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Brussels to the Point

e-Newsletter



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This newsletter is sent by NautaDutilh

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Overview of Significant Deadlines for Listed Companies

by Anne Tilleux

In previous issues, we highlighted new corporate legislation, in particular the Shareholders' Rights Act, the Corporate Governance Act and the Gender Equality Act. We would now like now to draw your attention to some approaching deadlines under these three acts. In addition, please note that a new act on the variable remuneration of non-executive directors was adopted on 7 November 2011.

1. Shareholders' Rights Act

On 18 April 2011, the Act of 20 December 2010 on the exercise of certain rights of shareholders (the "Shareholders' Rights Act") was published in the Belgian State Gazette. The Shareholders' Rights Act introduces a number of new rules on the calling of and participation in shareholder meetings as well as certain options with respect to remote shareholder participation and voting. It should be noted that the act only applies to Belgian companies whose shares are listed on a regulated market (i.e., Euronext Brussels).

The most important changes relate to:

- the convocation formalities for shareholder meetings: the notice of the meeting must be published at least 30 days in advance in such a way as to ensure its fast and non-discriminatory distribution throughout the EEA; the company's auditor must receive all necessary documents at least 45 days before the annual general meeting; certain documents and/or information must be made available on the company's website as from the convocation date of the shareholder meeting and remain available for at least 5 years;
- the possibility for the holders of the company's securities to request free of charge, as from publication of the notice of the meeting, a copy of any document which should be made available to them at the company's registered office;
- the notice of the meeting: certain items of information must be mentioned in the notice of a shareholder meeting;
- the right to add items to the agenda, for shareholders holding collectively at least 3% of the company's share capital;
- the rules on the postponement of a shareholder meeting: the board of directors can postpone the meeting by 5 weeks if a transparency notification has been or will be made or should have been made during the 20-day period before the meeting;

- a mandatory record date system for admission to the meeting: the record date is the 14th day prior to the meeting at 24.00 hours CET; shareholders of record should inform the company at least 6 days in advance whether they will attend the meeting;
- the grant, content and exercise of proxies for shareholder meetings; the possibility of remote participation in shareholder meetings by electronic means; and
- the content of the minutes of shareholder meetings.

The Shareholders' Right Act also introduces new rules for unlisted companies regarding (i) participation in general meetings by electronic means, (ii) voting by correspondence or electronically, (iii) the shareholders' right to submit questions in writing before the meeting (rather than during the meeting), and (iv) proxy voting.

The Shareholders' Rights Act will enter into force on 1 January 2012.

The applicable formalities and cut-off dates for shareholder meetings are summarised in the two timelines below.

The first timeline applies to ordinary shareholder meetings and extraordinary meetings at which the required quorum is met - [click here to view the first timeline](#)

The following timeline applies to extraordinary general meetings held on second call (following an extraordinary general meeting at which the required quorum is not met) - [click here to view the second timeline](#)

2. Corporate Governance Act

The ongoing financial crisis has prompted several corporate governance initiatives at both the national and international levels, in particular with regard to executive pay policies. The most recent measures, aimed at ensuring that investors have complete information about corporate remuneration policies, were introduced by the Act of 6 April 2010 on the strengthening of corporate governance in listed companies and autonomous public enterprises (the "Corporate Governance Act"), published in the Belgian State Gazette on 23 April 2010.

The Corporate Governance Act, which applies to companies listed on a regulated market in Belgium (i.e., Euronext Brussels), amends the Belgian Company Code by requiring or introducing:

1. the creation of a remuneration committee;
2. the approval of a corporate governance statement;
3. the approval of a remuneration report;
4. specific rules on non-executive/executive remuneration and severance packages.

• Creation of a remuneration committee

Listed companies, with the exception of qualifying small businesses, are required to establish a remuneration committee, composed of members of the board of directors. The committee must consist exclusively of non-executive directors, a majority of whom must be independent.

The committee is entrusted with formulating proposals concerning the remuneration policy for directors and the individual remuneration of directors, including variable compensation and severance packages, preparing a remuneration report and commenting on the remuneration report during the annual general meeting of shareholders. In small listed companies, these tasks must be fulfilled by the board of directors.

The provisions of the Corporate Governance Act on the remuneration committee are applicable as from the first financial year following publication of act in the Belgian State Gazette. Since the act was published on 23 April 2010, listed companies whose financial year runs from 1 January until 31 December should already have created a remuneration committee or authorised their board of directors to accomplish the tasks of the remuneration committee for financial year 2011. If they have not already done so, the deadline is 31 December 2011.

• Corporate governance statement

Listed companies must publish an annual corporate governance statement, in a specific and clearly identifiable section of their management report. The corporate governance statement must contain certain information, including the name of the corporate governance code which the company applies and an indication of the place where this code can be publicly consulted, a description of the main features of the company's internal control and risk management systems, and information about the composition and functioning of the company's management organs and their respective committees, including the remuneration and audit committees.

This obligation is applicable as from **financial year 2010**. Therefore, the **2011 management report** of every listed company should contain a corporate governance statement.

• Remuneration report

The corporate governance statement must contain a remuneration report, incorporating concrete data to ensure that the company's remuneration policy and the remuneration of the members of its management organs are transparent. The remuneration report is prepared by the remuneration committee, submitted to the board of directors, and approved by the annual general meeting of shareholders.

A remuneration report is required as from **financial year 2011**. Therefore, all information on the remuneration of top managers and directors will be disclosed in **2012**.

- Non-executive/executive remuneration and severance packages

The criteria used to determine the variable remuneration of an **executive director** (or other top manager) of a listed company must be expressly stated in the contract or other written document governing the company's legal relationship with that person. Variable remuneration may not be paid unless these predetermined criteria are satisfied for the period in question. If these rules are violated, variable remuneration may not be taken into account when calculating the relevant director's severance package.

Unless the company's articles of association provide otherwise or the general meeting of shareholders has expressly consented, the variable remuneration of an executive director of a listed company must meet the specific requirements of the Company Code.

The new rules on executive remuneration are applicable as from **financial year 2011**.

The annual general meeting must also approve any agreement providing for a **severance package** of more than 12 months' or 18 months' remuneration, duly justified by the remuneration committee. In the absence of such approval, the agreement will be deemed null and void. This requirement applies to agreements concluded or renewed/extended after **3 May 2010**.

Agreements concluded or renewed/extended after **3 May 2010** that grant variable remuneration to an **independent director** are also subject to the prior approval of the annual general meeting. This requirement was extended to all **non-executive directors**, including independent directors, by the new Act of 7 November 2011 on the variable remuneration of non-executive directors of listed companies (amending Article 554 §7 of the Company Code with regard to the share-based remuneration of directors of listed companies), published in the Belgian State Gazette on 23 November 2011. In the absence of such approval, the agreement shall be deemed null and void. This requirement is applicable to all agreements with non-executive directors concluded or renewed/extended after **3 December 2011**.

These changes and their dates of entry into force are summarised in the following table:

Obligation	Date of entry into force
Rules on severance packages	Agreements concluded/renewed/extended after 3 May 2010
Corporate governance statement	Financial year 2010
Remuneration committee	Financial year starting after 23 April 2010
Remuneration report	Financial year starting after 23 April 2010
Rules on the variable remuneration of executive directors	Financial year starting after 31 December 2010
Rules on the variable remuneration of independent directors	Agreements concluded/renewed/extended after 3 May 2010
Rules on the variable remuneration of non-executive directors	Agreements concluded/renewed/extended after 3 December 2011

3. Gender Equality Act

The Act of 28 July 2011, published in the Belgian State Gazette on 14 September 2011, introduced a gender quota for the boards of directors of listed companies, certain public corporations and the National Lottery (the "Gender Equality Act"). The Gender Equality Act requires that **at least one third** of the board members of a listed company be of a different gender.

The Gender Equality Act provides for two sanctions for violation of this rule, namely (i) the invalidation of the appointments of directors made in violation of the quota and (ii) the suspension of all financial and non-pecuniary benefits associated with the office of director until the quota is met.

For listed companies, the quota and first sanction mentioned above (i.e. invalidation of appointments) will enter into force on the first day of the sixth financial year following publication of the act (i.e. 1 January 2017 for companies whose financial year runs from 1 January until 31 December) or, for smaller listed companies and listed companies whose freely traded shares represent 50% or less of their total outstanding securities, on the first day of the eighth financial year following publication of the act (i.e. 1 January 2019 for listed companies whose financial year runs from 1 January until 31 December). The second sanction will only enter into force one year after the entry into force of the quota (i.e. 1 January 2018 and 1 January 2020, respectively).

The Gender Equality Act requires that an overview of measures taken to ensure gender equality be included in the corporate governance statement in the management report, from the first financial year after publication of the act, i.e. as from 1 January 2012 for companies whose financial year runs from 1 January until 31 December.

These obligations and deadlines are summarised in the following table:

Obligation	Listed companies whose financial year runs from 1 January until 31 December	Smaller listed companies/listed companies whose freely traded shares represent 50% or less of their total outstanding securities
Inclusion of an overview of gender quality measures in the corporate governance statement in the management report	1 January 2012 (first day of the first financial year starting after 14 September 2011)	1 January 2012 (first day of the first financial year starting after 14 September 2011)
Achievement of the quota	1 January 2017 (first day of the sixth financial year starting after 14 September 2011)	1 January 2019 (first day of the eighth financial year starting after 14 September 2011)
Invalidation of appointments of directors made in violation of the Gender Equality Act	1 January 2017 (first day of the sixth financial year starting after 14 September 2011)	1 January 2019 (first day of the eighth financial year starting after 14 September 2011)
Suspension of all advantages associated with the office of director	1 January 2018 (first day of the seventh financial year starting after 14 September 2011)	1 January 2020 (first day of the ninth financial year starting after 14 September 2011)

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