



# Recent changes in Dutch company and securities law

THE SHAREHOLDERS RIGHTS DIRECTIVE ACT AND THE PUBLIC COMPANY WORKS COUNCIL ACT

On 1 July 2010 a number of amendments in Dutch law entered into force. Some affect the rights and obligations of listed companies, their shareholders and works councils. These arise from implementation of the Act to implement the Shareholders Rights Directive (Shareholders Rights Directive Act). The act on the right of a public company's works council to speak at the general meeting (the Public Company Works Council Act) also entered into force.

This briefing outlines the main features of these amendments.

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## The Shareholders Rights Directive Act

- For companies incorporated under Dutch law whose shares or depositary receipts thereof are admitted to trading on a regulated market (whether in or outside the Netherlands) (Dutch-law listed companies), the announcement of a general meeting of shareholders now needs to be made no later than 42 days before the day of the meeting. This used to be 15 days. This also applies to extraordinary general meetings. Under the Directive, member states can provide that, if the company offers shareholders the chance to vote by electronic means, the general meeting may decide that calling an extraordinary meeting (which is therefore not an annual general meeting) may be done not later than on the 14th day before the day of the meeting. Although many parties wanted this option, the Dutch

legislator has not made use of it. Consequently, for every general meeting of a Dutch-law listed company, whether ordinary or extraordinary, the six-week period applies.

- For Dutch-law listed companies, the use of a registration date has now become mandatory. This date needs to be the 28th day before the day of the meeting. For a Dutch-law public company (*naamloze vennootschap*) that is not listed on a stock exchange (non-listed NV), the notice period in principle remains 15 days before the day of the meeting. If a non-listed NV, however, voluntarily applies a registration date, this registration date is also the 28th day before the day of the meeting. Consequently, if a non-listed NV applies a registration date, the meeting must be announced before the registration date.
- Any general meeting of a Dutch-law listed company must be announced on the company's website. Publication of the convening notice in a nationally distributed newspaper is no longer required.
- Dutch-law listed companies are no longer allowed to require shareholders to deposit their shares (or depositary receipts thereof) with their bank or broker in order to be able to participate in the general meeting of shareholders. Shares will therefore no longer be 'blocked' and will remain freely tradeable, including between the registration date and the date of the general meeting. The rights attached to these shares can be exercised by the shareholder as at the registration date, irrespective of who is the shareholder at the date of the general meeting.

<sup>1</sup> Directive 2007/36/EC on the exercise of rights of shareholders in listed companies.

- An agenda item proposed in writing by shareholders or holders of depositary receipts representing at least: with respect to Dutch-law listed companies, more than €50m according to the price list of Euronext Amsterdam; and with respect to non-listed NVs, 1 percent of the issued capital<sup>2</sup>, will need to be included in the meeting announcement, provided that the company receives the reasoned proposal or a proposal for a resolution no later than the 60th day before the day of the meeting. Therefore, the company may no longer refuse to include an item proposed by a shareholder authorised by law to submit one on the grounds that it is in the company's interest to oppose the request. The company may, however, refuse a proposed item on the grounds of reasonableness and fairness (*redelijkheid en billijkheid*).
- For each resolution adopted in a general meeting of a Dutch-law listed company, the company must publish specified voting results within 15 days of the day of the meeting. This information must include: (a) the total number of shares in respect of which votes were validly cast; (b) the number of shares referred to under (a) as a percentage of the total issued share capital; (c) the total number of votes validly cast; and (d) the total number of votes in favour of or against the proposal, as well as any abstentions.

## The Public Company Works Council Act

- Under the Public Company Works Council Act, the works council of a Dutch-law public company (*naamloze vennootschap*), whether listed or not, shall have the opportunity to state its point of view with respect to certain shareholders' resolutions before they are submitted to the general meeting. The point of view expressed by the works council must also be submitted to the general meeting. The chairman or another member of the works council designated by him may explain the point of view expressed in the general meeting.
- The following shareholders' resolutions are affected:
  - resolutions approving management board resolutions relating to an important change in the

<sup>2</sup> The Shareholders Rights Directive Act does not amend the thresholds mentioned. The legislator proposes to adjust the threshold to 3 per cent for both Dutch-law listed companies and non-listed NVs. Reference is made to a bill pending in the Lower House arising from the advice of the Corporate Governance Code monitoring committee of 30 May 2007 (32 014).

- identity or character of the company as referred to in article 2:107a of the Dutch Civil Code;
  - resolutions to appoint, suspend or dismiss a managing or supervisory director; and
  - resolutions to adopt the remuneration policy.

The absence of a works council point of view shall not affect the decision-making process on the item in the general meeting.

- As mentioned above, the Shareholders Rights Directive Act states that any general meeting of a Dutch-law listed company must be announced no later than 42 days before the day of the meeting. This means that the point of view expressed by the works council must be available before the announcement can be made.
- Although the Public Company Works Council Act entered into force on 1 July 2010, the rights conferred to the works council cannot be exercised with respect to general meetings held within 90 days of that date. Consequently, the first date possible for a general meeting to which the above applies is 30 September 2010.

## Website disclosure obligations for listed companies

The bills implementing the above amendments contain various obligations for Dutch-law listed companies to make disclosures through their website. These include the following mandatory disclosures:

- (no later than 42 days before the general meeting): announcement of the general meeting and all related documentation (including any points of view expressed by the works council) for the general meeting;
- (no later than 42 days before the general meeting): the total number of issued shares and votes on these shares as at the date the meeting is announced;
- (on the first business day after the registration date (which is the 28th day before the general meeting)): if it has changed, the total number of issued shares and votes on these shares on the registration date; and
- (no later than 15 days after the day of the general meeting): for every resolution adopted, the results of the voting (in the manner specified by law).

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