on Diversity and Inclusion (D&I policy)

The company should have a D&I policy for the enterprise. The D&I policy should in any case set specific, appropriate and ambitious targets in order to achieve a good balance in gender diversity and the other D&I aspects of relevance to the company with regard to the composition of the management board, the supervisory board, the executive committee (if any) and a category of employees in managerial positions ("senior management") to be determined by the management board.

The supervisory board adopts the D&I policy for the composition of the management board and the supervisory board. The management board should adopt the D&I policy for the executive committee (if applicable), the senior management and for the rest of the workforce with the prior approval of the supervisory board.

2.1.6 Reporting on the D&I policy

The corporate governance statement should explain the D&I policy and the way in which it is implemented in practice. This includes the following information:

i. the goals of the D&I policy;
ii. the plan to achieve the goals of the D&I policy;
iii. the results of the D&I policy in the past financial year and – where relevant and applicable – insight into the inflow, progression and retention of employees; and
iv. the gender composition of the management board, the supervisory board, the executive committee (if any) and senior management at the end of the past financial year.

If one or more goals for the composition of the management board, the supervisory board, the executive committee (if any) and/or senior management are not achieved, an explanation of the reasons should be included in the corporate governance statement, along with an explanation as to which measures are being taken to attain the goals, and by when this is likely to be achieved.

Explanatory note 2.1.5 and 2.1.6

Best practice provisions 2.1.5 and 2.1.6 go further than the legal requirements of Article 2:142b of the Dutch Civil Code (with regard to the statutory quota of at least one-third men and one-third women on the supervisory boards of companies whose shares or depositary receipts for shares are admitted to trading on a regulated market in the Netherlands) and Article 2:166 of the Dutch Civil Code (concerning targets for the number of men and women on the management board, the supervisory board and the categories of employees in management positions to be determined by the company). Pursuant to best practice provision 2.1.5, companies are expected to implement a broader D&I policy for the enterprise as a whole. This D&I policy should in any case set specific appropriate and ambitious targets in order to achieve a good balance in gender diversity and other company-relevant D&I aspects with regard to the composition of the management board, the supervisory board, the executive committee (if any) and a category of employees in management positions ("senior management") to be determined by the management board.

Diversity concerns all aspects and personal characteristics in which people may differ, including sex and gender identity, age, ethnicity, occupational disabilities and sexual orientation. Inclusion refers to an organisation's ability to create a culture in which every employee feels valued and respected, ensuring equal opportunities for employees regardless of identity and facilitating diversity in employee progression to the top of the organisation. Inclusion also covers social safety within the company, including tackling transgressive behaviour.

The management board and supervisory board are expected to consider what the social role of the company is in the field of D&I, what its relevance is to the company's culture and how this can be fulfilled in leadership development. D&I policy starts with awareness and objectives, even if it is still premature to set specific targets. Awareness starts with gaining insight - where relevant and possible - into the inflow, progression and retention of employees. In this context, companies can access the latest insights into the promotion of diversity provided by the Social and Economic Council of the Netherlands (SER) (including through the Diversity and Inclusion Programme and on the SER diversity portal[5]) and best practices for the aggregated mapping of employee inflow, progression and retention. For international companies with employees in different countries, the degree of insight that can be provided into inflow, progression and retention may differ depending on the country.

The reporting obligation of best practice provision 2.1.6 goes further than the reporting obligation that applies on the basis of Article 2:166 of the Dutch Civil Code and the Decree of 22 April 2022 amending the Decree on the content of the management report in connection with the temporary obligation for large companies to report in the management report on the male-female ratio in the top tier and second tier and on the target figures, since the D&I policy as referred to in this best practice provision is broader than the statutory provisions relating to target figures. The subjects on which the company is required to report and the order in which the report is presented are as far as possible in line with the Decree on the content of the management report. Companies that report in accordance with the Decree on the content of the management report are expected to include in their accountability the additional information required under best practice provision 2.1.6.

Finally, the above-mentioned legal provisions are based on the sex of the individuals involved and do not provide for the possibility for those involved to state their gender identity on their own initiative and according to their own wishes. It is recommended that this be made possible.

2.1.7 Independence of the supervisory board

The composition of the supervisory board is such that the members are able to operate independently and critically vis-à-vis one another, the management board and any particular interests involved.
In order to safeguard its independence, the supervisory board is composed in accordance with the following criteria:

i. any one of the criteria referred to in best practice provision 2.1.8, sections i to v inclusive, should be applicable to at most one supervisory board member;
ii. the total number of supervisory board members to whom the criteria referred to in best practice provision 2.1.8 are applicable should account for less than half of the total number of supervisory board members; and
iii. for each shareholder or group of affiliated shareholders directly or indirectly holding more than 10 per cent of the shares in the company, there is at most one supervisory board member who can be considered to be affiliated with or representing them as stipulated in best practice provision 2.1.8, sections vi and vii.

5 https://www.ser.nl/nl/thema/diversiteitsportaal

Explanatory note

Best practice provision 2.1.7, section ii, stipulates that a majority of the supervisory board members should be independent. This requirement must not be undermined by voting ratios within the supervisory board if an arrangement is being used that allows multiple voting rights pursuant to Article 2:140(4) of the Dutch Civil Code.

2.1.8 Independence of supervisory board members

Supervisory board members are not independent if they or their spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree:

i. has been an employee or member of the management board of the company or an issuing institution associated with the company as referred to in Section 5:48 of the Financial Supervision Act (Wet op het financieel toezicht, Wft) in the five years prior to the appointment;
ii. receives personal financial compensation from the company, or an entity associated with it, other than the compensation received for the work performed as a supervisory board member and insofar as this is not in keeping with the normal course of business;
iii. has had an important business relationship with the company or an entity associated with it, in the year prior to the appointment. This includes in any event the case where the supervisory board member, or the firm of which he is a shareholder, partner, associate or advisor, has acted as advisor to the company (consultant, external auditor, civil notary or lawyer) and the case where the supervisory board member has been a management board member or an employee of a bank with which the company has a lasting and significant relationship;
iv. is a member of the management board of a company in which a member of the management board of the company which he supervises is a supervisory board member;
v. has temporarily performed management board duties during the previous twelve months in the absence or incapacity of management board members;
vi. has a shareholding in the company of at least 10 per cent, taking into account the shareholding of natural persons or legal entities collaborating with him on the basis of an express or tacit verbal or written agreement;
vii. is a member of the management board or supervisory board – or is a representative in some other way – of a legal entity which directly or indirectly holds at least 10 per cent of the shares in the company, unless the entity is a group company.

Explanatory note

An entity associated with the company is understood to mean:

- *any legal entity or company with which the company is associated in a group;*
- *any legal entity or company in which the company has a participating interest as referred to in Article 2:24c of the Dutch Civil Code, if the most recent turnover of that legal entity or company amounts to at least 10% of the company's consolidated turnover; or*
- *any legal entity or company that provides more than 25% of the capital of the company, directly or indirectly.*

2.1.9 Independence of the chairman of the supervisory board

The chairman of the supervisory board should not be a former member of the management board of the company and should be independent within the meaning of best practice provision 2.1.8.

2.1.10 Accountability regarding supervisory board member independence

The report of the supervisory board should state that, in the opinion of the supervisory board, the independence requirements referred to in best practice provisions 2.1.7 to 2.1.9 inclusive, have been fulfilled and, if applicable, should also state which supervisory board member (or members), if any, it does not consider to be independent.

Principle 2.2 Appointment, succession and evaluation

The supervisory board should ensure that a formal and transparent procedure is in place for the appointment and reappointment of management board and supervisory board members, as well as a sound plan for the succession of management board and supervisory board members, in accordance with the D&I policy. The functioning of the management board and the supervisory board as a collective and the functioning of individual members should be evaluated on a regular basis.

2.2.1 Appointment and reappointment periods – management board members

A management board member is appointed for a maximum period of four years. A member may be reappointed for a term of not more than four years at a time, which reappointment should be prepared in a timely fashion. The D&I objectives from best practice provision 2.1.5 should be considered in the preparation of the appointment or reappointment.

2.2.2 Appointment and reappointment periods – supervisory board members

A supervisory board member is appointed for a period of four years and may then be reappointed once for another four-year period. The supervisory board member may then be reappointed again for a period of two years, which appointment may be extended by at most two years. In the event of reappointment after an eight-year period, reasons should be given in the report of the supervisory board. At any appointment or reappointment, the profile referred to in best practice provision 2.1.1, should be observed.

Explanatory note

The effectiveness of the supervisory board is determined by its composition, with the size, expertise, diversity and independence of the supervisory board being decisive factors. When reappointing supervisory board members, a critical assessment should be made as to whether the relevant supervisory member maintains an appropriate distance in undertaking his supervisory activities, and whether the required knowledge and expertise are represented within the supervisory board. The basic principle is that supervisory board members are appointed for two four-year periods. Any subsequent reappointment must be justified in the report of the supervisory board.

2.2.3 Early retirement

A member of the supervisory board or the management board should retire early in the event of inadequate performance, structural incompatibility of interests, and in other instances in which this is deemed necessary by the supervisory board.

In the event of the early retirement of a member of the management board or the supervisory board, the company should issue a press release mentioning the reasons for the departure.

Explanatory note

Notwithstanding this provision, in the case of companies not under the structure regime ("structuur-regime"), the general meeting may suspend or dismiss supervisory board members at any time. Under the provisions on companies to which the structure regime applies, the general meeting of such companies may pass a resolution of no confidence in the entire supervisory board. The adoption of such a resolution implies the immediate dismissal of all the members of the board.

2.2.4 Succession

The supervisory board should ensure that the company has a sound plan in place for the succession of management board and supervisory board members that is aimed at retaining the balance in the requisite expertise, experience and diversity. Due regard should be given to the board's profile referred to in best practice provision 2.1.1 in drawing up the plan for supervisory board members. The supervisory board should also draw up a retirement schedule in order to avoid, as much as possible, supervisory board members retiring simultaneously. The retirement schedule should be published on the company's website.

2.2.5 Duties of the selection and appointment committee

The selection and appointment committee should prepare the supervisory board's decision-making and report to the supervisory board on its deliberations and findings.
The selection and appointment committee should in any event focus on:

i. drawing up selection criteria and appointment procedures for management board members and supervisory board members;
ii. periodically assessing the size and composition of the management board and the supervisory board, and making a proposal for a composition profile of the supervisory board;
iii. periodically assessing the functioning of individual management board members and supervisory board members, and reporting on this to the supervisory board;
iv. drawing up a plan for the succession of management board members and supervisory board members;
v. making proposals for appointments and reappointments; and
vi. supervising the policy of the management board regarding the selection criteria and appointment procedures for senior management.

2.2.6 Evaluation by the supervisory board

At least once per year, outside the presence of the management board, the supervisory board should evaluate its own functioning, the functioning of the various committees of the supervisory board and of the individual supervisory board members, and discuss the conclusions of this evaluation. In doing so, attention should be paid to:

i. substantive aspects, conduct and culture, the mutual interaction and collaboration, and the interaction with the management board;
ii. events that occurred in practice from which lessons may be learned; and
iii. the desired profile, composition, competencies and expertise of the supervisory board.

The evaluation should take place periodically under the supervision of an external expert.

2.2.7 Evaluation of the management board

At least once per year, outside the presence of the management board, the supervisory board should evaluate both the functioning of the management board as a whole and that of the individual management board members, and should discuss the conclusions that must be attached to the evaluation, such also in light of the succession of management board members. At least once annually, the management board should also evaluate its own functioning as a whole and that of the individual management board members.

Explanatory note 2.2.6 and 2.2.7

The aim of the reviews is to assess the functioning of the members of the supervisory board and the management board. An annual review can enhance the quality of the functioning of the supervisory board and the management board and help to ensure that the right choices are made when preparing appointments or reappointments of supervisory and management board members, for example where the appropriate composition of the boards or appropriate levels of diversity in their composition are concerned. The manner in which the review is carried out is determined by the company and may therefore differ from one company to another. The review can take place collectively or on an individual basis between the chairman and each member separately. The annual review should take place periodically under the supervision of an external expert. Each supervisory board and management board member must be able to express their views confidentially during the review.

2.2.8 Evaluation accountability

The supervisory board's report should state:

i. how the evaluation of the supervisory board, the various committees and the individual supervisory board members has been carried out;
ii. how the evaluation of the management board and the individual management board members has been carried out;
iii. the main findings and conclusions of the evaluations; and
iv. what has been or will be done with the conclusions from the evaluations.

Principle 2.3 Organisation of the supervisory board and reports

The supervisory board should ensure that it functions effectively. The supervisory board should establish committees to prepare the supervisory board's decision-making. The foregoing does not affect the responsibility of the supervisory board as an corporate body and of the individual members of the supervisory board for obtaining information and forming an independent opinion.

2.3.1 Supervisory board's terms of reference

The division of duties within the supervisory board and the procedures of the supervisory board should be laid down in terms of reference. The supervisory board's terms of reference should include a paragraph dealing with its relations with the management board, the general meeting, the employee participation body (if any) and the executive committee (if any). The terms of reference should be posted on the company's website.

2.3.2 Establishment of committees

If the supervisory board consists of more than four members, it should appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. Without prejudice to the collegiate responsibility of the supervisory board, the duty of these committees is to prepare the decision-making of the supervisory board. If the supervisory board decides not to establish an audit committee, a remuneration committee or a selection and appointment committee, the best practice provisions applicable to such committees should apply to the entire supervisory board.

2.3.3 Committees' terms of reference

The supervisory board should draw up terms of reference for the audit committee, the remuneration committee and the selection and appointment committee. The terms of reference should indicate the role and responsibility of the committee concerned, its composition and the manner in which it discharges its duties. The terms of reference should be posted on the company's website.

2.3.4 Composition of the committees

The audit committee or the remuneration committee should not be chaired by the chairman of the supervisory board or by a former member of the management board of the company. More than half of the members of the committees should be independent within the meaning of best practice provision 2.1.8.

2.3.5 Committee reports

The supervisory board should receive from each of the committees a report of their deliberations and findings. In the report of the supervisory board it should comment on how the duties of the committees were carried out in the financial year. In this report, the composition of the committees, the number of committee meetings and the main items discussed at the meetings should be mentioned.

Explanatory note

These reports provide the content on the main items discussed at the committee meetings.

2.3.6 Chairman of the supervisory board

The chairman of the supervisory board should in any case ensure that:

i. the supervisory board has proper contact with the management board, the employee participation body (if any) and the general meeting;
ii. the supervisory board elects a vice-chairman;
iii. there is sufficient time for deliberation and decision-making by the supervisory board;
iv. the supervisory board members receive all information that is necessary for the proper performance of their duties in a timely fashion;
v. the supervisory board and its committees function properly;
vi. the functioning of individual management board members and supervisory board members is assessed at least annually;
vii. the supervisory board members and management board members follow their induction programme;
viii. the supervisory board members and management board members follow their education or training programme;
ix. the management board performs activities in respect of culture;
x. the supervisory board recognises signs from the enterprise affiliated with the company and ensures that any actual or suspected material misconduct and irregularities are reported to the supervisory board without delay;
xi. the general meeting proceeds in an orderly and efficient manner;
xii. effective communication with shareholders is assured; and
xiii. the supervisory board is involved closely, and at an early stage, in any merger or acquisition processes.

The chairman of the supervisory board should consult regularly with the chairman of the management board.

2.3.7 Vice-chairman of the supervisory board

The vice-chairman of the supervisory board should deputise for the chairman when the occasion arises.

2.3.8 Delegated supervisory board member

A delegated supervisory board member is a supervisory board member who has a special duty. The delegation must not extend beyond the duties of the supervisory board itself and must not include the management of the company. Its purpose is more intensive supervision and advice and more regular consultation with the management board. The delegation should only be of a temporary nature. The delegation must not detract from the duties and powers of the supervisory board. The delegated supervisory board member continues to be a member of the supervisory board and should report regularly on the execution of his special duty to the plenary supervisory board.

2.3.9 Temporary management board function of a supervisory board member

A supervisory board member who temporarily takes on the management of the company, where the management board members are absent or unable to fulfil their duties, should resign from the supervisory board.

2.3.10 Company secretary

The supervisory board should be supported by the company secretary.
The secretary:

i. should ensure that the proper procedures are followed and that the statutory obligations and obligations under the articles of association are complied with;
ii. should facilitate the provision of information of the management board and the supervisory board; and
iii. should support the chairman of the supervisory board in the organisation of the affairs of the supervisory board, including the provision of information, meeting agendas, evaluations and training programmes.

The company secretary should, either on the initiative of the supervisory board or otherwise, be appointed and dismissed by the management board, after the approval of the supervisory board has been obtained.

If the company secretary also undertakes work for the management board and notes that the interests of the management board and the supervisory board diverge, as a result of which it is unclear which interests the company secretary should represent, the company secretary should report this to the chairman of the supervisory board.

2.3.11 Report of the supervisory board

The annual statements of the company include a report by the supervisory board. In this report, the supervisory board should render account of the supervision conducted in the past financial year, reporting in any event on the items referred to in best practice provisions 1.1.3, 2.1.2, 2.1.10, 2.2.8, 2.3.5 and 2.4.4 and, if applicable, the items referred to in best practice provisions 1.3.6 and 2.2.2.

Principle 2.4 Decision-making and functioning

The management board and the supervisory board should ensure that decisions are made in a balanced and effective manner while taking account of the interests of stakeholders. The management board should ensure that information is provided in a timely and sound manner. The management board and the supervisory board should keep their knowledge and skills up to date and devote sufficient time to their duties and responsibilities. They should ensure that, in performing their duties, they have the information that is required for effective decision-making.

Explanatory note

Management board members are required to actively provide information to the supervisory board. By the same token, supervisory board members are required to actively gather the information they need in order to be able to perform their supervisory role effectively.

2.4.1 Stimulating openness and accountability

The management board and the supervisory board are each responsible for stimulating openness and accountability within the body of which they form part, and between the different bodies within the company.

2.4.2 Other positions

Management board members and supervisory board members should report any other positions they may hold to the supervisory board in advance and, at least annually, the other positions should be discussed at the supervisory board meeting. The acceptance of membership of a supervisory board by a management board member, requires the approval of the supervisory board.

2.4.3 Point of contact for the functioning of supervisory board and management board members

The chairman of the supervisory board should act on behalf of the supervisory board as the main contact for the management board, supervisory board members and shareholders regarding the functioning of management board members and supervisory board members. The vice-chairman should act as a contact for individual supervisory board members and management board members regarding the functioning of the chairman.

2.4.4 Attendance at supervisory board meetings

Supervisory board members should attend supervisory board meetings and the meetings of the committees of which they are a part. If supervisory board members are frequently absent from these meetings, they should be held to account on this. The report of the supervisory board should state the absenteeism rate from supervisory board and committee meetings of each supervisory board member.

2.4.5 Induction programme for supervisory board members

All supervisory board members should follow an induction programme geared to their role. The induction programme should in any event cover general financial, social and legal affairs, financial and sustainability reporting by the company, any specific aspects that are unique to the relevant company and its business activities, the company culture and the relationship with the employee participation body (if any), and the responsibilities of a supervisory board member.

2.4.6 Development

The management board and the supervisory board should each conduct an annual review for their own body to identify any aspects with regard to which the supervisory board members and management board members require training or education.

Explanatory note

In connection with the global transformation in the field of sustainability and digitisation, steps should be taken to ensure that the management board and the supervisory board also receive sufficient training and education on these themes.

2.4.7 Information safeguards

The management board should ensure that internal procedures are established and maintained which safeguard that all relevant information is known to the management board and the supervisory board in a timely fashion. The supervisory board should supervise the establishment and implementation of these procedures.

2.4.8 Supervisory board members' responsibility for obtaining information

The supervisory board and each individual supervisory board member have their own responsibility for obtaining the information from the management board, the internal audit function, the external auditor and the employee participation body (if any) that the supervisory board needs in order to be able to carry out its duties properly as a supervisory body.

2.4.9 Obtaining information from officers and external parties

If the supervisory board considers it necessary, it may obtain information from officers and external advisors of the company. The company should provide the necessary means to this end. The supervisory board may require that certain officers and external advisors attend its meetings.

Principle 2.5 Culture

The management board is responsible for creating a culture aimed at sustainable long-term value creation for the company and its affiliated enterprise. The supervisory board should supervise the activities of the management board in this regard.

Explanatory note

Culture can be defined as the values that implicitly and explicitly inform employees' actions and the resulting behaviour. Culture is a frame of reference on the basis of which one's own actions and those of others are reviewed. A healthy culture helps to prevent misconduct and irregularities.

The Code addresses culture, but is not prescriptive as to exactly what culture is or should be. It is up to the management board to create the company's culture. When doing so the existence of different subcultures within the enterprise should be taken into account.

2.5.1 Management board's responsibility for culture

The management board should adopt values for the company and its affiliated enterprise that contribute to a culture focused on sustainable long-term value creation, and discuss these with the supervisory board. The management board is responsible for the incorporation and maintenance of these values within the company and its affiliated enterprise. The management board should encourage behaviour that is in keeping with the values and propagate these values through leading by example. Attention must be paid to the following, among other things:

i. the strategy and the business model;
ii. the environment in which the enterprise operates;
iii. the existing culture within the enterprise, and whether it is desirable to implement any changes in this; and
iv. the social safety within the enterprise and the ability to discuss and report actual or suspected misconduct or irregularities.

2.5.2 Code of conduct

The management board should draw up a code of conduct and monitor its effectiveness and compliance with this code, on the part of both itself and the employees of the company. The management board should inform the supervisory board of its findings and observations with regard to the effectiveness of and compliance with the code. The code of conduct should be posted on the company's website.

2.5.3 Employee participation

If the company has established an employee participation body, the following should also be discussed in the consultations between the management board, the supervisory board and such employee participation body:

i. the conduct and culture in the company and its affiliated enterprise;
ii. the values adopted by the management board on the basis of best practice provision 2.5.1, and
iii. the company's D&I policy.

2.5.4 Reporting on culture

In the management report, the management board should provide explanatory notes on:

i. the culture within the enterprise, and whether it is desirable to implement any changes in this;
ii. how the culture, the underlying values and conduct promoted within the enterprise contribute to sustainable long-term value creation and, if it is considered desirable to amend these, which initiatives are taken to further increase this contribution; and
iii. the effectiveness of, and compliance with, the code of conduct.

Principle 2.6 Misconduct and irregularities

The management board and the supervisory board should be alert to signs of actual or suspected misconduct or irregularities. The management board should establish a procedure for reporting actual or suspected misconduct or irregularities, and take appropriate follow-up action on the basis of these reports. The supervisory board monitors the management board in this regard.

Explanatory note

Principle 2.6 and the associated best practice provisions deal with the reporting of suspected misconduct or irregularities. The arrangements for reporting actual or suspected misconduct and irregularities are expected to express that such reports are seen as a contribution to improving the functioning of the enterprise affiliated with the company, that the report will be seriously investigated, that measures will be taken where necessary and that the person making the report will not be disadvantaged.

Pursuant to the Whistleblower Protection Act (Wet bescherming klokkenluiders) an employer who usually employs at least fifty people is obliged to establish a procedure for dealing with reports of suspected misconduct within its organisation.[6] This act is applicable to suspected misconduct . The scope of the principle and best practice provisions in the Code are broader than the legal provisions, as the Code also aimed at reporting irregularities. The ability to report applies to all components of the enterprise affiliated with the company, regardless of whether the enterprise's activities take place in the Netherlands or abroad.

6 Article 2, Whistleblower Protection Act

2.6.1 Procedure for reporting actual or suspected misconduct or irregularities

The management board should establish a procedure for reporting actual or suspected misconduct or irregularities within the company and its affiliated enterprise. The procedure should be posted on the company's website. The management board should ensure that employees have the opportunity to file such a report without jeopardising their legal position.

2.6.2 Informing the chairman of the supervisory board

The management board should inform the chairman of the supervisory board without delay of any signs of actual or suspected material misconduct or irregularities within the company and its affiliated enterprise.

If the actual or suspected misconduct or irregularity pertains to the functioning of a management board member, employees can report this directly to the chairman of the supervisory board.

2.6.3 Notification by the external auditor

The external auditor should inform the management board and the chairman of the audit committee without delay if, during the performance of his duties, he discovers or suspects an instance of misconduct or irregularity. If the actual or suspected misconduct or irregularity pertains to the functioning of one or more management board members, the external auditor should report this directly to the chairman of the supervisory board.

2.6.4 Notification by the internal audit function

The internal audit function should inform the management board and the chairman of the audit committee without delay if, during the performance of his duties, he discovers or suspects an instance of material misconduct or irregularity. If the actual or suspected material misconduct or irregularity pertains to the functioning of one or more management board members, the internal audit function should report this to the chairman of the supervisory board.

2.6.5 Oversight by the supervisory board

The supervisory board monitors the operation of the procedure for reporting actual or suspected misconduct or irregularities, appropriate and independent investigations into signs of misconduct or irregularities, and, if an instance of misconduct or irregularity has been discovered, an adequate follow-up of any recommendations for remedial actions.

In order to safeguard the independence of the investigation in cases where the management board itself is involved, the supervisory board should have the option of initiating its own investigation into any signs of misconduct or irregularities and to coordinate this investigation.

Principle 2.7 Preventing conflicts of interest

Any form of conflict of interest between the company and the members of its management board or supervisory board should be prevented. To avoid conflicts of interest, adequate measures should be taken. The supervisory board is responsible for the decision-making on dealing with conflicts of interest regarding management board members, supervisory board members and majority shareholders in relation to the company.

Explanatory note

Book 2 of the Dutch Civil Code [7] defines a conflict of interest as being a situation in which, in a process of consultation and decision-making, the direct or indirect personal interests of a management board member or supervisory board member conflict with the interests of the company. The term "conflict of interest" in the Code is aimed at preventing conflicts of interest in general, regardless of whether consultation or decision-making is being undertaken. In addition, the legal provisions on conflicts of interest have been developed in greater detail in the Code.

2.7.1 Preventing conflicts of interest

Management board members and supervisory board members are alert to conflicts of interest and should in any case refrain from the following:

i. competing with the company;
ii. demanding or accepting substantial gifts from the company for themselves or their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
iii. providing unjustified advantages to third parties at the company's expense;
iv. taking advantage of business opportunities to which the company is entitled for themselves or for their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.

2.7.2 Terms of reference

The terms of reference of the supervisory board should contain rules on dealing with conflicts of interest, including conflicting interests between management board members and supervisory board members on the one hand and the company on the other. The terms of reference should also stipulate which transactions require the approval of the supervisory board. The company should draw up regulations governing ownership of, and transactions in, securities by management or supervisory board members, other than securities issued by the company.

2.7.3 Reporting

A conflict of interest may exist if the company intends to enter into a transaction with a legal entity:

i. in which a member of the management board or the supervisory board personally has a material financial interest; or
ii. which has a member of its management board or supervisory board who is related under family law to a member of the management board or the supervisory board of the company.

A management board member should report any potential conflict of interest in a transaction that is of material significance to the company and/or to such management board member, to the chairman of the supervisory board and to the other members of the management board without delay. The management board member should provide all relevant information on this subject, including information relevant to the situation regarding his spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree.

A supervisory board member should report any potential conflict of interest in a transaction that is of material significance to the company and/or to such supervisory board member, to the chairman of the supervisory board without delay and provide all relevant information on this subject, including information

7 Article 2:129(6) and Article 2:140(5) of the Dutch Civil Code

relevant to the situation regarding his spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree. If the chairman of the supervisory board has a potential conflict of interest, he must report this to the vice-chairman of the supervisory board without delay.

The supervisory board should decide, outside the presence of the management board member or supervisory board member concerned, whether there is a conflict of interest.

2.7.4 Accountability regarding transactions: management board and supervisory board members

All transactions in which there are conflicts of interest with management board members or supervisory board members should be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with management board members or supervisory board members that are of material significance to the company and/or to the relevant management board members or supervisory board members should require the approval of the supervisory board. Such transactions should be published in the management report, together with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3 and 2.7.4 have been complied with.

2.7.5 Accountability regarding transactions: majority shareholders

All transactions between the company and legal or natural persons who hold at least ten per cent of the shares in the company should be agreed on terms that are customary in the market. Decisions to enter into transactions with such persons that are of material significance to the company and/or to such persons, should require the approval of the supervisory board. Such transactions should be published in the management report, together with a declaration that best practice provision 2.7.5 has been complied with.

2.7.6 Personal loans

The company should not grant its management board members and supervisory board members any personal loans, guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the supervisory board. Loans should not be forgiven.

Principle 2.8 Takeover situations

In the event of a takeover bid for the company's shares, or for the depositary receipts for the company's shares, if it concerns a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Article 2:107a(1)(c) of the Dutch Civil Code, and/or involves other substantial changes in the structure of the company, both the management board and the supervisory board should ensure that the stakeholder interests concerned are carefully weighed and any conflict of interest for supervisory board members or management board members is avoided. The management board and the supervisory board should be guided in their actions by the interests of the company and its affiliated enterprise.

2.8.1 Supervisory board involvement

When a takeover bid for the company's shares or for the depositary receipts for the company's shares is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Article 2:107a(1)(c) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the company, the management board should ensure that the supervisory board is involved in the takeover process and/or the change in the structure closely and in a timely fashion.

2.8.2 Informing the supervisory board about a request for inspection by a competing bidder

If a takeover bid has been announced for the shares, or depositary receipts for shares, in the company, and the management board receives a request from a competing bidder to inspect the company's records, the management board should discuss this request with the supervisory board without delay.

2.8.3 Management board's position on a private bid

If a private bid for a business unit or a participating interest has been made public, where the value of the bid exceeds the threshold referred to in Article 2:107a(1)(c) of the Dutch Civil Code, the management board of the company should as soon as possible make public its position on the bid and the reasons for this position.

Explanatory note

A private bid is not deemed to be "serious" if it is clear that the bidder does not have sufficient financial resources to finance the bid or if no right-thinking and sensible shareholder would wish the management board to accept the bid for example because the bid price does not reflect the true value or the market value of the business unit or the participating interest.

CHAPTER 3. REMUNERATION

Principle 3.1 Remuneration policy – management board

The remuneration policy applicable to management board members should be clear and easy to understand, should focus on sustainable long-term value creation for the company and its affiliated enterprise, and take into account the internal pay ratios within the enterprise. The remuneration policy should not encourage management board members to act in their own interest, nor to take risks that are not in keeping with the strategy formulated and the risk appetite that has been established. The supervisory board is responsible for formulating the remuneration policy and its implementation.

3.1.1 Remuneration policy proposal

The remuneration committee should submit a clear and understandable proposal to the supervisory board concerning the remuneration policy to be pursued with regard to the management board. The supervisory board should present the policy to the general meeting for adoption.

3.1.2 Remuneration policy

The following aspects should in any event be taken into consideration when formulating the remuneration policy:

i. the objectives of the strategy for the implementation of sustainable long-term value creation within the meaning of best practice provision 1.1.1;
ii. the scenario analyses carried out in advance;
iii. the pay ratios within the company and its affiliated enterprise;
iv. the development of the market price of the shares;
v. an appropriate ratio between the variable and fixed remuneration components. The variable remuneration component is linked to measurable performance criteria determined in advance, which are predominantly long-term in character;
vi. if shares are being awarded, the terms and conditions governing this. Shares should be held for at least five years after they are awarded; and
vii. if share options are being awarded, the terms and conditions governing this and the terms and conditions subject to which the share options can be exercised. In any case, share options cannot be exercised during the first three years after they are awarded.

Explanatory note

Article 2:135a of the Dutch Civil Code came into force on 1 December 2019. This article contains detailed rules for the remuneration policy of companies whose shares, or depositary receipts for shares issued with the collaboration the company, have been admitted to trading on a regulated market as defined in Section 1:1 of the Financial Supervision Act. There is an overlap between Article 2:135a of the Dutch Civil Code and best practice provision 3.1.2 of the Code. Since the scope of the Code is broader than the scope of the Act best practice provision 3.1.2 can nevertheless be retained.

In the case of companies to which the legislation and the Code apply, the Code supplements the legal provisions. For example, the Code supplements the legislation by requiring companies to consider the prior scenario analyses and the development of the share price when formulating the remuneration policy.

It also supplements the legislation by requiring shares to be held for a period of at least five years after grant and precluding the exercise of options for at least the first three years after grant. In the case of companies that are not subject to the amended legislation, nothing will change and best practice provision 3.1.2 will remain the main guideline for remuneration policy.

With regard to objectives for the strategy for implementing sustainable long-term value creation (best practice provision 3.1.2, section i), attention will be focused particularly on integrating sustainability objectives into the remuneration policy and the relevant criteria for the attainment of those objectives.

Scenario analyses are analyses carried out by the supervisory board of the potential outcomes of the variable remuneration components and the consequences thereof for the management board members' remuneration when drawing up the remuneration policy and before determining the management board members' remuneration. The supervisory board determines whether the outcome of the scenario analyses leads to appropriate remuneration and whether measures are required to limit the remuneration.

3.1.3 Remuneration – executive committee

If the management board has an executive committee, the management board should inform the supervisory board about the remuneration of the members of the executive committee who are not management board members. The management board should discuss this remuneration with the supervisory board annually.

Principle 3.2 Determination of management board remuneration

The supervisory board should determine the remuneration of the individual members of the management board, within the limits of the remuneration policy adopted by the general meeting. The remuneration committee should prepare the supervisory board's decision-making regarding the determination of remuneration. Inadequate performance of duties should not be rewarded.

3.2.1 Remuneration committee's proposal

The remuneration committee should submit a proposal to the supervisory board concerning the remuneration of individual members of the management board. The proposal is drawn up in accordance with the remuneration policy that has been established and will, in any event, cover the remuneration structure, the amount of the fixed and variable remuneration components, the performance criteria used, the scenario analyses that are carried out and the pay ratios within the company and its affiliated enterprise.

3.2.2 Management board members' views on their own remuneration

When drafting the proposal for the remuneration of management board members, the remuneration committee should take note of individual management board members' views with regard to the amount and structure of their own remuneration. The remuneration committee should ask the members of the management board to pay attention to the aspects referred to in best practice provision 3.1.2.

Explanatory note

The management board members' views on their own remuneration are intended for the remuneration committee, and should not form part of the account given of the implementation of the remuneration policy.

3.2.3 Severance payments

The remuneration in the event of dismissal should not exceed one year's salary (the "fixed" remuneration component). Severance pay will not be awarded if the agreement is terminated early at the initiative of the management board member, or in the event of seriously culpable or negligent behaviour on the part of the management board member.

Principle 3.3 Remuneration supervisory board

The supervisory board should submit a clear and understandable proposal for its own appropriate remuneration to the general meeting. The remuneration of supervisory board members should promote an adequate performance of their role and should not be dependent on the results of the company.

3.3.1 Time spent and responsibility

The remuneration of the supervisory board members should reflect the time spent and the responsibilities of their role.

3.3.2 Remuneration of supervisory board members

Supervisory board members must not be awarded remuneration in the form of shares and/or rights to shares.

3.3.3 Share ownership

Shares held by a supervisory board member in the company on whose supervisory board they serve, should be long-term investments.

Principle 3.4 Accountability for implementation of remuneration policy

In the remuneration report, the supervisory board should render account of the implementation of the remuneration policy in a transparent manner. The report should be published on the company's website.

3.4.1 Remuneration report

The remuneration committee should prepare the remuneration report. This report should in any event describe, in a transparent manner, in addition to the matters required by law:

i. how the remuneration policy has been implemented in the past financial year;
ii. how implementation of the remuneration policy contributes to sustainable long-term value creation;
iii. how scenario analyses have been taken into consideration;
iv. the pay ratios within the company and its affiliated enterprise and, if applicable, any changes in these ratios compared to at least five previous financial years;
v. in the event a management board member receives variable remuneration, how this remuneration contributes to sustainable long-term value creation, the measurable performance criteria determined in advance on which the variable remuneration depends, and the relationship between the remuneration and performance; and
vi. in the event that a current or former management board member receives a severance payment, the reason for this payment.

Explanatory note

The requirements for the statutory remuneration report are set out in Article 2:135b and, if applicable, Articles 2:383c to 2:383e of the Dutch Civil Code. Companies that prepare a statutory remuneration report are also expected to report on the elements included in best practice provision 3.4.1. These elements can be included in the remuneration report that is prepared on the basis of Article 2:135b of the Dutch Civil Code.

Best practice provision 3.4.1, section ii, stipulates that the remuneration report should explain how the implementation of the remuneration policy contributes to sustainable long-term value creation. It should explain, among other things, how the total remuneration of management board members is in line with the remuneration policy, how sustainability objectives have been taken into account in the implementation of the remuneration policy and how this contributes to the creation of long-term value.

Companies are not expected to disclose the content of the scenario analyses in the remuneration report.

The term 'pay ratios' as referred to in best practice provision 3.4.1, section iv, is understood to mean the ratio between (i) the total annual remuneration of the CEO and (ii) the average annual remuneration of the employees of the company and the group companies whose financial data the company consolidates, where:

i. the total annual remuneration of the CEO includes all remuneration components (such as fixed remuneration, variable remuneration in cash (bonus), the share-based part of the remuneration, social security contributions, pension, expense allowance, etc.), as included in the (consolidated) financial statements;

ii. the average annual remuneration of the employees is determined by dividing the total wage costs in the financial year (as included in the (consolidated) financial statements) by the average number of FTEs during the financial year; and

iii. the value of the share-based remuneration is determined at the time of assignment, in line with the applicable rules under the applied reporting requirements.

It should also be explained whether there have been any changes in the pay ratios in comparison with at least five previous financial years. In addition to the minimum information that can be expected based on the aforementioned definition of the term pay ratios as referred to in best practice provision 3.4.1, section iv, additional information may be provided. Examples include the pay ratios for other management board members (besides the CEO), the pay ratios broken down by the main regions in which the company operates and/or the pay ratios for specific reference groups of employees.

3.4.2 Agreement of management board member

The main elements of the agreement of a management board member with the company should be published on the company's website in a transparent overview after the agreement has been concluded, and in any event no later than the date of the notice calling the general meeting at which the appointment of the management board member will be proposed.

CHAPTER 4.
THE GENERAL MEETING

Principle 4.1 The general meeting

The general meeting should be able to exert such influence on the policies of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances in the company. Good corporate governance requires the fully-fledged participation of shareholders in the decision-making in the general meeting.

Explanatory note

As stated in the preamble, the management board and the supervisory board are responsible for the corporate governance of the company and for compliance with the Code, the principle being that compliance is based on the "comply or explain" principle. Chapter 4 of the Code contains various best practice provisions that focus on shareholders. Insofar as the management board and the supervisory board are unable to influence shareholders' compliance with best practice provisions, the "comply or explain" approach may be disregarded by the management board and the supervisory board respectively.

4.1.1 Supervisory board supervision

The supervisory board's supervision of the management board should include the supervision of relations with shareholders.

4.1.2 Proper conduct of business at meetings

The chairman of the general meeting is responsible for ensuring the proper conduct of business at meetings in order to promote a meaningful discussion at the meeting.

4.1.3 Agenda

The agenda of the general meeting should list which items are up for discussion and which items are to be voted on. The following items should be dealt with as separate agenda items:

i. material changes to the articles of association;
ii. proposals relating to the appointment of management board and supervisory board members;
iii. the policy of the company on additions to reserves and on dividends (the level and purpose of the addition to reserves, the amount of the dividend and the type of dividend);
iv. any proposal to pay out dividend;
v. resolutions to approve the management conducted by the management board (discharge of management board members from liability);
vi. resolutions to approve the supervision exercised by the supervisory board (discharge of supervisory board members from liability);
vii. any substantial change in the corporate governance structure of the company and in the compliance with this Code; and
viii. the appointment of the external auditor.

4.1.4 Proposal for approval or authorisation

A proposal for approval or authorisation by the general meeting should be explained in writing. In its explanation the management board should deal with all facts and circumstances relevant to the approval or authorisation to be granted. The notes to the agenda should be posted on the company's website.

4.1.5 Shareholder's explanation when exercising the right to put items on the agenda

If a shareholder has arranged for an item to be put on the agenda, he should explain this at the meeting and, if necessary, answer questions about it.

4.1.6 Placing of items on the agenda by shareholders

A shareholder should only exercise the right to put items on the agenda after having consulted the management board. If one or more shareholders intend to request that an item be put on the agenda that may result in a change in the company's strategy, for example as a result of the dismissal of one or more management board or supervisory board members, the management board should be given the opportunity to stipulate a reasonable period in which to respond (the response time). The opportunity to stipulate the response time should also apply to an intention as referred to above for judicial leave to call a general meeting pursuant to Article 2:110 of the Dutch Civil Code. The relevant shareholder should respect the response time stipulated by the management board, within the meaning of best practice provision 4.1.7.

4.1.7 Stipulation of the response time

If the management board stipulates a response time, it should be a reasonable period that does not exceed 180 days from the moment the management board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the general meeting at which the item is to be dealt with. The management board should use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder (or shareholders), and should explore the alternatives. At the end of the response time, the management board should report on this consultation and the exploration to the general meeting. This should be monitored by the supervisory board.

The response time may be stipulated only once for any given general meeting and should not apply to an item in respect of which a response time or a statutory reflection period as referred to in Article 2:114b of the Dutch Civil Code has already been stipulated, or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.

Explanatory note

The statutory reflection period, which was introduced into the Dutch Civil Code on 1 May 2021 (Article 2:114b of the Dutch Civil Code), can be regarded as a partial codification of the response time provided for by the Code. There are sufficient differences between the two provisions to retain the response time. For example, the response time can often be stipulated at an earlier stage and for more subjects than the statutory reflection period, and the consequences of such stipulation are different (if the company stipulates the response time, no resolution needs to be put on the agenda (not even as a discussion item), whereas a resolution is required in the case of the statutory reflection period).The principle adopted in the legislation is that the two provisions can co-exist. The legislation leaves it to the courts to rule on any undesirable concurrence of the statutory reflection period and other protective measures.

The principle adopted in the Code is that, where the same matter is involved, overlapping or successive application in time of the response time and the statutory reflection period is undesirable. For that reason, a provision to the effect that the response time cannot be stipulated if the statutory reflection period has previously been stipulated for the same matter has been added to the Code. In the reverse situation, where the response time is stipulated first, followed by the reflection period, it seems logical that the period of response time that has elapsed in the meantime should be deducted from the statutory reflection time.

4.1.8 Attendance of members nominated for the management board or supervisory board

Management board and supervisory board members nominated for appointment should attend the general meeting at which votes will be cast on their nomination.

4.1.9 External auditor's attendance

The external auditor may be questioned by the general meeting in relation to his report on the fairness of the financial statements. The external auditor should attend and be entitled to address the meeting for this purpose.

Explanatory note

The chairman of the general meeting should ensure that there is an opportunity to question the external auditor. The presence of the external auditor at the general meeting does not detract from the general duty of the management board and the supervisory board to account to the general meeting for their duty to provide all requested information to the general meeting (unless there is an overriding reason not to do so). The external auditor can only be questioned about his audit work and about his opinion on the annual accounts. The primary responsibility for the content of the annual accounts rests with the management board. It follows that the external auditor should participate in the preparation of the general meeting. Reference is made to NBA Practice Note 1118 on the position of the external auditor in the general meeting.

4.1.10 Report of the general meeting

The report of the general meeting should be made available on request to the shareholders, no later than three months after the end of the meeting, after which shareholders should have the opportunity to react to the report in the following three months. The report should then be adopted in the manner provided for in the articles of association.

Principle 4.2 Provision of information

The management board and the supervisory board should ensure that the general meeting is adequately provided with information.

4.2.1 Substantiation of invocation of overriding interest

If the management board and the supervisory board do not provide the general meeting with all information desired with the invocation of an overriding interest on the part of the company, they must give reasons for this.

Explanatory note

Article 2:107(2) of the Dutch Civil Code stipulates that the management board and the supervisory board must provide the general meeting with all the required information unless an overriding interest on the part of the company precludes this. In addition, best practice provision 4.2.1 stipulates that the reason for invoking an overriding interest must be given.

4.2.2 Contacts and dialogue with shareholders

The company should formulate an outline policy on bilateral contacts with the shareholders and should post this policy on its website. Shareholders and the company should be prepared to enter into a dialogue, where appropriate and at their own discretion.

The company is expected to facilitate the dialogue unless, in the opinion of the management board, this is not in the interests of the company and its affiliated enterprise.

Shareholders are expected to be prepared to enter into a constructive dialogue with the company. If a shareholder enters into a dialogue with the company outside the context of a general meeting, the shareholder shall disclose his full share position (long and short and through derivatives) at the request of the company.

Explanatory note

Under Dutch company law, companies and shareholders must behave towards each other in accordance with standards of reasonableness and fairness. It is up to the management board to draw up an outline policy for contact and dialogue with shareholders outside the general meeting of shareholders and to determine whether such dialogue is in the interest of the company and its affiliated enterprise.

The dialogue referred to in this best practice provision covers more subjects than the stakeholder dialogue referred to in best practice provision 1.1.5, which focuses specifically on the sustainability aspects of the company's strategy.

4.2.3 Meetings and presentations

Analyst meetings, analyst presentations, presentations to institutional or other investors and press conferences should be announced in advance on the company's website and by means of press releases. Analyst meetings and presentations to investors should not take place shortly before the publication of the regular financial information. All shareholders should be able to follow these meetings and presentations in real time, by means of webcasting, telephone or otherwise. After the meetings, the presentations should be posted on the company's website.

4.2.4 Posting information in a separate section of the website

The company should post and update information which is relevant to the shareholders and which it is required to publish or submit pursuant to the provisions of company law and securities law applicable to it in a separate section of its website.

4.2.5 Management board contacts with press and analysts

The contacts between the management board on the one hand and the press and financial analysts on the other should be handled and structured carefully and with due observance of the applicable laws and regulations. The company should not do anything that might compromise the independence of analysts in relation to the company and vice versa.

4.2.6 Outline of anti-takeover measures

The management board should outline all existing or potential anti-takeover measures in the management report and should also indicate in what circumstances and by whom these measures may likely be used.

Principle 4.3 Casting votes

Participation of as many shareholders as possible in the general meeting's decision-making is in the interest of the company's checks and balances. The company should, as far as possible, give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.

4.3.1 Voting as deemed fit

Shareholders, including institutional investors (pension funds, insurance companies, investment institutions and asset managers), should exercise their voting rights on an informed basis and as they deem fit. Institutional investors that use the services of proxy advisors (i) should encourage those proxy advisors to be prepared to enter into a dialogue with the company regarding their voting policy, voting guidelines and voting recommendations, and (ii) ensure that their votes are cast in line with their own voting policy.

Explanatory note

Insofar as a shareholder uses the services of a proxy advisor before exercising his voting right, it is logical that he should check that the advisor provides balanced advice based on fair consideration of all the issues.

4.3.2 Providing voting proxies or voting instructions

The company should give shareholders and other persons entitled to vote the possibility of issuing voting proxies or voting instructions to an independent third party prior to the general meeting.

4.3.3 Cancelling the binding nature of a nomination or dismissal

The general meeting of shareholders of a company not under the structure regime ("structuurregime") may adopt a resolution to cancel the binding nature of a nomination for the appointment of a member of the management board or of the supervisory board and/or a resolution to dismiss a member of the management board or of the supervisory board, by an absolute majority of the votes cast. It may be provided that this majority should represent a given proportion of the issued capital, which proportion must not be set higher than one-third. If this proportion of the capital is not represented at the meeting, but an absolute majority of the votes cast is in favour of a resolution to cancel the binding nature of a nomination, or to dismiss a board member, a new meeting may be convened at which the resolution may be adopted by an absolute majority of the votes cast, regardless of the proportion of the capital represented at the meeting.

4.3.4 Voting right on financing preference shares

The voting right attaching to financing preference shares should be based on the fair value of the capital contribution.

Explanatory note

Best practice provision 4.3.4 is intended to apply particularly to future issues of financing preference shares. However, the management board and supervisory board may agree with the holders of the existing financing preference shares to adjust the present control of the financing preference shares.

4.3.5 Publication of institutional investors' engagement policy

Institutional investors should implement principle 4.4 when drawing up their engagement policy. Institutional investors should publish their engagement policy on their website.

4.3.6 Report on the implementation of the institutional investors' engagement policy

Institutional investors should report at least annually, on their website, on how they implemented their engagement policy. The report should provide in any case a general description of their voting behaviour, as well as an explanation of the most significant votes and the use of the services of proxy advisors.

"Most significant votes" should be understood in any event to mean:

i. votes on matters that have received substantive media attention or votes on items that are regarded by institutional investors as a priority in of the run-up to the general meeting season;
ii. votes on a resolution on the agenda of a general meeting (a) that are of strategic importance, or (b) where the institutional investor disagrees with the resolution of the company's management board; or
iii. votes in general meetings of companies in which the institutional investor has a large holding compared to the institutional investor's holding in other investee companies.

In addition, institutional investors should report on their website at least once per quarter on whether and, if so, how they have voted as shareholders for each company and voting item. In the report, institutional investors should disclose the key points of the dialogues they have conducted with companies.

If an institutional investor votes against a resolution of the management board or abstains from voting on a resolution of the management board, the institutional investor should explain the reasons for its voting behaviour to the management board either pro-actively or at the company's request.

4.3.7 Abstaining from voting in the event of a larger short position than long position

Shareholders will abstain from voting if their short position in the company is larger than their long position.

4.3.8 Share lending

Shareholders should recall their lent shares before the voting record date for a general meeting of the company if the agenda for that meeting includes one or more significant matters.

The shareholder should determine what is regarded as a significant matter, but this will include, in any event, resolutions on the agenda of a general meeting:

i. that is of strategic importance;
ii. where the shareholder disagrees with the resolution of the management board.

Principle 4.4 Recognising the importance of company strategy

Shareholders, including institutional investors, recognise the importance of a strategy focused on sustainable long-term value creation for the company and its affiliated enterprise.

Principle 4.5 Issuing depositary receipts for shares

Depositary receipts for shares can be a means of preventing a majority (including a chance majority) of shareholders from controlling the decision-making process as a result of absenteeism at a general meeting. Depositary receipts for shares should not be issued as an anti-takeover protective measure. The board of the trust office should issue voting proxies under all circumstances and without limitations to all depositary receipt holders who request this. The holders of depositary receipts so authorised, can exercise the voting right at their discretion. The board of the trust office should have the confidence of the holders of depositary receipts.

Depositary receipt holders should have the possibility of recommending candidates for the board of the trust office. The company should not disclose to the trust office information which has not been made public.

4.5.1 Trust office board

The board of the trust office should have the confidence of the holders of depositary receipts and operate independently of the company that has issued the depositary receipts. The trust conditions should specify in what cases and subject to what conditions holders of depositary receipts may request the trust office to call a meeting of holders of depositary receipts.

4.5.2 Appointment of board members

The board members of the trust office should be appointed by the board of the trust office, after the vacancy has been announced on the website of the trust office. The meeting of holders of depositary receipts may make recommendations to the board of the trust office for the appointment of persons to the position of board member. No management board members or former management board members, supervisory board members or former supervisory board members, employees or permanent advisors of the company should be a member of the board of the trust office.

4.5.3 Board appointment period

A person may be appointed to the board of the trust office for a maximum of two four-year terms, followed by a maximum of two two-year terms. In the event of a reappointment after an eight-year period, reasons should be given in the report of the board of the trust office.

4.5.4 Attendance of the general meeting

The board of the trust office should attend the general meeting and should, if desired, make a statement about how it proposes to vote at the meeting.

4.5.5 Exercise of voting rights

In exercising its voting rights, the trust office should be guided primarily by the interests of the depositary receipt holders, taking the interests of the company and the enterprise affiliated with it into account.

4.5.6 Periodic reports

The trust office should report periodically, but at least once per year, on its activities. The report should be posted on the company's website.

4.5.7 Contents of the reports

The report referred to in best practice provision 4.5.6 should in any event set out:

i. the number of shares for which depositary receipts have been issued and an explanation of changes to this number;
ii. the work carried out in the financial year;

iii. the voting behaviour in the general meetings held in the financial year;
iv. the percentage of votes represented by the trust office during the meetings referred to in section iii;
v. the remuneration of the members of the board of the trust office;
vi. the number of meetings held by the board and the main items dealt with in them;
vii. the costs of the activities of the trust office;
viii. any external advice obtained by the trust office;
ix. the positions or ancillary positions held by the board members of the trust office; and
x. the contact details of the trust office.

4.5.8 Voting proxies

The board of the trust office should issue voting proxies under all circumstances and without limitations to all depositary receipt holders who request this. Each depositary receipt holder may also issue binding voting instructions to the trust office in respect of the shares which the trust office holds on his behalf.

CHAPTER 5.
ONE-TIER GOVERNANCE STRUCTURE

Principle 5.1 One-tier governance structure

The composition and functioning of a board of directors comprising both executive and non-executive directors must be such that the supervision by non-executive directors can be properly carried out and independent supervision is assured.

Explanatory note

The Code is focused on companies with a two-tier governance structure, but also applies to companies with a one-tier governance structure. In addition to Chapters 1 to 4 inclusive, Chapter 5 contains one principle and five best practice provisions that apply specifically to companies with a one-tier governance structure.

Those provisions in the Code that relate to supervisory board members also apply to non-executive directors, without prejudice to the other responsibilities that these non-executive directors may have. Where this is not possible, the "comply or explain" principle applies.

5.1.1 Composition of the board of directors

The majority of the board of directors is made up of non-executive directors. The requirements for independence stipulated in best practice provisions 2.1.7 and 2.1.8, apply to the non-executive directors.

Explanatory note

The independence requirements for supervisory board members apply in full to non-executive directors. Best practice provision 2.1.8, section i, stipulates that a supervisory board member is not independent if, in the five years prior to the appointment, he has been an employee or a member of the management board. In the case of companies with a one-tier governance structure, "'management board member" means "executive director".

5.1.2 Chairman of the board of directors

The chairman of the board of directors chairs the meetings of the board. The chairman of the board of directors should ensure that the board collectively, and its committees, have a balanced composition and function properly.

Explanatory note

In a company with a one-tier governance structure, those duties which in Chapters 1 to 4 inclusive of the Code were specifically allocated to the chairman of the supervisory board fall within the remit of the chairman of the board of directors.

5.1.3 Independence of the chairman of the board of directors

The chairman of the board of directors should not be an executive director or former executive director of the company, and should be independent within the meaning of best practice provision 2.1.8.

5.1.4 Composition of committees

The committees referred to in best practice provision 2.3.2 should comprise exclusively non-executive directors. Neither the audit committee nor the remuneration committee can be chaired by the chairman of the board of directors or by a former executive director of the company.

Explanatory note

It is important that a well-considered choice is made with regard to the reporting lines of the committees.

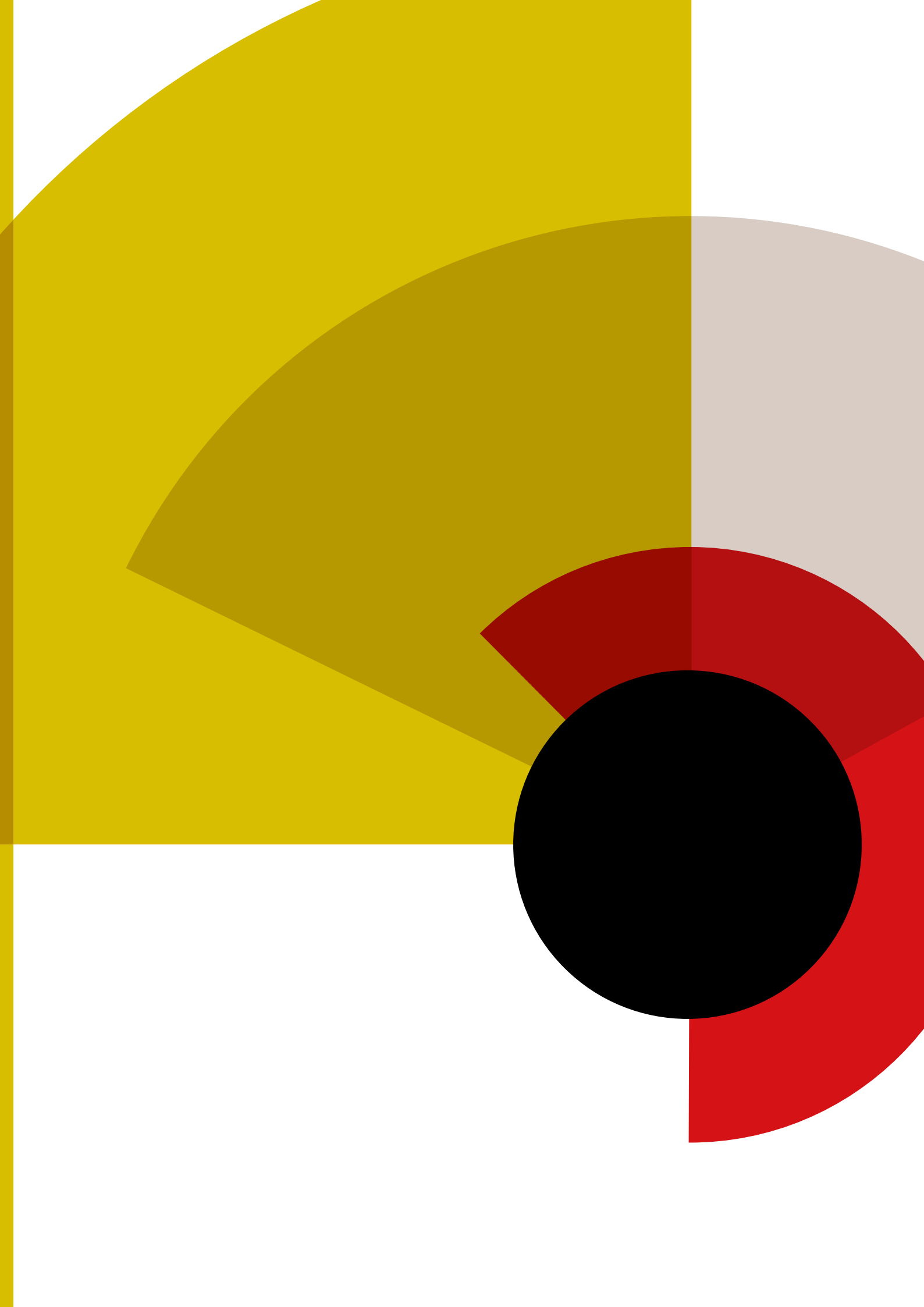
5.1.5 Reporting on supervision by non-executive directors

The non-executive directors render account of the supervision exercised in the past financial year. They should, as a minimum, report on the items referred to in best practice provisions 1.1.3, 2.1.2, 2.1.10, 2.2.8, 2.3.5 and 2.4.4 and, if applicable, the items referred to in best practice provisions 1.3.6 and 2.2.2.

Explanatory note

The account rendered by non-executive directors can form part of the management report or be included in a separate report. The report is published as an appendix to, or at the same time as, the financial statements.

ENTRY INTO FORCE

This Code will come into force as of the financial year starting on or after 1 January 2025. The Committee recommends that companies submit to the general meeting, as a separate agenda item in 2026, the chapter in the report of the management board broadly outlining the corporate governance structure and compliance with this Code.

Where principles or best practice provisions in this Code, compared with the Code adopted in 2022, require changes to rules, regulations, procedures or other written records, a company will be deemed to be compliant with this Code if such changes have been implemented no later than 31 December 2025.