
The Netherlands

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings on 34 companies as of 31 August 2012.

Dutch companies have a two-tier board structure consisting of a supervisory board and a management board. The supervisory board usually consists of independent members, whereas the management board consists of executives of the company. By law, shareowners in the Netherlands have significant shareowner rights. Major changes typically require the approval of the shareowners, but a company's articles may assign that right to the supervisory board. A simple majority vote is necessary to pass a resolution at annual general meetings (AGMs). Shareowners have the ability to nominate a supervisory board member and to submit proposals to the AGM agenda.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	82%	Because of the dual-board structure, supervisory boards tend to be largely independent.
What percentage of companies have fully independent audit committees?	70.6%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	11.8%	
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	Yes, sometimes	Dutch law does not require shares to be deposited. Dutch companies, however, cannot guarantee that shares will not be deposited or blocked from trading because blocking depends on the custodian's practices. Certain companies may require share blocking in their articles.
Are there share ownership limitations in this market?	No	

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	
Do companies adhere to majority voting in the election of board members?	Yes	A simple majority is usually sufficient to elect directors. The Dutch Corporate Governance Code recommends an absolute majority of the votes present at a general meeting representing up to one-third of the company's share capital.
Do companies allow for cumulative voting in the election of board members?	No	
Are shareowners able to affect remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	Yes, sometimes	This issue is often discussed in shareowner meetings but is not standard on the agenda.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes, usually	In practice, most companies offer this right to shareowners.
Are shareowners able to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Introducing dissident resolutions is more common for those whose share ownership exceeds 10% of outstanding shares.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes, usually	Generally, shareowners holding at least 10% of the share capital may demand a general meeting.
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	Yes	They are allowed but are not common.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is standard in the Dutch market.

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Do companies require a supermajority vote to approve a merger?	No, usually	In practice, most companies require a simple majority.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	No	
Are class action suits commonly used in this market?	Yes	Class action suits are sometimes used.
Are derivative suits commonly used in this market?	No	

Current Engagement Practices and Shareowner Rights Developments

The Dutch Civil Code requires the supervisory board to advise and supervise the management board. The management board proposes supervisory board nominees at the AGM for the approval of the shareowners. Shareowners may also submit supervisory board nominees to the AGM. Shareowners may cancel the binding nature of nomination for the appointment of a management board member or a supervisory board member by an absolute majority vote.

Supervisory board members are elected on a rotating basis and may serve only three terms of four years each. No obstacles prevent shareowners from participating in the AGM. Shareowners may be represented by a shareowner association. No special legal rules apply to the treatment of non-Dutch shareowners, and proxy representation is allowed. The time to submit proxy votes is usually set one to two weeks before the AGM. Internet voting is possible, but relatively few companies offer it. Shareowners that hold a bank account in the Netherlands may use the Stichting Communicatiekanaal Aandeelhouders (Shareholder Communication Channel) to exercise their votes.

The first Dutch Corporate Governance Code (Tabaksblat Code) was published in December 2003. The code sets out the principles of good corporate governance and best practice provisions for all companies whose statutory seats are in the Netherlands and whose shares are officially listed on the Euronext Amsterdam Stock Exchange. The code is enforced on a “comply or explain” basis, with the provision that the explanation is to be included in a company’s annual report. The aim of the code is to allow shareowners to play an active role in the companies.

After the introduction of the code, shareowners began to take a more active role than they did in the past. For this reason, the Corporate Governance Code Monitoring Committee decided to revise the code in December 2008. The amended Corporate Governance Code was eventually adopted by the Dutch Cabinet in May 2009. The new code strengthens the areas of risk management, executive pay, shareowner responsibility, supervisory board composition, and corporate social responsibility.

In prior years, companies typically had the ability to issue special shares to affiliated foundations to prevent a hostile tender offer. In the revised Dutch Governance Code of 2008, such anti-takeover measures have been restricted, and many companies have eliminated their special shares and foundations. Only a few companies currently have such a foundation in place. In practice, mergers require the approval of two-thirds of the votes cast if less than half the issued capital is represented at the general meeting, unless the articles provide otherwise.

Legal and Regulatory Framework

The Financial Markets Authority (FMA) is the entity responsible for ensuring the implementation of disclosure requirements, including the responsibility to supervise annual reporting. In addition, the EU Market Abuse Directive (MAD) was implemented in 2005 to help protect market integrity. After the introduction of the Dutch Corporate Governance Code, the Corporate Governance Code Monitoring Committee was created to promote the use of the code and to monitor compliance with and the application of the code. The committee was established by the Minister of Finance, the state secretary in the Ministry for Economic Affairs, Agriculture & Innovation, and the Minister of Justice.

In practice, supervisory board members are usually nominated by the management board and/or the supervisory board itself. The Dutch Works Council, however, may nominate up to one-third of the supervisory board members. Supervisory board members may be dismissed collectively by the general meeting. In the Netherlands, supervisory board members may be removed without cause and must attain at least a majority vote to remain on the board.

A number of mechanisms for shareowner engagement and activism are available in the Netherlands. Each share entitles the shareowner to one vote. General meetings are usually convened by the management board, but shareowners holding at least 10% of the share capital may convene an extraordinary meeting. Resolutions at the general meetings are usually passed by a simple majority vote. A company's articles, however, may provide for a higher threshold in the removal of non-executive directors. A reduction of capital may also provide for a higher threshold. The highest threshold that is allowed under Dutch law is a

two-thirds majority of the votes representing more than half the share capital. In the Dutch market, shareholder rights plans (poison pills) are not common and shareowners are not subject to stock ownership limitations. Shareowners holding at least 1% of the share capital may propose resolutions for the agenda of the AGM. A new law to increase the required shareowner holding to 3% is pending. A company's articles of association may provide for a lower threshold, but the 1% threshold is most common. The agenda of the AGM has to be published at least 42 days in advance of the scheduled meeting.

For listed companies, shareowners are subject to the law on disclosure of shareholding. Shareowners in all listed companies must notify both the company and the Securities Board of the Netherlands of any purchases or sales of shares. According to the law, however, only the listed firms and shareholdings of at least 5% of the outstanding shares must be disclosed. A proposed new law would decrease the requirement for disclosure to 3%.

Key organizations with information relevant to shareowner rights in the Netherlands include the following:

European Corporate Governance Institute (www.ecgi.org)

Monitoring Commissie (Corporate Governance Code)
(<http://commissiecorporategovernance.nl>)

World Bank Group (www.worldbank.org)

Association of Stockholders (www.v eb.net)

Stichting Communicatiekanaal Aandeelhouders (www.communicatiekanaal.nl)

Ministry of Finance of the Netherlands (www.minfin.nl)

E-Standards Forum (www.estandardsforum.org)

Financial Markets Authority (www.afm.nl)