



Corporate Update

Reminder of some important deadlines for listed companies

3 February 2011

This newsletter is sent by NautaDutilh



Audit committee

Since the entry into force of the Act of 17 December 2008,^[1] listed companies are required to have an audit committee, the composition and workings of which are subject to strict conditions. The act provides for a number of exceptions for listed companies that do not meet certain criteria in terms of size.

The precise composition of the audit committee will depend on the particular characteristics of the company concerned. Nonetheless, in any case, a majority of the committee's members must be **non-executive directors** and **at least one** of these non-executive directors must be an **independent** director. The latter must also possess the requisite level of **expertise** in accounting and auditing.

Deadline of 1 July 2011

Directors appointed before 7 January 2009 who met the criteria for independence required by the version of the Company Code in force at the time but who do not meet the new criteria for independence introduced by the Act of 17 December 2008 can continue to serve as independent directors until 1 July 2011. As from that date, all independent directors sitting on audit committees must meet the criteria for independence defined in new Article 526ter of the Company Code.

Content of the management report as from financial year 2010

- As from financial year 2010, proof of the independence and expertise in accounting and auditing of at least one member of the audit committee must be provided in the company's management report.
- The Corporate Governance Code is more stringent than the act as it recommends that at least a majority of the audit committee members be independent directors and that the committee members have not only individual but also collective expertise in accounting and auditing.

The Act of 6 April 2010^[2] and the Royal Decree of 6 June 2010^[3] (see below) have introduced an obligation for listed companies to explain why they derogate from one or more provisions of the Corporate Governance Code. Further to implementation of the "comply or explain" principle, listed companies company must explain in their annual report, as from financial year 2010, any derogations from the Corporate Governance Code.

Remuneration committee

Listed companies are also obliged, pursuant to the Act of 6 April 2010, to set up a remuneration committee and, if they have not yet done so, to establish one no later than during their first **financial year starting after 23 April 2010**.

The remuneration committee must be composed solely of **non-executive directors**, a **majority** of whom must meet the new requirements for independence set forth in Article 526ter of the Company Code. The committee members must also possess relevant **expertise** in remuneration matters.

Deadline of 1 July 2011

Directors appointed before the entry into force of the Act of 6 April 2010 who meet the criteria for independence set forth in Article 524 §4(2) but not those set forth in Article 526ter of the Company Code can continue to serve as independent directors until 1 July 2011.

Corporate governance statement

Each year, a listed company must prepare a corporate governance statement, which constitutes a clearly identifiable section of its management report. This obligation entered into force upon the publication in the *Belgian State Gazette* of the Act of 6 April 2010, which means that a corporate

governance statement must be included in a listed company's management report as from **financial year 2010**.

The corporate governance statement must include, amongst other items of information, an indication of the governance code the company intends to apply, namely the Corporate Governance Code (Royal Decree of 6 June 2010) and the place where this code can be freely consulted, as well as a description of the company's internal oversight and risk management procedures (on 11 January 2011, the corporate governance committee published guidelines in this regard, which are available at www.corporategovernancecommittee.be) as well as information about the composition and workings of the management organs and their respective committees, such as the remuneration committee and the audit committee.

Remuneration report

For **financial years starting after 23 April 2010**, the corporate governance statement in the management report must include a section specifically entitled the "remuneration report". For companies whose financial year begins on 1 January of each year, this means the first remuneration report must cover the financial year starting on 1 January 2011 and be included in the management report relating to this same financial year, which will be prepared in early 2012.

The remuneration report must be based on concrete data in order to ensure that the executive pay principles and the remuneration of members of *management* are transparent.

The report is prepared by the remuneration committee, submitted to the board of directors and approved by a special vote of the ordinary general meeting of shareholders. The agenda of the listed company's annual general meeting must thus contain a specific item relating to approval of the remuneration report.

Abolishment of bearer shares

All bearer shares, for both listed and unlisted companies, must be converted into registered form no later than **31 December 2013**. All shares must, by this date, be recorded in the shareholders' register or in a securities account. Bearer shares which have not been converted will be dematerialised by operation of law at the end of this period.

Many small shareholders-investors are not very involved in the legal and daily financial life of the companies in which they invest. Therefore, we recommend that companies adequately communicate this information to their shareholders in order to ensure that each investor still holding bearer shares is aware of the consequences if the shares are not converted by 31 December 2013.

Shareholders' Rights Directive

The Shareholders' Rights Directive is on the verge of being implemented in Belgium. A bill was indeed approved by the House of Representatives on 25 November 2010 and, since the Senate did not exercise its right to take up the bill, has become final even though the act has yet to be promulgated and published due to the governmental stalemate.

The main objective of the new provisions is to facilitate and encourage shareholder involvement in corporate life. Most of the new provisions apply to companies whose shares are admitted to trading on a regulated market (Euronext Brussels), but some apply to all companies.

The notice periods for general meetings of shareholders of listed companies will be extended to 30 days (in place of 24) and 17 days (for meetings at second call). Notices must not only be published in the *Belgian State Gazette* and in a nationally circulated newspaper but also made available through other media (to ensure that the information is publicly available throughout the European Economic Area). In addition, the content of notices of general meetings is clarified and a record date system rendered mandatory (the record date will always be the 14th day prior to the meeting at 24.00 CET). Shareholders representing 3% of the capital of a listed company will be able to request that items be added to the agenda of a general meeting while the current threshold is 20%. The new act also intends to facilitate shareholder participation in general meetings by allowing them to vote remotely and by electronic means. The rules on voting by proxy have also been amended.

A more detailed newsletter on this specific subject will be published shortly.

Listed companies will thus have to amend their articles of association and their corporate governance charter in order to bring them into line with the new provisions. Listed companies will also need to update their website.

[1] Act of 17 December 2008 introducing notably the requirement of an audit committee within listed companies and financial institutions, *Belgian State Gazette*, 29 December 2008, as amended by the Act of 9 February 2009, *Belgian State Gazette*, 25 February 2009.

[2] Act of 6 April 2010 for the purpose of strengthening corporate governance in listed companies, *Belgian State Gazette*, 23 April 2010.

[3] Royal Decree of 6 June 2010 designating the Corporate Governance Code as the applicable governance code to be respected by listed companies, *Belgian State Gazette*, 28 June 2010.

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