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The Tabaksblat Report — Audit, remuneration and nomination committees in international perspective

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In dit artikel wordt de rol van de door de Commissie-Tabaksblat voorgestelde drie kerncommissies van de raad van commissarissen in een internationale context geplaatst. De voorgestelde relevante bepalingen worden daartoe vergeleken met vergelijkbare concepten in het Verenigd Koninkrijk, Frankrijk, Duitsland en de Verenigde Staten van Amerika.

1 Introduction[1]

Corporate governance is currently at the centre of attention of international business, political and academic communities. In particular we refer to the Action Plan published by the EU Commission[2], the Winter Report[3] and the OECD principles on corporate governance which are in the process of being updated.[4]
Apart from these recent initiatives, corporate governance has been merely a national topic, as evidenced by the many codes of conduct and best practice initiatives taken in Europe during the past decade.[5]
The draft Dutch corporate governance code drafted by the Tabaksblat Committee (the 'Tabaksblat Report')[6] report fits well in the international context. The report reflects a common understanding of generally accepted principles of corporate governance as developed in various jurisdictions, and as such the Netherlands corporate governance code can be considered to be a 'state-of-the-art' document.

However, due to conceptual differences in company law throughout the international community, each national code has its own peculiarities. Those evident differences and their consequences will not be discussed in this article.

Instead we have selected the topic of the three key committees of the supervisory board in an international context, which may be considered a change to Dutch company law, although it has already partly been brought into practice by some Dutch listed companies. This issue, although almost self-explanatory at first sight, proves, by further in-depth review, to have some relevant aspects which may need to be further thought through, in particular by Dutch business, political and academic circles.

Given the fact that currently there have been more than 40 corporate governance codes drafted by different issuing bodies within the European Union, we have selected (more or less arbitrarily[7]) four jurisdictions, with which the Netherlands traditionally has close (trading) relations: the UK, France, Germany and the US. We will first give a brief introduction for each of those jurisdictions as to the relevant codes or legislation. Subsequently we will compare the selected principles and provisions of the Tabaksblat Report, where relevant, with similar provisions in the other jurisdictions. We end our article with some concluding remarks.

2 Corporate governance in the UK: an introduction

2.1 The Cadbury report (1992)

Well over ten years ago, the UK Committee on the Financial Aspects of Corporate Governance (the Cadbury Committee) was formed[8] as a result of the continuing concern about standards of financial reporting and accountability, heightened by BCCI, Maxwell and the controversy over directors' pay. The setting for the report was to ensure Britain's competitive position by granting freedom to boards of listed companies to drive their companies forward within a framework of effective accountability.
The principles on which the code is based are those of openness, integrity and accountability. The report introduces the concept of ‘comply or explain’.

2.2 The Greenbury report (1995)

This report responded to public and shareholder concerns about directors' remuneration. The Greenbury Committee proposed that the fundamental principles of accountability, transparency and performance would be encapsulated in a new code of best practice on directors' remuneration.

2.3 The Hampel report (1998)

Both the Cadbury and Greenbury reports were responses to things which were perceived to have gone wrong – corporate failures in the first case, unjustified compensation packages in the privatised utilities in the second. Understandably, both concentrated largely on the prevention of abuse. The Hampel committee was equally concerned with the positive contribution which good corporate governance can make. The Hampel report consists of principles of corporate governance (17) on the one hand, and of conclusions and recommendations (56) on the other (in addition it stresses the importance of the 'comply or explain' rule). The distinction between abstract principles and concrete recommendations has been the standard for drafting codes of conduct in other jurisdictions ever since.

2.4 The Combined Code (1998)

The Combined Code should be seen as a consolidation of the three committees, not as a new departure. It includes, however, a number of changes made by the London Stock Exchange, with the agreement of the Hampel committee, following the consultation undertaken by the London Stock Exchange on the committee's original draft. The Combined Code contains both principles (17) and detailed code provisions (48).

2.5 The Myners report (2001)[9]

On 16 May 2000 the Myners Committee published a consultation document containing a review of institutional investment. The main themes emerging from the consultation were (i) structural changes in the industries concerned, (ii) the role of pension fund trustees and their advisers, (iii) the specific characteristics of private equity as an investment by institutions, (iv) the impact of benchmarking and performance measurement on institutional decision-making, and (v) the impact of regulation.

2.6 The Smith report (2002)

Following in the dramatic corporate failures in the United States in early 2002 the UK government asked the Financial Reporting Council (FRE) to prepare a Combined Code guidance on audit committees. The guidance consists of a large number of requirements, including 'essential requirements'. The Smith Report is included as an annex to the new Combined Code (discussed below).

2.7 The Higgs report (2003)

On 20 January 2003 Derek Higgs published his report on the role and effectiveness of non-executive directors. The report includes (i) guidance for non-executive directors, (ii) guidance for chairmen and (iii) a proposal for a revised Combined Code. The suggestions from the Higgs report are included as an annex to the new Combined Code.

2.8 The new Combined Code (22 July 2003)

The new Combined Code supersedes and replaces the Combined Code issued by the Hampel Committee. The intention is that the new Combined Code will come into effect for reporting years beginning on or after 1 November 2003. The Financial Services Authority has said that it will consult on consequential changes to the Listing Rules.

3 Corporate governance in France: an introduction

3.1 The Viénot I report (1995)

In July 1995, two of the leading French business associations, the AFEP (Association Française des Entreprises Privées) and the MEDEF (Mouvement des Entreprises de France) requested a committee chaired by Marc Viénot to issue a report promoting non-binding corporate governance principles (the 'Viénot I Report'). The report focused on the composition, functioning and duties of the board of directors of French listed companies.

3.2 The Viénot II report (1999)

In July 1999, as recommended by the Viénot I Report and at the request of the AFEP and the MEDEF, the same committee reviewed effective implementation of these principles in French listed companies (the 'Viénot II Report'). The report reiterated the Viénot I Report's recommendations and emphasised new non-binding principles regarding director compensation, share options and director independence.

3.3 The Bouton report (2002)[10]

In reaction to the Enron and Vivendi Universal scandals, the AFEP and the MEDEF requested a committee chaired by Daniel Bouton to re-examine application in France of corporate governance principles. The report issued on 23 September 2002 contained stricter recommendations regarding directors'

independence, committee roles, statutory auditors' independence and financial information (the ‘Bouton Report’).
Although the Viénot I, the Viénot II and the Bouton Reports (referred to together as the ‘Recommendations’) are non-binding, French listed companies are strongly encouraged to comply with them. Some of these Recommendations were also given a binding effect due to their enactment in Statute no 2001-420 on ‘New Economic Regulations’ or in the rules issued by the Commission des Opérations de Bourse.[11]

So as to complete the Bouton Report, which did not contain sufficient recommendations to protect investors, the Minister of Economic Affairs proposed new binding corporate governance legislation[12] aimed at increasing the statutory auditors' independence and expanding the role of the shareholders' general meetings as a means of counterbalancing the powers of executive management.

4 Corporate Governance in Germany: an introduction

The German corporate governance code, the Cromme Code[13], presents in essence regulation for the management and supervision of German listed companies, as well as the rights of shareholders. The Cromme Code aims to make the German corporate governance system transparent and understandable. The Cromme Code deals with the role of the shareholders, the co-operation between management board and supervisory board, the management board, the supervisory board, transparency and reporting and audit of the annual financial statements.
The Cromme Code contains both ‘recommendations’ and ‘suggestions’, and prescribes the ‘comply or explain’ rule for the ‘recommendations’. However, listed companies may deviate from the ‘suggestions’ without disclosure. Through the declaration of conformity[14], the Cromme Code has a legal basis. The declaration has to be made permanently available for the shareholders.

5 Corporate governance in the US: an introduction

In the United States, the regulation of corporation governance matters is not handled by any single body acting alone, but instead is derived from a variety of sources at both the federal and state levels. Relevant federal law provisions that generally apply to those companies which have registered securities under the US Securities Exchange Act of 1934 (Exchange Act), which is virtually all public companies, arise under (i) the Exchange Act and related regulations adopted by the US Securities and Exchange Commission (SEC), (ii) the recently enacted Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act[15]), which includes specific corporate governance-related provisions and required detailed rulemaking by the SEC and other bodies such as the national securities exchanges (e.g., the New

York Stock Exchange (NYSE)) and national securities associations (e.g., the National Association of Securities Dealers (NASD), which partially owns and operates Nasdaq stock markets (Nasdaq)), and (iii) the listing rules of the exchanges or markets on which the companies have securities listed.

In addition to these requirements, companies organized in the United States must comply with the relevant state law statutes of the state in which they are incorporated. Non-US companies (i.e, those not incorporated under the laws of any of the US states, possessions or territories) trading on a US exchange or market must follow US corporate governance standards only insofar as required by the US federal securities laws and the relevant rules of the exchange or market on which the companies' shares are traded.

As the Sarbanes-Oxley Act has become a major source of additional corporate governance requirements in the United States, it is important to understand that it was enacted by the federal government in July 2002 in response to a number of high profile accounting and corporate governance scandals.16 It aims, among other things, to strengthen corporate governance, strengthen auditor independence, require significant additional public disclosure, and increase the scope and severity of liability under the federal securities laws for public companies, their executive officers and directors, auditors, legal counsel and others. Generally, the Sarbanes-Oxley Act covers all US and non-US companies which have securities listed on one of the US exchanges.

Unlike the ‘comply or explain’ model proposed by the Tabaksblat Committee, the Sarbanes-Oxley Act sets out very specific requirements which, with limited exceptions, must be complied with either by law or pursuant to the listing rules of the exchanges and Nasdaq. In a number of instances the rules for non-US issuers permit more leeway than those for US issuers because both the SEC and the NYSE seek to encourage non-US issuers to access the US capital markets and recognize that many home jurisdiction requirements covering non-US companies would otherwise conflict with US laws and regulations.

6 The role of the three key committees of the supervisory board in the Tabaksblat Report: an international comparison

6.1 Introduction

The Tabaksblat Report introduces standards for good entrepreneurship and its supervision and also reporting requirements on the activities of the corporate bodies of listed companies. In this way, the Tabaksblat Committee aims to strengthen the structure of checks and balances in listed companies. To ensure the

sustainability of good corporate governance, the Tabaksblat Committee explicitly proposes the installation of a permanent corporate governance panel which will regularly monitor the need for amending the principles and recommendations included in the Code.

The introduction of the audit, remuneration and nomination committees has two interesting aspects. First, apart from the general supervisory tasks of supervisory boards, now three specific areas for supervision will need to be more explicitly addressed, also because of the newly introduced reporting requirements concerning these three key subjects towards the shareholders.[17] Secondly, individual qualified supervisory directors will be responsible for a specific task which may consequently lead to more exposure for them individually, albeit that the Tabaksblat Committee attempts to prevent this by stressing the collective liability of the supervisory board.[18]

The relevant principle of the Tabaksblat Report hereinafter reads as follows:

II.4 Composition and role of three key committees of the supervisory board.
Principle: The supervisory board shall, in any event, appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. The supervisory board shall remain responsible for decisions, even if they are prepared by committees appointed from among its members.
Each of these three committees is now considered in its international context.

6.2 Audit committee[19]

6.2.1 UK

The Cadbury report mentioned that the effectiveness of a board depends on its structure and procedures. One aspect of structure is the appointment of committees of the board, such as the audit, remuneration and nominations committees. According to the Smith report, audit committees should include at least three members, who should all be independent non-executive directors. In addition the chairman of the company should not be an audit committee member. The new Combined Code[20] has included these recommendations. In addition it contains detailed task allocation for the audit committee.
The new Combined Code[21] prescribes that the board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.

6.2.2 France

Under French law[22], the creation of working committees of the board is permitted, but not compulsory. The board determines the composition and function of such committees and remains responsible for their activities. Following suggestions from the Viénot I Report, the Bouton Report recommends that companies should have an audit committee, a compensation committee and a nominations committee. Other types of committee may be set up, such as a strategy committee. Rules of operation, specifying responsibilities and operating procedures, should be drawn up at least for the audit and the compensation committees and approved by the board. However, the board's responsibilities should not be shifted onto the committees.
At least two-thirds of the audit committee members should be independent. No audit committee member should be a corporate officer (mandataire social) of the company. Renewal of office of the audit committee chairman should be subject to specific review by the board.

6.2.3 Germany

The Cromme Code explicitly states that the supervisory board has to set up an audit committee which should deal with issues such as accounting and risk management, the required independence of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focus points and the fee arrangements with the auditor.[23] The chairman of the audit committee should neither be a former member of the management board nor the current chairman of the supervisory board.

6.2.4 US

Since 1978, the New York Stock Exchange has required all listed companies to have audit committees composed solely of independent directors, and the 1987 report of the American Treadway Commission concluded that audit committees had a critical role to play in ensuring the integrity of US company financial reports.
A major area of corporate governance which has been focused on by the Sarbanes-Oxley Act is the role of the audit committee. The SEC has issued rules under the Sarbanes-Oxley Act concerning audit committees, including recently issued rules directing the national securities exchanges and national securities associations to prohibit the initial or continued listing of any company that does not comply with the detailed audit committee requirements set out in the rule.

Among other things, the Sarbanes-Oxley Act and the SEC rules require for all public companies, whether listed or not, that the audit committee must be responsible for the review and pre-approval of all audit and non-audit services provided by its auditors (or by the full board of directors if there is no audit committee). Further, all non-US companies must disclose in their annual report (on Form 20-F) whether they have a 'financial expert' on their audit committee and name the financial expert. If there is no such financial expert, the company must disclose why this is so.

For listed companies, the exchanges and Nasdaq must require that each listed company has an audit committee made up entirely of 'independent' members of the board of directors (as 'independence' is defined by the exchanges pursuant to the SEC rule) or, if no audit committee exists, the entire board of directors is to be considered the audit committee for these purposes and must meet these standards. Under their respective listing standards, the exchanges and Nasdaq must require the audit committees to be directly responsible for the appointment, compensation, retention and oversight of the company's independent auditors (which auditors are to report directly to the audit committee), and to establish procedures for handling complaints about accounting, internal accounting controls and auditing matters. The audit committee is also to have the authority to engage outside advisors including independent counsel and is to be provided adequate funding to do so.

It is interesting to note, however, that the listing standards prescribed by the SEC rule pursuant to the Sarbanes-Oxley Act are merely considered a baseline – the SEC encouraged the exchanges and Nasdaq to come up with even more detailed and onerous rules than those specifically required in some of these areas. The proposed rules issued thus far by the NYSE and the NASD in this regard appear to confirm the exchanges' intentions to do so with regard to the independence requirements. The exchanges and Nasdaq must have rules in this regard finalized by 1 December 2003, and non-US companies must be in compliance with these rules by 31 July 2005.

For companies with dual board structures, such as in the Netherlands, the SEC considers the supervisory (or non-management) board to be the most appropriate body to comply with the audit committee requirements. Therefore, the rules will require that the supervisory board either form a separate audit committee meeting these new requirements or otherwise itself serve as the company's audit committee if the entire supervisory board meets the independence provisions of these requirements.

Aside from the audit committee requirements discussed above, a non-US issuer's home jurisdiction rules will generally govern the creation and types of board committees allowed. However, in relation to the certification requirements that the CEO and CFO are subject to under the Sarbanes-Oxley Act (which are discussed in further detail below), the SEC has recommended the creation of a committee charged with responsibility for the company's disclosure controls and procedures. Specifically, as part of the Sarbanes-Oxley Act's ‘Section 302’ certification requirements, the CEO and CFO must each certify, among other things, to the establishment, maintenance and evaluation of certain ‘disclosure controls and procedures’ which are designed to ensure that information required to be disclosed by a company in its filings are communicated to the company's management and disclosed as required. The SEC has not provided detailed procedures for the required review and evaluation of these procedures, but instead has recommended that each company create a committee with responsibility for considering the materiality of information and determining the company's disclosure obligations on a timely basis, which committee would report to senior management, including the CEO and CFO. This committee would differ from the audit committee in that it would include officers and employees having an interest in the committee's responsibilities as well as the expertise necessary to serve, and would likely include the principal accounting officer or controller, the general counsel (or other senior legal officer with responsibility for disclosure issues), the principal risk management officer, the chief investor relations officer, and other officers and employees associated with the company's business units as the company sees fit.

6.2.5 Comment

The Tabaksblat Report follows international practice from which it appears that audit committees at supervisory board level are a common instrument. The French Bouton report explicitly states that the board's (collective) responsibility should not be shifted onto (any of) the specific supervisory board committees. This provision has been included in the Tabaksblat Report[24] as well, and may be relevant in view of potential exposure of individual supervisory directors.
From the US Sarbanes-Oxley Act and subsequent SEC and exchanges rules it may be concluded that the introduction of audit committees in European corporate governance codes will only be the beginning of a lengthy, probably even more in-depth, development. The capital markets in the US seem to be more mature in this respect. They do not adhere to the ‘comply or explain’ principle but prefer specific legislation and regulation, permitting only limited exceptions.
Whilst managing and supervisory boards in the Netherlands are expected ‘to serve the interests of the company’[25], the new Combined Code in the UK expects the

board to maintain a sound system of internal control 'to safeguard shareholders' investment and the company's assets'.

6.3 Remuneration committee[26]

6.3.1 UK

The Greenbury report of 1995 drew attention to the question of directors' remuneration. The new Combined Code[27] states that the levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. In addition it recommends that the remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases.

The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels.
The new Combined Code[28] recommends that directors' notice periods be set at one year or less. It is suggested that notice periods should in fact be less than this, which should have the effect of limiting severance payments. However, there is a concern that this could encourage directors to demand higher basic remuneration and could also encourage short-term strategic thinking.

On 3 June 2003, the UK Department of Trade and Industry launched a consultation exercise looking at the issue of directors' contracts, performance, severance payments and the links between them. The consultation document seeks views on whether, and if so how, further measures are required to ensure that compensation reflects performance when directors' contracts are terminated. Although the document's premise still remains that individual directors' pay is a matter for companies and their shareholders, the government sees itself as having a role to create a framework to allow shareholders to participate in this process effectively and responsibly. The consultation paper also looks at the use of liquidated damages clauses in directors' contracts (i.e., agreeing at the beginning of the contract the amount which will be paid in the event of severance). The

danger of these clauses can be that the damages are set too high and are not capable of variation to reflect underperformance. Another possible proposal is that there should be a 'cap' on the level of damages set, for example, six months' basic salary.

6.3.2 France

The Viénot I report recommended the use of a remuneration committee by the supervisory board to provide advice to the full board on remuneration issues. At that time, most French boards already had a committee charged with remuneration. The Viénot II Report[29] contains recommendations in respect of the compensation received by officers, and, in particular, recommends that such compensation be published in a chapter of the annual report. These recommendations were enacted in the French Commercial Code[30], which provides that information as to compensation and allocation method provided by the company and its group affiliates must be disclosed for each corporate officer of the group and not only for corporate officers as a whole.

6.3.3 Germany

The Cromme Code leaves it up to the supervisory board's discretion to delegate the remuneration tasks to a specific committee.[31] If such committee is installed it will have to prepare a proposal for the structure of the management board remuneration package, including a performance related part. This proposal will be discussed and decided upon by the supervisory board.[32]

6.3.4 Comment

The remuneration committee proposed in the Tabaksblat Report is in line with international practice and may play an important role in finding a satisfactory solution for the commonly expressed feeling in society to limit excessive remuneration in general and, more specifically, exit packages for managing directors. The remuneration committee will create more transparency because of its requirement to disclose remuneration structures to the shareholders. The other way by which a solution to limit the size of exit packages may be found is the introduction of contractual 'caps', both with respect to the notice period of managing directors and the amount of severance payments. In line with developments in the UK (which tend to an even stricter limitation) the Tabaksblat Report proposes to limit the remuneration of managing directors in the event of dismissal to a maximum of one year's salary (the 'fixed' part of the remuneration), irrespective of duration of the contract of employment.[33] However, if contractual

rights to compensation become uncertain, this may lead to demands from managing directors for increased base pay or ‘golden hello’ payments.

6.4 Nomination committee[34]

6.4.1 Germany

According to the Cromme Code[35] the supervisory board has the option to delegate the necessary preparations for nominating members of the management board to a specific committee. Furthermore the Cromme Code prescribes that the supervisory board shall form committees with sufficient experience in order to increase the efficiency of the supervisory board.[36] Other subjects that may be delegated to specific committees include the strategy of the company, the remuneration of the members of the management board and investing and financing issues.[37]

6.4.2 US

A significant area under review in the United States concerns the rules relating to the nomination and election of directors. The SEC has recently published a report concerning its review of the SEC's rules in this regard. It indicates that the SEC is considering new rules to provide improved disclosure and improved shareholder access to the director nomination process. The report recommends that the SEC require more robust disclosure of the nominating committee processes of public companies, including the consideration of candidates recommended by shareholders, as well as specific disclosure of the processes by which shareholders may communicate with the directors of the companies in which they invest. The report also recommends that major, long-term shareholders (or groups of long-term shareholders) be provided access to company proxy materials to nominate directors where there are objective criteria indicating that shareholders may not have had adequate access to an effective proxy process.[38] Currently, the SEC's proxy rules are not applicable to non-US companies.

6.4.3 Comment

The Tabaksblat Committee follows the Winter Report, which recommended independent (non-executive) directors to sit on nomination committees. However, in the US there seems to be a tendency towards more influence of the shareholders, while the European Commission recommends in the Action Plan a key role for executive directors, arguing that executive directors are best placed to know the qualities required for a board position and to assess candidates.[39]

Although it does not seem a practical, let alone logical, option for the Netherlands, in view of the remarkably different positions described above, the issue of having either executive, or non-executive directors, or even shareholders, on the nomination committee may need to be reconsidered.

7 Concluding remarks

Since the European Commission has explicitly stated that it does not have the intention of drafting statutory legislation (i.e. a directive rather than recommendations) on principles of corporate governance, and thus achieve real harmonisation, individual Member States have the, implicit, responsibility to work towards convergence on corporate governance. The Tabaksblat Report is a good example of this. The OECD principles on corporate governance (currently in the process of being updated), as well as the European Corporate Governance Forum as proposed by the Winter Report and adopted by the European Commission in the Action Plan, may have a crucial role in this respect.

It seems that the jurisdictions where corporate governance has been an important topic, in the sense of an awareness in the business community, for a longer period, approach corporate governance in a more in-depth way. This may be evidenced best by referring to the US approach to the tasks and responsibilities of the audit committee and the role of shareholders in respect of nomination of directors, as well as the sophisticated discussion going on in the UK regarding directors' remuneration.

Although 'disclosure' is the common denominator for both the US, the UK and the recently developed European continental corporate governance systems, there is an essential difference in approach: while 'comply or explain' based on voluntary adopted best practice codes prevail in the UK and continental Europe, the US legislature and regulators seem to prefer a system setting out detailed requirements to be complied with by listed companies, permitting only a limited number of specific exceptions.

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2 Http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0284en01.pdf. Terug

3 'Final Report High Level Group of Company Law Experts on a Modern Regulatory Framework For Company Law in Europe', dated November 2002; see http://europa.eu.int/comm/internal_ market/en/company/company/modern/consult/report_en.pdf. Terug

4 Http://www.oecd.org/document/62/0,2340,en_2649_34813_ 1912830_1_1_1_1,00.html;

corporate governance was also discussed by the G 8 at its recent summit in Evian, see http://www.g8.fr/. Terug

5 See also 'Comparative Study Of Corporate Governance Codes Relevant to the European Union And Its Member States' http://europa.eu.int/comm/internal_market/en/company/company/news/corp-gov-codes-rpt-part1_en.pdf. Terug

6 'The Dutch corporate governance code; Principles of good corporate governance and best practice provisions', Draft: an invitation to comment, dated 1 July 2003. Terug

7 See also the similar selection used in 'Op zoek naar vertrouwen', NRC Handelsblad 2/3 August 2003, p. 14. Terug

8 The Committee was set up in May 1991 by the Financial Reporting Council, the London Stock Exchange and the accountancy profession to address the financial aspects of corporate governance. Terug

9 R.H. Maatman, 'Institutional Investment in the UK, A review', Ondernemingsrecht 2001, p. 242–245. Terug

10 In addition, another French code issued by the association representing French asset managers was drafted by the Hellebuyck Commission (1998 with an update in 2001). Terug

11 Responsibility for regulating France's financial markets is currently divided among three authorities: the Commission des Opérations de Bourse, the Conseil des Marchés Financiers and the Conseil de discipline de la gestion financière. La loi de securité financière (the 'Financial Security Statute'), dated 17 July 2003 merges these three institutions into a single Autorité des marchés financiers. Terug

12 See the aforementioned Financial Security Statute. Terug

13 Published in March 2002 and last updated in July 2003; see also http://www.corporate-governance-code.de; in June 2000 the predecessor of the Corporate Governance Code, the Berlin Initiative Code, was published by the Berliner Initiativkreis. Terug

14 Section 161 AktG (the German company law act), which provision entered into force on 26 July 2002 Terug

15 M.J. van Ginneken, 'De 'Sarbanes-Oxley Act of 2002': het Amerikaanse antwoord op Enron', Ondernemingsrecht 2003, p. 63–70. Terug

16 L. Timmerman, 'De sprookjes van Andersen en Enron', Ondernemingsrecht 2002, p. 519–522. Terug

17 Provision II.4.3. Terug

18 Provision II.4. Terug

19 Provisions II.4.6–4.9. Terug

20 Provision C.3.1. Terug

2 Principle C.2. Terug

21

22 Section 90 paragraph 2 of Decree no 67-236 of 23 March 1967. Terug

23 Section 5.3.2. Terug

24 Principle II.4. Terug

25 Vennootschappelijk belang; see also section 2:140 paragraph 2 Civil Code. Terug

26 Provisions II.4.10–4.12. Terug

27 Principle B.1. Terug

28 Provision B.1.6. Terug

29 Section 7. Terug

30 Section L.225-102-1. Terug

31 Section 5.3.3. Terug

32 Section 4.2.2. Terug

33 Provision I.2.10. Terug

34 Provision II.4.13. Terug

35 Section 5.1.2. Terug

36 Section 5.3.1. Terug

37 Section 5.3.3. Terug

38 In this respect we refer to the recent publicity regarding US listed company Apria Healthcare which company plans to grant shareholders extensive rights regarding the appointment and dismissal of directors; see also FEM Business of 26 July 2003 Terug

39 Http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/03/1120RAPID&lg=EN&display= Terug