

DUTCH STEWARDSHIP CODE

CONSULTATION DOCUMENT

Draft preamble

1. Since its establishment, Eumedion has been a strong advocate of good governance of Dutch listed companies¹. Eumedion is one of the seven supporting organisations of the Dutch corporate governance code that contains principles and best practices for an effective corporate governance model that is intended to promote the continued success of listed companies. According to the considerations of the recently adopted Shareholder Engagement Directive², “effective and sustainable shareholder engagement is one of the cornerstones of the corporate governance model of listed companies”. Asset owners³ and asset managers⁴ hold the overwhelming majority of the shares in listed companies and manage other people's and institutions' money. As a result, society at large expects that both Dutch and non-Dutch asset owners and asset managers take their responsibility in playing an active role in promoting good corporate governance and sustainability practices of Dutch listed companies. It is for this reason that Eumedion drafted this Stewardship Code (hereinafter: “Code”), explaining how asset owners and asset managers can meet their stewardship responsibilities in a way that contributes to sustainable long-term value creation by listed companies and consequently to the long-term risk-adjusted returns on their investments. The Code also makes asset owners more accountable to their beneficiaries and asset managers more accountable to their clients. It also accommodates companies in identifying which of its investors are committed to vote in an informed manner and to enter into a constructive dialogue.
2. It is not the asset owner's nor the asset manager's role to manage the companies in which it invests. They do have, however, a role to play in overseeing the boards of those companies and need therefore to gain understanding on how the boards fulfil their responsibilities. This stewardship role of asset owners and asset managers includes the casting of informed⁵ votes at shareholder meetings and the monitoring of and engagement with listed companies on aspects related to strategy, the performance and risk of the company, capital structure, social and environmental impact and

¹ A 'Dutch listed company' means a company whose registered office is in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system.

² Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ 2017, L 132; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0828&from=EN>).

³ As defined in Art. 2, point (e) of the Shareholder Rights Directive (in brief: pension funds and life insurance companies).

⁴ As defined in Art. 2, point (f) of the Shareholder Rights Directive (in brief: investment firms providing portfolio management services to investors, managers of UCITS and alternative investment funds).

⁵ An informed vote means that the voting right is exercised in accordance with the investors own voting policy. In the event that the investor makes use of voting advice from third parties, it should independently form its own opinion on the voting recommendations made by this adviser.

corporate governance. Engagement is purposeful dialogue with listed companies on these aspects as well as on issues that are the subject of votes at general meetings. Asset managers and asset owners are also expected to cooperate with other shareholders and to communicate with other stakeholders of the company.

3. This Code builds on, and supersedes, the Eumedion Best Practices for Engaged Share-Ownership of 2011. This Code incorporates the new obligations for asset owners and asset managers stemming from the earlier mentioned Shareholder Engagement Directive. All Dutch asset owners and Dutch asset managers will be required to report on an “apply or explain” basis on their compliance with these new obligations as from 10 June 2019. Dutch asset owners and asset managers are therefore explicitly invited to *sign* up to this Code. Signing this Code allows the asset owner or asset manager to publicly demonstrate its commitment to responsible and engaged share-ownership and its compliance with the minimum EU requirements. They can also apply the Code’s principles to non-Dutch listed companies.
4. A signatory of the Code is expected to publish on its website a statement that:
 - describes how the signatory has applied each of the eleven principles of the Code and discloses the specific information requested in the principles; or
 - if one or more of the principles have not been applied or the specific information requested has not been disclosed, explains why the signatory has not applied those elements of the Code.
5. Almost 90% of the shares of the largest Dutch listed companies are held by non-Dutch investors. Non-Dutch asset owners and non-Dutch asset managers with home-country stewardship principles, or who have signed stewardship codes in other jurisdictions that have similar objectives as this Code, can choose to *endorse* this Code. They may also endorse this Code by referring to it in their own stewardship or engagement policy and statements. This is in particular expected from non-Dutch Eumedion participants. Non-Dutch investors must be aware of the specifics of the Dutch legal obligations of shareholders of Dutch listed companies, e.g. the legal requirement to behave towards the company and its stakeholders in a manner that is reasonable and fair.
6. The Code’s principles create a set of standards guiding the behaviour of asset owners and asset managers. The principles are aligned with international stewardship codes and principles and may be regarded as an elaboration of the general principles of responsible and engaged share-ownership. Asset owners and asset managers are, therefore, expected to apply all principles. However there can be specific circumstances that one or more principles cannot be applied. Indeed, not all asset owners and asset managers are the same. As a consequence, the application level may differ, depending on such factors as the asset owner’s or asset manager’s size, investment policies (e.g. whether the policies are oriented towards active or passive strategies, towards quantitatively derived strategies or strategies based on fundamental analysis, etc.) and preferences of its beneficiaries and clients. In the

situation of non-application of one or more principles, the investor should publicly disclose a clear and reasoned explanation why it has decided not to apply these principles. The principles incorporated in this Code should not, however, restrict asset owners and asset managers from choosing to adopt more explicit and/or stronger stewardship practices.

7. Some asset owners use asset managers or external service providers to fulfil their stewardship activities on their behalf. Asset owners should clearly communicate their policies on stewardship to their asset managers or service providers, including the extent to which this Code's principles should be applied. Asset owners should hold their asset managers or service providers to account for fulfilling their stewardship activities properly. After all, it is the asset owner who remains responsible for the fulfilment of the stewardship activities on its behalf. Asset owners who solely invest indirectly in listed companies – via mutual or investment funds – have an obligation to effectively oversee and monitor the managers' stewardship activities, including the application of the principles of this Code or of other (international) codes or guidelines with similar objectives.
8. Asset owners and asset managers cooperate with other shareholders in stewardship activities with Dutch listed companies where appropriate. In the case of collaboration, investors should respect the relevant laws, regulations and guidelines, such as the Market Abuse Regulation.⁶ Investors should also take note of the Dutch and European guidelines with respect to acting in concert, such as the guidelines of The Netherlands Authority for the Financial Markets (AFM) in relation to the notification of substantial holdings⁷ and the public statement of the European Securities and Markets Authority (ESMA) regarding public bids⁸.
9. An independent Monitoring Committee will be established that is responsible for overseeing the application of the Code's principles. The Monitoring Committee is, amongst others, responsible for:
 - carrying out an annual assessment of whether and to what extent Dutch asset owners and managers apply the principles of the Code and to what extent non-Dutch asset owners and asset managers refer to the Code;
 - drawing attention to national and international developments in the area of stewardship;
 - offering an annual report of its findings to Eumedion's Board and submitting it to the Government.
10. The Stewardship Code will enter into force on 1 January 2018.

⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014, L 173; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN>).

⁷ <https://www.afm.nl/~profmedia/files/wet-regelgeving/marktmisbruik/guideline-shareholders.ashx?la=en>.

⁸ <https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-677.pdf>.

Draft principles

1. Asset owners and asset managers have a stewardship policy that describes how they integrate stewardship towards Dutch listed investee companies in their investment strategy. The stewardship policy should be aimed at enhancing and preserving value for their beneficiaries and/or clients, and should promote sustainable long-term value creation at investee companies. The stewardship policy at least includes the matters described in principles 2 – 11. The stewardship policy should be publicly disclosed on their website. Asset owners and asset managers publicly report at least once a year on their website how they have implemented their stewardship policy, asset owners also report if and how they have integrated that policy into their mandates.
2. Asset owners and asset managers monitor their Dutch listed investee companies on material issues, including, but not limited to, the company's business model for creating long-term value, the company's strategy, long-term performance and risks and opportunities, the capital structure, social and environmental impact, corporate governance and corporate actions. Material issues are those elements that may affect the company's ability to create sustainable long-term value.
3. Asset owners and asset managers are prepared to enter into dialogue with their Dutch investee companies and are prepared to escalate their stewardship activities in case issues remain unresolved. In the event that an asset owner or asset manager enters into dialogue with the investee company on certain issues, outside the context of a general meeting, the asset owner or asset manager will disclose its full equity holding (long and short) at the request of that company.
4. Asset owners and asset managers cooperate with other shareholders in stewardship activities where appropriate.
5. Asset owners and asset managers communicate with relevant stakeholders of the Dutch investee companies, such as the works council and non-governmental organisations, where appropriate.
6. Asset owners and asset managers identify, manage and remedy actual and potential conflicts of interest in relation to their engagement with Dutch listed investee companies and to their voting decisions. Asset owners and asset managers publicly disclose their conflicts of interest policy in relation to their stewardship activities.
7. Asset owners and asset managers exercise their voting rights and other shareholder rights in an informed manner. They publicly disclose on their website: a) at least annually a general description of their voting behaviour and b) at least once every quarter how they voted their shares in Dutch listed investee companies, at an individual company level and per voting item. In the event that the asset

owner or asset manager casts a withhold or against vote on a management proposal, he should explain the reasons for this voting behaviour to the company management, either pro-actively or at the request of the company.

8. Asset owners and asset managers that consider exercising their right to submit a request for convening an extraordinary general meeting or for tabling a shareholder resolution should consult management prior to exercising this right.
9. If a resolution proposed by an asset owner or asset manager has been put on the agenda of a general meeting, the asset owner or asset manager should be present or represented at that meeting in order to explain this resolution and, if necessary, answer questions about it.
10. Asset owners and asset managers publicly disclose their voting policy and whether and how they use proxy research and/or voting services. Asset owners and asset managers that use proxy research and/or voting services ensure that their votes are cast in line with their own voting policy.
11. Asset owners and asset managers do not borrow shares for the sole purpose of exercising voting rights on these shares and will abstain from voting if their short position in the company in question is larger than their long position. They should recall their lent shares before the voting registration date for a general meeting of a Dutch listed investee company, if the agenda for that general meeting contains one or more controversial resolutions.

Draft guidance

Guidance principle 1

- If an asset owner is unable to exercise stewardship activities directly, he should ensure that his asset manager(s) or external service provider(s) is (are) undertaking these activities on his behalf through a contract, often called a 'mandate'. The asset owner is required to publicly disclose – on an apply-or-explain basis – certain key elements of this mandate as stipulated by Article 3h of the Shareholder Engagement Directive. Some asset owners solely invest in mutual or investment funds and, therefore, not directly in shares of Dutch listed companies. As a consequence, those asset owners are unable to exercise stewardship activities themselves. Those asset owners should ensure that the managers of the mutual or investment funds have an engagement policy in line with principle 1 or with other (international) codes or guidelines with similar objectives.

Guidance principle 3

- It is easier to discuss challenging issues with a company – particularly if such a discussion needs to be held urgently – if a relationship between the asset owner and asset manager and the Dutch listed investee company has already been established.

Escalation actions by investors may include:

- Writing a letter to the management and/or supervisory board in which the matters of concern are explained;
- Holding additional meetings with the management and/or supervisory board, specifically to discuss matters of concern;
- Holding meetings with other stakeholders, such as other shareholders, banks, creditors, the works council and non-governmental organisations;
- Expressing concerns in a general meeting;
- Issuing a public statement;
- Intervening jointly with other institutional investors on specific issues;
- Requesting that certain subjects be placed on the agenda of the general meeting or asking that an extraordinary general meeting be convened;
- Submitting one or more nominations for the appointment of a member of the management board and/or supervisory director as appropriate;
- Taking legal action, when appropriate, such as initiating inquiry proceedings at the Enterprise Chamber of the Amsterdam Court of Appeal;
- Selling the shares.

'Full equity holding' in the last sentence of principle 3 means the asset owner's or asset manager's full economic interest in the listed company as referred to in Article 5:25kbis Dutch Financial Supervision Act.

Guidance principle 4

- Groups of investors may wish to discuss issues which are of common interest to them, and which they may wish to pursue collectively with one or several companies. Those investors should respect the relevant regulations and guidelines from regulatory authorities, such as those intended to prevent the use of insider information and the rules on 'acting in concert'.
- Collective engagement may deliver benefits to both companies and investors – for instance, because company strategy is informed by an open discussion of a range of views, engagement is made more cost effective, or clarity can be achieved on particular issues where investors share the same view.
- Collective discussion may also generate a wider and deeper range of analysis than would be possible in a one-to-one meeting, although there should be sensitivity to the fact that some issues are better discussed on a one-to-one basis, and that constructive discussion of such issues may be inhibited in a group meeting context.

Guidance principle 5

- Asset owners and asset managers may aim to understand the aspirations and motivations of other key stakeholders in the company, for example employees, customers and suppliers, before entering into dialogue with a Dutch investee company and/or before exercising their voting rights on material issues.

Guidance principle 6

- Asset owners and asset managers should be aware of the possible existence of other interests involving themselves and the company, apart from the shareholder's interest alone. This can occur, for example, when the asset owner or asset manager in question also offers financial products (such as insurance contracts) to the listed company, or when a member of the management board or the supervisory board of the asset owner or asset manager is also a member of the management board or supervisory board of the company in question. It is also possible for an asset manager that invests for a pension fund to hold shares in a company that sponsors the pension fund concerned, or for an asset owner or asset manager to be affiliated in some way with a company for whose shares a public bid has been launched.

Guidance principle 8 and 9

- Principle 8 is in line with the first sentence of best practice provision 4.1.6 of the Dutch corporate governance code and principle 9 with best practice provision 4.1.5 of the Dutch corporate governance code.

Guidance principle 10

- Asset owners and asset managers should use their voting rights in a well informed manner and in line with their voting policy. This also applies when they use the services of proxy advisors. In that case, asset owners and asset managers should regularly evaluate that those proxy advisors have robust processes, policies and capabilities in place to ensure the quality of the voting recommendations made.

Appendix

The draft Dutch Stewardship Code was prepared by a special Eumedion working group consisting of the following members:

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