



The Annual Accounts  
in the Netherlands  
A guide to Title 9  
of the Netherlands  
Civil Code

Deloitte

The Annual Accounts in the Netherlands –  
A guide to Title 9 of the Netherlands Civil Code

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# Preface

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Before 1971, Dutch law with respect to the annual accounts of companies was rather limited. Over the last forty years, and due to European Directives, the regulations and legislation with respect to the annual accounts in the Netherlands have increased significantly.

Following the introduction of the Euro, the European Union published the IAS-Regulation in 2002, which mandated the use of International Financial Reporting Standards as endorsed by the EU (IFRS-EU) for the consolidated financial statements of all listed companies as of 2005. In 2004, the Transparency Directive of the European Commission (Directive No. 2004/109/EG) was issued. This Directive was enacted into Dutch law in 2007 by means of the Financial Markets Supervision Act (Wft). The Wft deals with the supervision by the Netherlands Authority for the Financial Markets (AFM) of, for example, listed companies and financial institutions. The Wft is also covered in this publication.

This publication provides a comprehensive overview of Title 9 Book 2 (hereinafter: Title 9) of the Netherlands Civil Code (NCC) with respect to the annual accounts in the Netherlands. It has been updated to reflect recent changes to the NCC, following the enactment of the 'Flex-bv Act'. The objective of this publication is to assist preparers, practitioners, users and other interested parties in understanding the complexities of Title 9. The primary focus of this publication is on the annual accounts of B.V.'s and N.V.'s in the Netherlands. Accordingly, the paramount goal is to incorporate meaningful, relevant and structured guidance with respect to the application of Title 9. To a limited extent, relevant guidance is included for listed companies (e.g. listed N.V.'s) and certain special industries. Extensive cross-references have been added to specific articles to guide the reader through the different articles and sub-articles in Title 9. This 2013 edition includes a Dutch law checklist for company-only financial statements.

This publication does not specifically address other laws and regulations that govern listed companies and certain specific industries, such as financial institutions. It should be noted that such specific industries typically fall under the scrutiny of the Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) respectively.

We would like to express our gratitude to Peter Thomson, Fred van der Giessen and Dingeman Manschot for sharing their expertise and for their significant efforts in producing this publication.

Ronald Smittenberg  
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# 1. Executive summary

The legal requirements relating to the annual accounts are included in Title 9 Book 2 (hereinafter: Title 9) of the Netherlands Civil Code (NCC). Title 9 is applicable to the annual accounts of certain types of legal entity, such as the public limited liability company (N.V.) and the private limited liability company (B.V.). The Dutch Accounting Standards Board issues authoritative and interpretative accounting standards. The NCC and Dutch Accounting Standards (DASs) comprise the Netherlands Generally Accepted Accounting Principles (NL GAAP). Companies are well advised to comply with DASs and are furthermore recommended to use the DASs for reference when interpretation of Title 9 of the Netherlands Civil Code is required.

The annual accounts consist of the management board's report, the financial statements and the other information section. The financial statements consist of the company-only financial statements<sup>1</sup> consisting of the balance sheet, the profit and loss account and the notes, and the consolidated financial statements (if applicable). The financial statements must provide an 'insight' such that a reasonable judgement can be formed regarding the financial position and results of the company, and, to the extent that the nature of the financial statements permits, its solvency and liquidity. Depending on the type of group relationship, consolidated financial statements may be prepared. Certain exemptions to consolidation may apply. The general recognition and measurement criteria and key disclosures are also discussed in this publication.

The management board of a company is required to prepare the annual accounts within certain time limits. The financial statements of an N.V. or a B.V. are adopted by the general meeting. A company must publish its annual accounts within certain time limits following the adoption of its financial statements.

Companies are classified by means of certain size criteria into three categories: large companies, medium-sized companies and small companies. Small and medium-sized companies may take advantage of certain exemptions, if they do not prepare financial statements in accordance with International Financial Reporting Standards (IFRS). A distinction can be made between exemptions relating to preparation of the financial statements, and those relating to publication of the financial statements.

<sup>1</sup> Also referred to as 'company financial statements'.

Small companies have no legal audit requirement. The financial statements of medium-sized and large companies must be audited (unless the group exemption in article 403 NCC is applied).

The Decree on financial statements formats lays down certain formats for the balance sheet and profit and loss account which are applicable to the companies defined in the Decree. The formats are included in Appendix 2 of this publication for the reader's convenience.

The NCC sets out a number of requirements for the management board's report of large and medium-sized companies. The requirements for the management board's report and the items to be included in the other information section are discussed in detail.

Certain requirements of Title 9 with respect to specific industries are discussed.

Key requirements of the Financial Markets Supervision Act (Wft), including the scope, main provisions and filing deadlines, are outlined in Chapter 11.

This publication has been updated for changes to the NCC which became effective in October 2012, following the enactment of the 'Flex-bv Act' in 2012. Chapter 12 summarises the key changes to the NCC in connection with the 'Flex-bv Act'.

The appendix includes a number of useful tools such as the prescribed formats for the balance sheet and profit and loss account and also a Dutch law checklist for company-only financial statements.

## 2. Introduction

### 2.1 Annual accounts

The legal requirements relating to the annual accounts are included in Title 9 of the Netherlands Civil Code (NCC). The annual accounts comprise:

- management board's report
- financial statements, consisting of:
  - balance sheet
  - profit and loss account
  - notes
- other information.

Consolidated financial statements, when required, are part of the annual accounts.

A cash flow statement<sup>2</sup> is required for medium-sized and large companies based on DAS 360.104. The cash flow statement is however not mentioned in the NCC as a primary statement. DAS 360.101 states that the cash flow statement is part of the financial statements. Given the definition of financial statements in article 361-1 NCC, it could be argued that the cash flow statement forms part of the notes to the financial statements. However, in practice, medium-sized and large companies present the cash flow statement together with the balance sheet and profit and loss account, as a third primary statement. A cash flow statement is not required if the capital of a company is fully provided by another entity<sup>3</sup> which prepares an equivalent cash flow statement as part of its consolidated financial statements. A company which applies this exemption shall disclose where such consolidated financial statements can be obtained (DAS 360.104).

<sup>2</sup> Reference is made to the glossary of terms in appendix 1.

<sup>3</sup> Either directly or indirectly.

## 2.2 Scope of Title 9

Title 9 is applicable to the annual accounts of the following legal entities (article 360 NCC):

- public limited liability company (N.V.);
- private limited liability company (B.V.);
- cooperative;
- mutual guarantee association;
- limited partnership (C.V.) or general partnership (V.O.F.) where all partners who are fully liable to creditors for debts, are capital companies incorporated under foreign law;
- foundations or associations holding on their own, one or more businesses (so-called commercial foundation or association) with net turnover of at least EUR 4.4 million.

In this guide, all these types of entities are referred to as 'companies'.

## 2.3 Impact of Title 9

Title 9 contains a considerable number of legal requirements relating to publication, audit and disclosure of financial statements, as well as some requirements on valuation. Because these requirements vary depending on the size of the company concerned, company size is discussed initially. Publication and audit requirements are described subsequently.

Disclosure requirements are dealt with throughout this publication, but mainly in Chapter 6 'Financial statements'. The prescribed models for disclosure and publication of the balance sheet and the profit and loss account are set out in Appendix 2.

The management board's report, the items to be included in the other information section and specific industries are dealt with in Chapters 8, 9 and 10 of this publication.

## 2.4 NL GAAP

The DASB issues authoritative and interpretative accounting standards. The NCC and Dutch Accounting Standards (DASs) comprise Netherlands Generally Accepted Accounting Principles (NL GAAP). DASs do not formally have the status of law. However, it should be emphasised that DASs do have a great degree of authority and status in the Netherlands. The significance of DASs has been confirmed by the Court of Appeal and the Supreme Court in various cases. Compliance with DASs is essential in demonstrating that the financial statements provide the legally required insight (see Chapter 6 'Financial statements', paragraph 6.1). Companies are therefore well advised to comply with DASs and to use DASs for reference when interpretation of Title 9 of the Netherlands Civil Code is required. DASs differentiate between bold type statements (indicating a higher definitive status) and non-bold type statements. The DASB requires that deviation from the definitive status statements only takes place when there are sound reasons for such deviation (DAS 100.407).

Annual accounts may be queried by any interested party, at the Court of Appeal in Amsterdam. The Court may decide that current and future annual accounts must be changed to be in conformity with the insight required by company law or with any other specific legal provisions of Title 9. It is possible to appeal against such decisions in the Supreme Court of the Netherlands.

### **Tax accounting principles**

Small companies may elect to apply the accounting principles in Chapter 2 of the Dutch Corporation Tax Act 1969, provided that all such provisions are applied. The use of such accounting principles shall be disclosed (article 396-6 NCC).

## 2.5 IFRS

Article 362 of the NCC offers companies the possibility to prepare both the company-only financial statements and the consolidated financial statements under IFRS-EU. IFRS-EU are EU endorsed International Financial Reporting Standards. It should be noted that listed companies are obliged to prepare their consolidated financial statements under IFRS-EU. For this purpose, the definition

of a listed company is a company of which securities are traded on a regulated stock exchange, as referred to in Article 4-14 of EC Directive 2004/39/EC, of a European Union member state. Therefore, the question is whether or not the securities are listed on a regulated stock exchange. This not only concerns shares but also, for instance, bonds.

Non-listed companies are free to prepare their company-only financial statements or consolidated financial statements under IFRS-EU. A company may, however, only prepare its company-only financial statements under IFRS-EU if its consolidated financial statements have been prepared under the same standards. The table below outlines the possible combinations the law offers if a company prepares company-only financial statements and consolidated financial statements.

	Consolidated financial statements	Company-only financial statements
1	Title 9 plus Dutch Accounting Standards	Title 9 plus Dutch Accounting Standards
2	IFRS-EU	Title 9 without application of the option to apply the accounting principles that have been used for the consolidated financial statements (plus Dutch Accounting Standards)
3	IFRS-EU	Title 9 with application of the option to apply the accounting principles which the company used for preparing the consolidated financial statements
4	IFRS-EU	IFRS-EU plus certain applicable articles from Title 9
5	Standards that are generally accepted in one of the other member states of the European Communities if the international entanglement of the group justifies this	Standards that are generally accepted in one of the other member states of the European Communities if the international entanglement of the group justifies this

### Explanation of combination 1

If the company prepares its consolidated financial statements under Title 9 and does not apply IFRS-EU, article 362-8 NCC requires the company-only financial statements to also be prepared under Title 9. This combination is not possible

for listed companies which must prepare their consolidated financial statements under IFRS-EU. If a company chooses not to prepare its consolidated financial statements under IFRS-EU, the provisions of Title 9 must be followed in the company-only financial statements. These Title 9 provisions may not be avoided by invoking IFRS-EU.

### **Explanation of combination 2**

If a company prepares its consolidated financial statements under IFRS-EU and its company-only financial statements under Title 9, without using the option to apply the accounting principles the company applied for preparation of its consolidated financial statements (combination 3), this will, in most cases, produce differences in shareholders' equity when comparing the consolidated financial statements and the company-only financial statements. These differences must be disclosed in the notes to the company-only financial statements (article 389-10 NCC). The capital maintenance rules of articles 365-2, 373, 389-8, 389-10 and 390 NCC will apply solely to the company-only financial statements (which are prepared under Title 9). The company-only financial statements form the basis for dividend distributions.

### **Explanation of combination 3**

Article 362-8 NCC permits preparation of the consolidated financial statements based on IFRS-EU in combination with preparation of the company-only financial statements under Title 9, applying the accounting principles that the company also applied for preparation of the consolidated financial statements.

The legislator created the possibility to also apply the accounting principles used for preparation of the consolidated financial statements according to IFRS-EU for preparation of the company-only financial statements. This enables keeping the equity according to the company-only financial statements equal to the equity according to the consolidated financial statements. It should be noted that the accounting principles applied in the consolidated financial statements as referred to above include the debt/equity classification criteria.

Combination 3 implies that the company prepares the company-only financial statements under the IFRS-EU recognition and measurement criteria applied

in the consolidated financial statements, with the exception of the valuation of consolidated participating interests over which control is exercised. IFRS-EU requires such participating interests to be valued at cost or in accordance with IFRS 9/IAS 39 (i.e. at fair value) in the company-only financial statements (separate financial statements under IFRS). Under combination 3, however, controlled (i.e. consolidated) participating interests are accounted for in the company-only financial statements in accordance with the:

- net asset value method; or
- equity method<sup>4</sup>.

Under combination 3, the net asset value or equity (method) value of controlled participating interests in the company-only financial statements, is determined based on the IFRS-EU recognition and measurement criteria applied for preparation of the consolidated financial statements. Accordingly, the goodwill acquired from third parties through a participating interest is not amortised. Instead, this goodwill is accounted for in accordance with IFRS 3. By applying this variant, reconciliation can be maintained between the equity in the company-only financial statements and the equity in the consolidated financial statements. Under combination 3 no reversal of goodwill is allowed with respect to that controlled participating interest. The latter is consistent with the IFRS-EU consolidated financial statements.

The accounting for unconsolidated participating interests (i.e. no control exists) in the combination 3 company-only financial statements differs from the above. Such unconsolidated participating interests may, for example, be associates (significant influence exists) or joint ventures (joint control exists). Associates and joint ventures are accounted for under the equity method as described in IAS 28 in the company-only financial statements.

<sup>4</sup> Goodwill is presented separately under the net asset value method, whereas goodwill is subsumed into the equity value under the equity method. Therefore, the only difference relates to the presentation. Both methods result in the same measurement of equity and profit or loss. The equity method under IAS 28 is not the same as the 'equity method' described by DAs.

The company-only financial statements are prepared based on Title 9. Therefore the presentation and disclosure requirements of Title 9 must be followed. The presentation and disclosure requirements of IFRS-EU cannot be applied in the company-only financial statements if these are different. The Decree on financial statements formats (BMJ) and the disclosure requirements of Title 9 apply. Article 402 NCC also applies, so that an abridged profit and loss account suffices. If IFRS-EU require additional disclosures, there are obviously no objections to include that information in the company-only financial statements as well. The following articles of the NCC apply to the company-only financial statements prepared under combination 3 (article 362-9 NCC):

Article(s) of the NCC	Topic
365-2	Statutory reserve for capitalised development costs
373	Presentation and disclosure of equity
382	Disclosure of average number of employees, wages and social securities
382a	Audit fee
383 and 383b-383e	Director remuneration
389-8	Reserve for currency translation differences
389-10	Disclosure in the company-only financial statements of differences between equity and result according to the company-only and consolidated financial statements
390	Revaluation reserve
Section 7 (article 391)	Management board's report
Section 8 (article 392)	Other information
Section 9 (article 393)	Audit
Section 10 (article 394 and 395)	Disclosure
421-5	This article applies to banks only

Combination 3 may only be applied by a company which prepares IFRS-EU consolidated financial statements. Therefore, a company which does not prepare consolidated IFRS-EU financial statements itself cannot apply combination 3, nor can it apply combination 3 by reference to IFRS-EU financial statements of its parent or by reference to IFRS-EU consolidation schedules submitted to its parent.

#### **Explanation of combination 4**

Under combination 4, both the company-only and consolidated financial statements are prepared in accordance with IFRS-EU. A company that applies IFRS-EU in its company-only financial statements cannot – among other things – apply article 403 NCC (group exemption). It should be noted that article 403 NCC<sup>5</sup> is included in Section 12 of Title 9, which is not applicable in that situation. Furthermore, a small company applying IFRS-EU in its company-only financial statements cannot use the exemptions of article 396 NCC<sup>6</sup> (including the exemptions regarding disclosure and the exemption from an audit), nor does Section 11 of Title 9 apply in such situations. To avoid such consequences of applying IFRS-EU in the company-only financial statements, application of combination 3 is a recommended alternative.

Under combination 4, controlled (i.e. consolidated) participating interests are accounted for in the company-only financial statements (separate financial statements under IFRS) at historical cost or at fair value in accordance with IAS 27.10.

The company-only financial statements constitute the basis for dividend distributions. The capital maintenance rules included in articles 365-2, 373, 389-8 and 10, and 390 NCC therefore only apply to the company-only financial statements.

<sup>5</sup> Article 403 NCC is explained in Chapter 6 of this publication.

<sup>6</sup> Article 396 NCC is explained in Chapter 3 and Chapter 4, paragraph 4.7.

The following articles of the NCC apply to the company-only financial statements prepared under combination 4 (article 362-9 NCC):

Article(s) of the NCC	Topic
365-2	Statutory reserve for capitalised development costs
373	Presentation and disclosure of equity
382	Disclosure of average number of employees, wages and social securities
382a	Audit fee
383 and 383b-383e	Director remuneration
389-8	Reserve for currency translation differences
389-10	Disclosure in the company-only financial statements of differences between equity and result according to the company-only and consolidated financial statements
390	Revaluation reserve
Section 7 (article 391)	Management board's report
Section 8 (article 392)	Other information
Section 9 (article 393)	Audit
Section 10 (article 394 and 395)	Disclosure
421-5	This article applies to banks only

If the company applies combination 4, it prepares its company-only financial statements under IFRS-EU plus certain articles from Title 9. According to article 362-9 NCC, the company cannot use the article 408 NCC<sup>7</sup> consolidation exemption. Combination 4 and article 408 NCC are therefore incompatible.

As discussed above, a company which applies combination 4, is automatically classified as a large company (reference is further made to Chapter 3, paragraph 3.3).

#### **Explanation to combination 5**

Article 362-1 (second sentence) NCC is rarely applied. Under this provision the financial statements may be prepared based on standards that are generally accepted in one of the other member states of the EU if the international entanglement justifies this. A condition for application of this provision is that the legally required insight must still be provided (article 362-1, first sentence, NCC).

#### **Checklist**

This publication features a Dutch law checklist for the company-only financial statements of Dutch companies which apply the so-called combination 3 or combination 4 option explained above. Reference is made to Appendix 7.

<sup>7</sup> Article 408 is explained in Chapter 6, paragraph 6.2.

# 3. Company size

## 3.1 Criteria

Companies are classified by size using three criteria (articles 396, 397 and 398 NCC):

- total assets as recorded in the balance sheet;
- net turnover;
- average number of employees.

For a parent company, the value of total assets and net turnover for this purpose are its own (stand-alone) figures, including those of its group companies (i.e. on a consolidated basis). The average number of employees includes the employees of group companies. This does not apply if the company applies article 408 NCC, in which case the size criteria are determined on a stand-alone (unconsolidated) basis (article 397-2 NCC). Article 408 NCC is discussed in Chapter 6 'Financial statements', paragraph 6.2.

The company's assets for this purpose must be determined on a historical cost basis.

## 3.2 Categories

Companies are classified into three categories:

- large;
- medium-sized;
- small.

## 3.3 Classification chart

Amounts in EUR	Small	Medium-sized *	Large
<b>Total assets (**)</b>	< 4.4 million	< 17.5 million	> 17.5 million
<b>Net turnover</b>	< 8.8 million	< 35 million	> 35 million
<b>Average number of employees</b>	< 50	< 250	> 250

\* and not a small company

\*\* on a cost basis

A company is classified in a particular category (small, medium-sized or large) if it meets at least two of the three criteria for that category. A company will change between categories only if the criteria of another category have been met on two consecutive balance sheet dates.

The size of the company calculated at the end of the first financial year is decisive for the classification of the first and second financial year.

Please note that the quantitative size criteria may be subject to change (article 398-4 NCC)<sup>8</sup>.

A company which applies IFRS-EU using combination 4, cannot use the size exemptions of article 396 and 397 NCC (article 362-9 NCC). Furthermore, IFRS-EU does not classify entities into small, medium-sized or large companies. Consequently, such a company is classified as a large company.

As stated in article 398-3 NCC, articles 396 and 397 NCC are not applicable to:

- a) companies which have listed securities on a regulated market or multilateral trading facility as defined in article 1:1 Wft<sup>9</sup>. A common example is a company which has listed securities on a regulated stock exchange;
- b) investment companies to which article 401-1 NCC applies (reference is made to Chapter 10).

Companies mentioned under (a) or (b) above are also effectively classified as a large company.

<sup>8</sup> In October 2011 the European Commission issued a proposal for a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (Accounting Directive). In April 2013 a preliminary agreement was reached with the European Parliament Commission. In the final compromise text the maximum amounts of the small companies category have been set at EUR 4 million (total assets) and EUR 8 million (net turnover); member states may increase these amounts, although they should not exceed EUR 6 million and EUR 12 million, respectively. The maximum amounts for the medium-sized companies category have been set at EUR 20 million (total assets) and EUR 40 million (net turnover). At the time of writing, the Directive had not yet been adopted; implementation into Dutch law must take place within two years after adoption of the Directive.

<sup>9</sup> Or a system comparable with a regulated market or multilateral trading facility (as defined in article 1:1 Wft) of a non-member state.

## 4. Preparation, adoption and publication of annual accounts

### 4.1 Introduction

Article 10 of Book 2 of the NCC deals with general administrative requirements. The management board is required to maintain accounting records in order to determine the company's financial position and its activities at any given point in time. It must archive its books, documentation and other data records for a period of seven years. The management board is required to produce a hard-copy balance sheet and profit and loss account no later than six months after the year-end. The latter applies irrespective of the other NCC requirements in respect of the annual accounts.

### 4.2 Preparation

The management board is required to prepare the annual accounts within five months after the financial year-end for the N.V. and B.V. and six months for the cooperative, mutual guarantee association, commercial foundation and commercial association. The general meeting of members (for a cooperative or a mutual guarantee association), the governing body (for a commercial foundation or association) or the general meeting of shareholders (for an N.V. or a B.V.<sup>10</sup>) may extend the period for preparing the annual accounts for a maximum period of six months (for an N.V. or a B.V.) or a maximum period of five months (for a cooperative, mutual guarantee association or a commercial foundation or association). The maximum extended period for preparing the annual accounts is therefore eleven months.

Following the implementation of the Transparency Directive into Dutch law (Stb. 2008, 476) effective 1 January 2009, the maximum period for preparing and publishing the financial statements of listed companies is four months after the financial year-end (article 5:25c-1 Wft). This maximum period may not be extended.

<sup>10</sup> In this publication, the phrase 'general meeting' is used, since other parties than shareholders may also attend the general meeting.

### 4.3 Signing

An original set of financial statements must be dated and signed by the management board and, where applicable, the supervisory board.

### 4.4 Adoption

The financial statements of an N.V. or a B.V. must be presented to and adopted by the general meeting. Simplified adoption requirements apply for B.V.'s of which all shareholders are also directors of the company. In that case, the signing of the financial statements by all management board members and (if applicable) supervisory board members qualifies as the formal adoption of those financial statements, if the following conditions have been met:

- all other parties with a right to attend the general meeting (e.g. share certificate holders, pledgeholders or parties entitled to a usufruct) have been given the opportunity to read the prepared financial statements; and
- such parties have given their consent to such simplified adoption of the financial statements (article 210-5 NCC).

Under the simplified regime, the signing of the financial statements by all management board members and (if applicable) supervisory board members qualifies as the formal adoption of those financial statements. However, article 393-7 NCC states that the financial statements cannot be adopted until the authorised parties have read the auditor's report<sup>11</sup> which is part of the 'other information' in the financial statements. In order to comply with article 393-7 NCC under the simplified adoption requirements, we recommend the following practical solution.

The management board prepares and dates a 'final draft' of the financial statements. Such final draft financial statements are not yet signed by the management board, since this would effectively result in the adoption of those financial statements. The auditor's report is issued on those final draft financial statements (with the same date). The final draft financial statements prepared and dated by the management

<sup>11</sup> Unless that body has been informed of the fact that and the reasons why the auditor's report has not been included (article 393-7 NCC).

board (including the auditor's report) are provided to all authorised parties<sup>12</sup> for review. When such authorised parties (typically the management board and if applicable the supervisory board) agree with those final draft financial statements, they are signed and dated. This qualifies as the formal adoption of those financial statements. Once adopted, the financial statements cannot be revoked. Should it subsequently be found that the financial statements are seriously deficient in providing the legally required insight, specific procedures (outlined in Chapter 6, 'Financial statements', paragraph 6.1) have to be followed (article 362-6 NCC).

#### **4.5 When to publish**

A company must publish its annual accounts within eight days of adoption, in accordance with article 394-1 NCC.

If the financial statements have not been adopted within two months following the maximum period for preparing the financial statements (five months for an N.V. and a B.V. and six months for a cooperative, mutual guarantee association, commercial foundation and association, or the extended maximum period of eleven months after the end of the financial year), the management board must publish them without delay. In that case the financial statements must clearly disclose that they have not yet been adopted (article 394-2 NCC). The maximum period for publication is therefore thirteen months (article 394-3 NCC). Non-compliance with article 394-3 NCC is an economic offence within the context of article 1 sub 4 Economic Offences Act (WED).

<sup>12</sup> The management board, and if applicable the supervisory board, share certificate holders, pledgeholders or parties entitled to a usufruct.

#### 4.6 How to publish

Publication is effected by filing a copy of the annual accounts with the office of the Trade Register at the Chamber of Commerce where the company is registered according to its Articles of Association. The date of adoption must be stated on the filed copy. In principle, the information to be published must be prepared in Dutch. If the original information was not prepared in Dutch, filing the information for publication in English, French or German is permitted (article 394-1 NCC).

The annual accounts to be presented to the Works Council must always be prepared in Dutch (article 31a-2 WOR).

The management board's report (refer to Chapter 8) and certain parts of the other information section (refer to Chapter 9) contained in the annual accounts of medium-sized and large companies do not have to be filed with the Trade Register at the Chamber of Commerce, provided the documents concerned are kept at the office of the company for public inspection and a copy thereof is obtainable upon request at no more than cost price. The company must register a notice of this procedure with the Trade Register at the Chamber of Commerce (article 394-4 NCC), which means that the board report is (effectively) made publicly available (upon request). Medium-sized companies may however elect to apply an exemption to make publicly available certain sections of the other information section (article 397-7 NCC). Medium-sized companies need not include information on non-financial performance indicators in the management board's report (article 397-8 NCC).

Small companies are not required to prepare the management board's report in conformity with article 391 NCC nor to publish the management board's report (article 396-7 and article 101-1 and 210-1 NCC respectively). Reference is made to Chapter 8.

For listed companies, the annual accounts are to be filed at the AFM not later than five days after adoption of the financial statements by the general meeting. The AFM will execute any further distribution to the Trade Register at the Chamber of Commerce (article 5:25o-1 Wft). If a listed company has not adopted

its financial statements within six months after the end of the financial year, it must notify the AFM (article 5:25o-2 Wft). The AFM will then file the unadopted annual accounts within three days with the Trade Register at the Chamber of Commerce (article 5:25o Wft).

#### 4.7 What to prepare and what to publish

Small and medium-sized companies may take advantage of certain exemptions if they do not prepare financial statements in accordance with IFRS. A distinction can be made between exemptions relating to preparation of the financial statements, and those relating to publication of the financial statements (articles 396 and 397 NCC). The preparation and publication exemptions are summarised as follows. (F = full compliance with the provisions is required; PE = partial exemption from the provisions is available; E = full exemption from the provisions is available):

<b>Small companies</b>	<b>Preparation</b>	<b>Publication</b>
Balance sheet and notes (section 3 of Title 9)	PE	PE
Profit and loss account and notes (section 4 of Title 9)	PE	E
Special requirements regarding notes to the financial statements (section 5 of Title 9)	PE	PE
Management board's report (section 7 of Title 9)	E	E
Other information (section 8 of Title 9)	F	E
Audit requirements (section 9 of Title 9)	E	
<b>Medium-sized companies</b>	<b>Preparation</b>	<b>Publication</b>
Balance sheet and notes (section 3 of Title 9)	F	PE
Profit and loss account and notes (section 4 of Title 9)	PE	PE
Special requirements regarding notes to the financial statements (section 5 of Title 9)	PE	PE
Management board's report (section 7 of Title 9)	F	F
Other information (section 8 of Title 9)	F	PE
Audit requirements (section 9 of Title 9)	F	

Large companies	Preparation	Publication
Balance sheet and notes (section 3 of Title 9)	F	F
Profit and loss account and notes (section 4 of Title 9)	F	F
Special requirements regarding notes to the financial statements (section 5 of Title 9)	F	F
Management board's report (section 7 of Title 9)	F	F
Other information (section 8 of Title 9)	F	F
Audit requirements (section 9 of Title 9)	F	

Exemptions from the above are applicable to:

- the company-only profit and loss account of the parent company, if its financial data has been included in the consolidated annual accounts (article 402 NCC);
- the annual accounts of a group company, if the conditions of article 403 NCC are complied with;
- an intermediate holding company applying the consolidation exemption (article 408 NCC).

These exemptions are discussed further in Chapter 6 'Financial statements', paragraph 6.2.

Listed companies must also include a so-called responsibility statement in their annual accounts (article 5:25c-2c Wft). This is an annual statement in which the natural persons responsible for the listed company, with a clear reference to their names and functions, must state that - to the best of their knowledge - the annual accounts give a true and fair view.

# 5. Audit requirements

## 5.1 Which companies require an audit

### Small companies

No audit required.

### Medium-sized and large companies

An audit of the financial statements is required. A company of which the financial data has been included in the consolidated financial statements of another company may be exempt from audit, subject to certain conditions being met (i.e. article 403 NCC, which is discussed in Chapter 6 'Financial statements', paragraph 6.2). Any stakeholder may require a company to comply with its audit requirement (article 393-8 NCC). Non-compliance is an economic offence in the context of article 1 sub 4 Economic Offences Act (WED).

## 5.2 Auditor

The financial statements of companies within the scope of Title 9 must be audited by a registered auditor or accounting consultant authorised to certify financial statements (article 393-1 NCC).

## 5.3 Appointment of auditor

The authority to appoint the auditor lies with the general meeting. If the general meeting does not appoint the auditor, the supervisory board may. If there is no supervisory board or if it also fails to appoint the auditor, the management board may appoint auditors.

An appointment can be withdrawn, by the general meeting or any other body that made the appointment. An appointment made by the management board may also be withdrawn by the supervisory board. The appointment may solely be withdrawn for well-founded reasons. A disagreement regarding accounting principles or audit procedures is not considered such a reason. The general meeting shall hear the auditor, upon his request, on a withdrawal instruction given to him, or on a declared intention to proceed to such withdrawal.

The management board and the auditor shall, without delay, inform the AFM of a withdrawal by the company or of a premature ending thereof by the auditor, and shall provide an adequate statement of reasons (article 393-2 NCC).

#### 5.4 Scope of the auditor's report

The auditor examines whether the annual accounts provide the insight required by article 362-1 NCC. He will also verify whether the annual accounts meet the requirements set by law, whether the management board's report, to the extent that he is able to assess this, is prepared in accordance with Title 9, whether it is consistent with the annual accounts, and whether the data referred to in article 392-1 under (b) up to and including (h), has been included (article 393-3 NCC).

The auditor reports the outcome of his audit by means of an opinion whether the annual accounts present a true and fair view. The auditor may issue separate opinions for the company-only financial statements and for the consolidated financial statements. The auditor's report shall include in any event:

- a statement to which annual accounts the audit relates and which legal requirements apply to these annual accounts;
- a description of the extent of the audit and which auditing standards were observed when performing the audit;
- a statement whether the annual accounts provide the required insight and comply with the requirements pursuant to law;
- a reference to certain matters to which the auditor calls attention, without issuing a qualified opinion (refer to article 393-5 paragraph 6b NCC);
- a statement about deficiencies identified in connection with the audit of the financial statements, whether the management board's report has been prepared in accordance with Title 9, and whether the other information required pursuant to article 2:392-1, under (b) up to and including (h) NCC, has been included;
- a statement about the consistency of the management board's report with the financial statements (article 393-5 NCC).

The auditor must issue an opinion and report on the audit to the supervisory and management board's. The auditor must at least report the findings in respect of the reliability and continuity of electronic data processing (article 393-4 NCC).

The body authorised to adopt the financial statements cannot do so if the other information section does not include an auditor's report, unless that body has been informed of the fact that, and the reasons why (i.e. legal grounds only), the auditor's report has not been included (article 393-7 NCC).

# 6. Financial statements

## 6.1 General provisions

The full financial statements consist of the company-only financial statements comprising the balance sheet, the profit and loss account and the notes, together with the consolidated financial statements (if applicable).

### Insight to be provided<sup>13</sup>

In accordance with principles generally accepted in the Netherlands, the financial statements must provide an insight such that a reasonable judgement can be formed regarding the financial position and results of the company, and, to the extent that the nature of the financial statements permits, its solvency and liquidity (article 362-1 NCC).

In order to provide the insight referred to above, it may be necessary that the financial statements disclose information in addition to that required by Title 9. If it is necessary for the insight to be provided, a company must deviate from legal requirements. The reason for such deviation must be stated in the notes, and if necessary, with an indication of the effect on the equity and results of the company (article 362-4 NCC).

### General principles

The company's equity, assets and liabilities as well as income, expenses and result must be presented fairly, clearly and consistently (article 362-2 and 3 NCC). Income and expenses relating to a particular financial year must be included in the financial statements for that year, whether or not they have led to receipts or payments in that year (article 362-5 NCC).

### Financial year

The financial year of an entity is the calendar year, if the articles of association do not specify another financial year (article 10a NCC). A change in financial year requires a change in the articles of association and a formal decision by the general meeting.

<sup>13</sup> Insight: the capacity to discern the true nature of the company's financial affairs.

The balance sheet date of the consolidated financial statements shall be the same as the balance sheet date of the company-only financial statements (article 412-1 NCC). The consolidated financial statements may under no circumstances be prepared on the basis of data more than three months prior to or after the balance sheet date (article 412-2 NCC). Therefore, subsidiaries with financial years differing from the parent company's financial year, may be included in the consolidated financial statements of the parent, providing that the figures of those subsidiaries date from less than three months before or after the balance sheet date of the parent company.

#### **Events subsequent to the year-end**

The financial statements must be finalised and submitted to the general meeting for adoption, with due regard to any matters affecting the company's financial position as at the balance sheet date that have become known since the financial statements were prepared and before the general meeting at which they are to be presented. This implies that all matters concerning the company's financial position as at the balance sheet date must be included in the financial statements. Should it be discovered subsequently to the adoption of the financial statements by the general meeting that the financial statements seriously fail to provide the insight required, management must inform the members or shareholders without delay and file a notice of such event with the Trade Register at the Chamber of Commerce. The notice must be accompanied by an auditor's report in case the financial statements have been audited (article 362-6 NCC).

#### **Currency and language**

The items in the financial statements must be reported in euros. This rule may be departed from if reporting in a foreign currency is justified by the company's activities or by the international character of the group to which the company belongs. Reporting in a foreign currency may apply to the financial statements as a whole, or only to the consolidated financial statements (article 362-7 NCC). The financial statements must be prepared in the Dutch language, unless the general meeting has resolved to use a different language (article 362-7 NCC).

### **Breakdown of figures**

Setting-off assets against liabilities or income against expenditure in the financial statements is not permitted when these items are required to be shown as separate items by Title 9 (article 363-2 NCC).

Combination of items is permitted only if the items taken together are of negligible significance with respect to the insight to be provided in the financial statements (article 363-3 NCC).

### **Comparative figures and consistency**

For each item in the financial statements, the corresponding figure for the preceding financial year must be shown as far as possible. Where necessary and in the interest of comparability, that item must be adjusted and the change resulting from the adjustment must be disclosed (article 363-5 NCC).

The layout of the balance sheet and the profit and loss account may differ from that used for the preceding year if there are valid reasons to do so. Any differences, and the reasons for the differences, must be disclosed in the notes.

### **Decree on financial statements formats**

Article 363-6 NCC stipulates financial statements formats and further regulations, which shall be applicable to the companies defined therein. This Decree pertaining to financial statements formats is addressed in Chapter 7.

## **6.2 Group relationships**

### **Definitions**

#### **1. Participating interest**

- a. a company to which the participating company, or one or more of its subsidiaries, has provided capital for its own account, for the purpose of furthering its own business activities by establishing a long-term relationship (article 24c-1 NCC);
- b. an interest in a partnership in which the participating company, or one of its subsidiaries, accepts full liability as a (general) partner for the partnership's liabilities (article 24c-2a NCC); or

- c. an interest in a partnership in which the participating company, or one of its subsidiaries, is a partner for the purpose of furthering its own business activities by establishing a long-term relationship (article 24c-2b NCC).

When an interest has the characteristics described above, the legal entity or partnership concerned is considered to be a participating interest, regardless of the percentage of ownership.

Legal presumption of a participating interest (significant influence):

Where an interest (as defined above) of at least 20 per cent of the issued capital is held in an entity, it will be presumed to be a participating interest of the participating company (article 24c-1 NCC). Furthermore, significant influence over an investee is presumed if 20 per cent or more of the voting rights are held by the investor (article 389-1 NCC). These legal presumptions may be rebutted based on the individual facts and circumstances. This means that a capital interest of more than 20 per cent held in an investee does not necessarily qualify as participating interest, providing that the aforementioned presumption can be rebutted.

Likewise, a capital interest of less than 20 per cent may qualify as participating interest, depending on the facts and circumstances.

## **2. Group company**

A legal entity or partnership which is part of a group. The law defines a group as a number of legal entities and companies which in practice form one entity for organisational and economic purposes (article 24b NCC). Furthermore, central governance plays a crucial role in the determination of a group company.

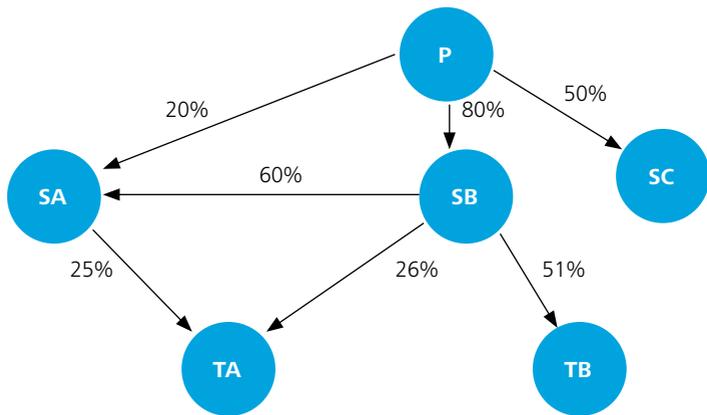
## **3. Subsidiary company**

- a. a legal entity in which the company (by itself or together with one or more subsidiary companies) is authorised to exercise more than half of the voting rights at the general meeting; this majority may be the consequence of an agreement with others entitled to vote, or not (article 24a-1a NCC);
- b. a legal entity in which the company, under the same conditions as described above, is authorised to appoint or dismiss more than half of the members of the management or supervisory board (article 24a-1b NCC);

- c. a partnership in which the investing company is a fully liable partner (article 24a-2 NCC).

### Indirect ownership

A group with several tiers of companies is illustrated by the following diagram. The figures indicate the percentage of equity owned by the immediate parent. It is assumed that the voting rights are in accordance with the percentage of share capital held.



The following companies are subsidiaries of company P:

- SB through P's share ownership;
- SA because SA is a subsidiary of SB;
- TB because TB is a subsidiary of SB;
- TA because SB, itself a subsidiary of P, holds 26% directly and 25% through its subsidiary SA, which together is 51%.

SC is not a subsidiary company of P, because P (by itself or together with one or more subsidiary companies) cannot exercise more than 50% of the voting rights of SC.

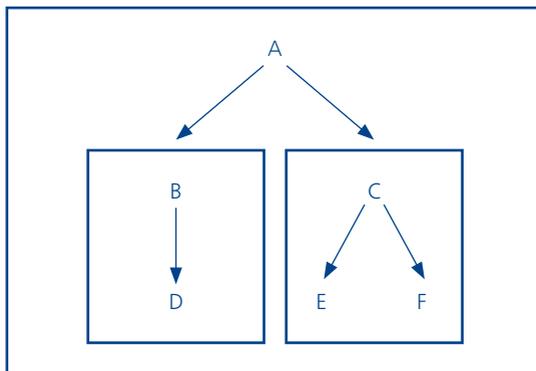
### Consolidated financial statements

The financial data of subsidiary and other companies as described below, as well as those of the parent company, must be included in the consolidated financial statements of the group.

The consolidation requirement is contained in article 406 NCC. A distinction is made between the consolidation requirement for the group head (article 406-1 NCC) and consolidation requirement for the intermediate holding company (article 406-2 NCC). Article 407 NCC and article 408 NCC provide certain consolidation exemptions, which are discussed on the following pages.

Example:

Company A is the (ultimate) head of the entire group, consisting of companies A, B, C, D, E and F. Intermediate holding companies B and C are each head of their respective sub-groups B+D and C+E+F.



Therefore three consolidated financial statements are applicable:

- for the entire group =  $A + (B+D) + (C+E+F)$ ;
- for the sub-group  $(B+D)$ ; and
- for the sub-group  $(C+E+F)$ .

### ***Consolidation requirement for group head (406-1)***

A company that heads a group - alone or jointly with another group company - prepares consolidated financial statements that include the financial data of:

- the group head;
- the subsidiaries in the group;
- other group companies; and
- other companies over which it has the power to control or over which it performs the central management (article 406-1 NCC).

### ***Consolidation requirement for intermediate holding company (article 406-2 NCC)***

The consolidation requirement for intermediate holding companies is contained in article 406-2 NCC. Based on this article, the company to which paragraph 1 (consolidation requirement for group head) does not apply but that does have one or more subsidiaries or other companies in its group over which it has the power to control or performs the central management, must prepare consolidated financial statements. This provision implies that an intermediate holding company with at least one subsidiary in its part of the group is obliged to consolidate that part of that sub-group. This also applies if the intermediate holding company has no effective control over its part of the group. An intermediate holding company with at least one other company in its part of the group over which it has the power to control or perform central management is also obliged to consolidate. The law provides for an exemption from consolidation for such intermediate holding companies, if certain conditions are met (article 408 NCC, which is discussed later).

### ***Consolidation exemptions (article 407 NCC)***

Consolidation requirements do not apply to (article 407-1 NCC):

- group companies whose total significance is immaterial to the group as a whole;
- group companies whose financial data can only be obtained at disproportional cost or with great delay;
- group companies which are only held for disposal.

Furthermore, consolidation is not required for (article 407-2 NCC):

- small groups (applying the limits of small companies) under the following conditions:
- if none of the companies to be included into the consolidation is listed on a regulated market;
- if no notices of objections have been lodged against the fact that a consolidation will not be carried out, within six months after the commencement of the financial year, by at least ten per cent of the members or holders of at least ten per cent of the issued share capital.

The parent company may exclude its own data from consolidation if the company manages group companies under the terms of a joint operating agreement with a company whose financial data is not included in the consolidated financial statements of the company. This applies only if the company has no activities other than managing and financing group companies and participations and if these group companies and participations are valued using the net asset value method (article 407-3 NCC).

### ***Consolidation technique***

The financial data of a legal entity or partnership may be included in the consolidated financial statements in proportion to the interest held in it, if:

- a. one or more consolidated companies is or are entitled jointly to exercise rights or authority (as referred to by article 24a-1 NCC) in the subject legal entity or partnership pursuant to an agreement of cooperation with other shareholders, members or partners (referred to as 'joint control'); and
- b. the legal requirement of insight is met (article 409 NCC).

The legal requirement of insight for jointly controlled entities may also be satisfied by the application of article 389 NCC. Article 389 NCC states that participating interests over which significant influence is exercised are in principle (refer to the section below) accounted for using the net asset value method.

Group companies over which an investor has the power to control or over which it performs the central management are fully consolidated (article 406 NCC).

The different consolidation techniques and instances where these are applied are summarised as follows:

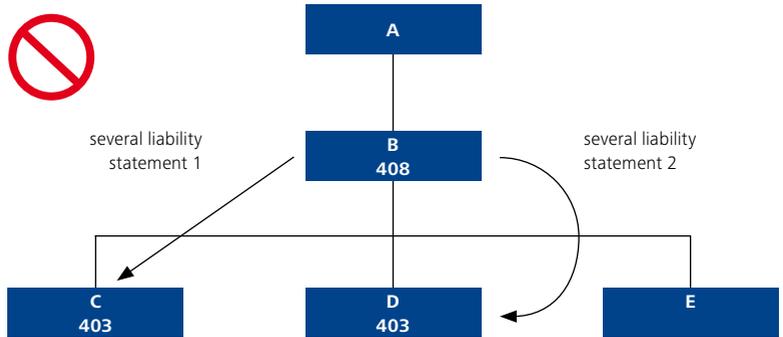
Classification	Substantive criterion	Accounting treatment
Joint venture	Joint control	Proportionate consolidation or net asset value method
Group company and the power to control	Control	Full consolidation

### Exemptions for group companies

1. If the financial data of the parent company has been included in the consolidated financial statements, the profit and loss account of the parent company needs to disclose only the income from participating interests after taxation, as a separate item. The adoption of this exemption must be disclosed in the notes to the consolidated financial statements (article 402 NCC).
2. A situation may arise in practice where the head of the group has issued a written statement of liability vis-à-vis one or more of its group companies. If the conditions of article 403 NCC are complied with, the group company for which a written statement of liability has been issued does not need to comply with the provisions of Title 9 of the NCC. This option is also referred to as the exemption for group companies. One of the conditions of article 403 NCC is that the financial data of the group company, for which the written statement of liability has been issued, has been included in the consolidated financial statements of the company that has issued the written statement of liability. Another major condition is that these consolidated financial statements either fall within the scope of the Seventh EC Directive on Company Law, or under the Regulation of the European Parliament and the Council regarding the application of international financial reporting standards for financial statements (IFRS Regulation). This means that in principle only entities for which the consolidating company which has issued a written statement of liability and which is situated within the European Union can apply this exemption.

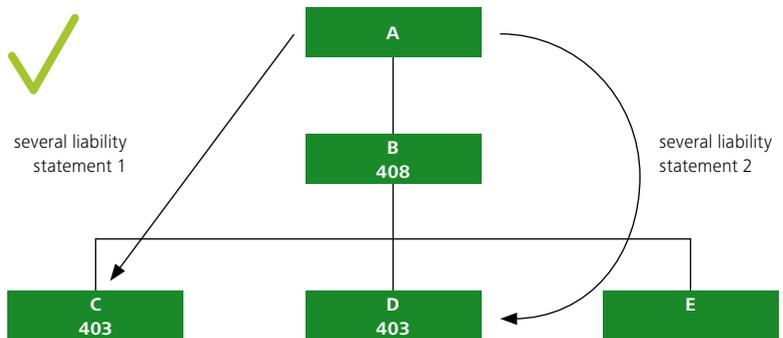
Therefore, this exemption is not available to entities reporting under United States GAAP. Applying article 403 NCC implies that the company or the company that has issued the written statement of liability cannot apply the two exemptions from consolidation referred to above: the exemption for a small group (article 407-2 NCC) and the exemption for intermediate holding companies (article 408 NCC, discussed in the next paragraph below). If one of these exemptions is nevertheless applied, the conditions of article 403 NCC are no longer complied with. Consequently, the company that has issued the written statement of liability must prepare consolidated financial statements including the data relating to the enterprises to which the written statement of liability has been granted. This is illustrated in the example on the next page:

**Wrong**



However, the following combination of article 403 NCC and 408 NCC is acceptable:

**Correct**



In this case, A consolidates the financial data of C and D, being the same entity issuing the several liability statement for C and D. In principle, B is now allowed to use the exemption in article 408 NCC, since C and D are included in the consolidated financial statements of A (article 403 NCC) as well as financial data to be consolidated by B (i.e. B+C+D+E, article 408 NCC).

A group company is exempt from the usual disclosure, publication and audit requirements relating to its financial statements if it meets all of the following conditions (article 403 NCC):

- a. the balance sheet in any event states the total amount of the fixed assets as well as the current assets and the amount of shareholders' equity, provisions and liabilities, and the profit and loss account in any event mentions the result from normal business operations and the balance of the other income and expenses, all after taxation;
- b. the members or shareholders have stated in writing, after the start of the financial year and prior to the adoption of the financial statements, to agree with a derogation from these requirements;
- c. the financial data of the legal person is consolidated by another legal person or partnership into its consolidated financial statements to which, pursuant to the applicable law, the Regulation of the European Parliament and the Council regarding the application of international financial reporting standards, the Seventh EC Directive on Company Law or one of the two EC Directives on (consolidated) financial statements of banks and other financial institutions or of insurance companies applies;
- d. the consolidated financial statements, as far as these are not prepared or translated into Dutch, are prepared or translated into French, German or English;
- e. the auditor's report and management board's report are prepared or translated into the same language as the consolidated financial statements;
- f. the legal entity or partnership referred to under (c) has stated in writing that it assumes joint and several liability for obligations arising from juridical acts of the legal entity; and
- g. the statements referred to under (b) and (f) have been filed with the Trade Register at the Chamber of Commerce where the legal person is registered as well as, annually within six months after the balance sheet date or within

one month after a lawfully made publication, the documents or translations listed under (d) and (e), or a reference to the Trade Office of the Chamber of Commerce where they are filed.

For credit institutions, specific conditions apply (see Chapter 10 'Specific industries').

As stated above under item (a), group companies meeting the above conditions need prepare only an abridged balance sheet and profit and loss account as set out below:

Abridged balance sheet	
Fixed assets	Shareholders' equity
Current assets	Provisions
	Liabilities

The abridged profit and loss account should show:

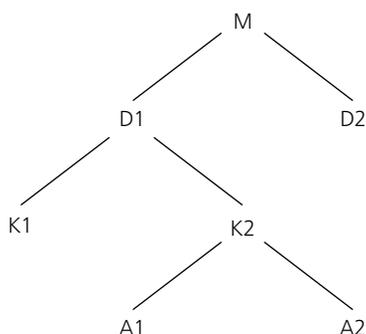
- net profit or loss from ordinary operations (after taxation);
- the balance of other income and charges (after taxation).

These abridged financial statements must be adopted by the general meeting. No audit and publication of such financial statements is required.

### **Consolidation exemption for intermediate holding companies (article 408 NCC)**

The exemption of article 408 NCC implies that an intermediate holding company is not required to prepare consolidated financial statements if the financial data that the intermediate holding company should consolidate, has been included in the consolidated financial statements of a larger group.

As illustrated below, group structures can be complex. This group has multiple sub-group heads which would mean multiple consolidations at different levels in the entire group. This illustrates the need for this exemption, which is often referred to as the intermediate holding company consolidation exemption.



The rationale underlying this exemption is that, technically, an understanding of the entire group makes it unnecessary to also provide a view of part of a group. Consequently, it would not be necessary for K2 to prepare consolidated financial statements if K2, A1 and A2 were included in the consolidated financial statements of D1. Similarly, D1 would not need to consolidate if D1+K1 + (K2+A1+A2) were included in the consolidated financial statements of M.

Conditional to applying this exemption is that the consolidated financial statements (which include the data of the intermediate holding company) and the management board's report are either prepared in accordance with the provisions of the seventh EC Directive or according to equivalent provisions. The IASB's standards (i.e. IFRSs) can be regarded as equivalent provisions, while in practice financial statements that have been prepared according to, for example, United States GAAP are also considered equivalent (note that this differs from article 403 NCC). When applying non-EU principles, it will have to be established whether the view provided by the financial statements is not materially different (in a qualitative sense) from financial statements based on the provisions of the Seventh EC Directive. We refer to the two illustrations in the preceding paragraph above explaining when the combination of article 408 NCC with article 403 NCC is not possible.

The financial data that the intermediate holding company should consolidate must be integrally included in the consolidated financial statements of the larger group. Should this data be consolidated proportionately, one of the statutory conditions is not complied with, as in that case it does not concern a group part as referred to in article 408 NCC.

This consolidation exemption can only be used if all conditions of article 408 NCC have been met. Therefore the full text of this article is included below for reference.

An intermediate holding company is not obliged to prepare consolidated financial statements including its subsidiaries and other group companies belonging to it, provided that all of the following conditions are met (article 408 NCC):

- a. no written objection has been made within six months after the beginning of the financial year, by at least ten per cent of the members or holders of at least ten per cent of the capital;
- b. the financial data to be consolidated by the intermediate holding company has been included in the consolidated financial statements of a larger group;
- c. the consolidated financial statements and the management board's report have been prepared in conformity with the requirements of the Seventh EC Directive on Company Law or the requirements of one of the Directives of the Council of the European Communities on (consolidated) financial statements of banks and other financial institutions or of insurance companies or according to a similar method if these requirements are not applicable;
- d. the consolidated financial statements including auditor's report and management board's report, as far as these are not prepared or translated into Dutch, are prepared or translated into French, German or English;
- e. the documents listed under (d) have been filed not later than six months after the balance sheet date or within one month after a lawfully made publication with the Trade Register at the Chamber of Commerce in the place where the intermediate holding company has its domicile or registered address (although reference may be made to another Trade Register in the Netherlands).

In the notes to the financial statements of the intermediate holding company disclosure should be made of:

- the fact that the exemption under article 408 NCC has been applied;
- the name and domicile of the company that has filed the consolidated financial statements that include the intermediate holding company's data;
- the location of the Trade Register in the Netherlands in which such consolidated statements have been filed.

#### **Information to be provided regarding legally-presumed participating interests and parent companies**

For each legally-presumed participating interest and for each partnership in which the company is a fully liable partner, the following information must be included in the statutory financial statements (article 379-1 and 2 NCC):

- a. name;
- b. principal place of business;
- c. proportion of issued capital held (not applicable to limited partnerships);
- d. shareholders' equity according to the latest adopted financial statements;
- e. profit or loss for the year according to the latest adopted financial statements.

Item d) and e) do not have to be disclosed if (article 379-2 NCC):

- the financial data of the participating interest concerned is included in the consolidated financial statements;
- the participating interest concerned is valued in accordance with article 389, paragraphs 1 to 7 NCC;
- the financial data of such a participating interest is not included in the consolidation because of their immateriality or on the basis of article 408 NCC; or
- the participating interest does not have to meet publication requirements for its balance sheet, while the parent's participation in its capital is less than fifty per cent.

Unless such a company is not required to disclose its interest in the reporting company, the name and principal place of business must be disclosed for (article 379-3 NCC):

- the ultimate holding (parent) company of the group to which the company belongs; and
- each company that consolidates the financial data of the company in its published consolidated financial statements.

For the latter category of company, the location where copies of their consolidated financial statements are available (at no more than cost) must also be disclosed.

The name and domicile of the following companies must be disclosed in the consolidated financial statements, encompassing the following (article 414-1 NCC):

- a. those fully or partially consolidated;
- b. those of which the financial data is partially consolidated in proportion to the percentage shareholding held;
- c. those participated in and accounted for in the consolidated financial statements in accordance with article 389 NCC;
- d. subsidiaries without a separate corporate identity that have not been disclosed pursuant to items a), b) or c);
- e. those to which one or more fully consolidated companies or their subsidiaries, together or alone, and on their own account, furnish or cause to be furnished at least twenty per cent of the issued share capital, and which have not been disclosed pursuant to the items a), b) or c).

Disclosure of the following is also required (article 414-2 NCC):

- a. the reason why the entity concerned is fully consolidated, unless this consists of the authority to exercise the majority of voting rights in it and to furnish capital commensurate with that majority;
- b. the reason why a company, of which the financial data pursuant to article 409 NCC is included in the consolidated financial statements, is eligible;
- c. if applicable, the reason for not consolidating a subsidiary in accordance with article 414 NCC item 1c), d) or e);
- d. the amount of the issued and paid-up capital;
- e. shareholders' equity and the results of every company mentioned under article 414 NCC item 1e) according to their latest adopted financial statements.

If disclosure of name, statutory domicile and shares held in the issued capital of a subsidiary to which item 1c) is applicable assists in providing legally required insight, it may not be omitted, even if the participation is not material. Item 2e) does not apply to companies in which the interest held is less than fifty per cent and for which the law does not require publication of balance sheets (article 414-3 NCC).

Upon request exemptions to the above requirements may be granted by the Minister of Economic Affairs.

The above-mentioned information need not be included in the notes if it has been filed with the Trade Register at the Chamber of Commerce and that fact has been stated in the notes, as well as in the list filed with the Trade Register at the Chamber of Commerce (article 379-5 NCC).

The reporting company must disclose for which group companies it has accepted liability in accordance with article 403 NCC (article 414-5 NCC).

The above-mentioned disclosures for consolidated financial statements are summarised as follows:

<b>Consolidated companies</b>		
Name	Registered office	Share in issued share capital
-	-	-
-	-	-
<b>Unconsolidated companies</b>		
Name	Registered office	Share in issued share capital
-	-	-
-	-	-

Combining the requirements in article 379 and 414 NCC, results in the following categories of companies:

A	Fully consolidated entities and partnerships
B	Proportionately consolidated entities and partnerships
C	Entities and partnerships which qualify as participating interests and are accounted for in accordance with article 389
D	Unincorporated subsidiary companies not included under A, B or C
E	Entities and partnerships (not included under A, B, C or D) in which one or more fully consolidated entities, or their subsidiary companies, individually or in combination, participate for at least 20 per cent
F	(Any) company at the head of the group of which the entity is a part
G	(Any) company that consolidates the financial data of the entity in publicly available consolidated financial statements

Recapitulation of disclosure requirements regarding the consolidated financial statements:

<b>Name and place of domicile</b>	A	B	C	D	E	F	G**
<b>Place where consolidated financial statements can be obtained</b>							G**
<b>Share in issued share capital</b>	A	B	C	D	E		
<b>Equity and result according to latest adopted financial statements</b>					E**		
<b>Reason for consolidating, unless this pertains to power to control the majority of voting rights and equivalent portion of capital</b>	A						
<b>Reason for proportionate consolidation (article 409)</b>		B					
<b>Reason for not consolidating a subsidiary company</b>			C*	D	E*		
<b>Disclosure of a liability statement issued for the respective company (article 403)</b>	A						

(\*) If a subsidiary company

(\*\*) Certain exemptions may apply.

Combining the requirements in article 379 and 414, results in the following categories of companies (company-only financial statements):

A	Companies in which one or more subsidiary companies participate for at least 20 per cent for their own account
B	Companies for which the entity has accepted liability towards creditors
C	(Any) company at the head of the group of which the entity is a part
D	(Any) company that consolidates the financial data of the entity in publically available consolidated financial statements

Recapitulation of disclosure requirements regarding the company-only financial statements:

Name and place of domicile	A	B	C*	D*
Place where consolidated financial statements can be obtained				D
Share in issued share capital	A	B		
Equity and result according to latest adopted financial statements	A*	B*		

(\*) Very limited exemptions may apply.

### Valuation of participating interests

The valuation of participating interests is a complex matter.

Significant influence:

Participating interests must be accounted for using the net asset value method, if an investor has significant influence on those interests' commercial and financial policy (article 389-1 NCC). Where the parent company, together with its subsidiaries, can exercise at least twenty per cent of the votes of the members or shareholders, there is a rebuttable presumption that significant influence exists (article 389-1 NCC). Deviation from the net asset value is allowed only if there are sound reasons and such justification is disclosed in the annual accounts (article 389-9 NCC). Such justifications may be the application of article 408 NCC or consolidated financial statements of a company which is internationally entangled. In these circumstances, the participating interests may be measured at cost price.

It is not allowed to measure participating interests with significant influence at current value (article 10-3c BAW).

No significant influence:

Valuation at cost or, although less common, at current value is mandatory in the absence of significant influence.

Valuation methods:

The valuation rules set out in articles 384 and 389 NCC are summarised as follows. Three valuation methods exist:

- a. valuation according to the net asset value method;
- b. valuation at cost;
- c. valuation at current value.

***a. Valuation according to the net asset value method (article 389 NCC)***

The book value of the investment at the beginning of each year is adjusted to take account of the following movements during the year:

- reported net income/loss;
- dividends;
- revaluations of assets and liabilities;
- currency translation;
- other movements.

This method implies that the share in net income of the participating interest is reported by the parent company as 'income from participating interests'.

The book value of the investment when it is initially acquired is determined on the basis of net asset value, or in specific cases 'another first book value':

- Net asset value:

Net asset value is the fair value of the individual assets and liabilities of the participating interest. This value is subsequently adjusted for the share in the result of the participating interest and dividends in accordance with the accounting principles of the investor.

- Another first book value:  
This value may be used only when the net asset value cannot be determined because insufficient information is available. Net asset value according to the participating interest's own balance sheet or the cost of the shares acquired can be used as 'another first book value' (article 389-3 NCC).

Reference is made to the legal reserves section in paragraph 6.5 below, specifically the legal reserve ex article 389-6 NCC.

#### *Reserves for undistributed income*

From the moment the participating interest is valued according to the net asset value method, a legal reserve must be formed by the investing company for its share in the positive results and in the direct equity movements reported by the participating interest, less (1) the distributions the investing company is entitled up to the date of adoption of the financial statements and (2) distributions which may be received without restrictions (article 389-6 NCC).

#### *Goodwill*

Any goodwill resulting from the use of the net asset value method can be accounted for as follows (article 389-7 NCC):

1. capitalised as goodwill under intangible fixed assets and subsequently amortised. The amortisation is to be charged to the profit and loss account;
2. charged directly to shareholders' equity (must be shown separately); or
3. charged directly to the profit and loss account (must be shown separately).

DAS 216.218 recommends to apply the first method (i.e. capitalise and amortise goodwill). The DASB furthermore believes that the third method will generally not lead to the legally required insight described in article 362-1 NCC. Capitalised expenses relating to goodwill must be amortised in accordance with their expected useful economic lives. If it is possible to allocate goodwill to a substantially longer period than five years, it may be amortised over that longer period. In that case the reasons for this extension and the amortisation period must be disclosed in the notes (article 386-3 NCC).

### ***b. Valuation at cost***

Under this method, the investment is carried at acquisition cost. This method is typically applied by intermediate holding companies that apply article 408 NCC and companies that prepare consolidated financial statements and are internationally entangled.

Changes in the underlying net asset value of the participating interest valued at cost are ignored unless an impairment of the value of the investment occurs. Revenue is recognised only to the extent dividends are received.

### ***c. Valuation at current value***

Valuation at current value implies that the investment account will not be affected by the results of the participating interest without significant influence. When a revaluation of the participating interest is made, the revaluation adjustment is recorded in a revaluation reserve. Revenue is recognised only to the extent dividends are received. Refer to the section on legal reserves in paragraph 6.5 below. It should be noted that it is not allowed to measure participating interests with significant influence at current value (article 10-3c BAW).

## **6.3 Valuation principles and determination of financial results**

### **General requirements**

The general requirements included in Title 9 indicate the principles to be used. Such requirements are (article 362-1 to 362-3 NCC):

- The principles applied in the financial statements must provide an insight such that a reasonable judgement can be formed regarding the company's financial position at year-end and its results for the year and, to the extent the nature of the financial statements permits, its solvency and liquidity;
- The balance sheet and the profit and loss account together with the notes thereto must present fairly, clearly and consistently the shareholders' equity at the balance sheet date and the results for the year then ended;
- The financial statements must conform with accounting principles generally acceptable in the Netherlands. This rule may be departed from because of the international character of a group. The parent company can then prepare the

financial statements in accordance with accounting principles accepted in one of the other member countries of the European Community, if this still provides the insight required in the Netherlands. The dispensation will be particularly important for EU-wide conglomerates. The use of this dispensation must be disclosed in the notes.

The most important requirement is to provide the necessary insight. This is the equivalent of the 'fair presentation' and 'true and fair view' requirement in English-speaking countries.

Additional general principles mentioned in Title 9 are the:

- accruals concept:  
income and expenses must be recorded in the period in which they are earned or incurred, regardless of the moment of receipt or payment;
- matching concept:  
income and related costs must be included in the same period;
- realisation concept:  
profits are not to be included until they are realised; all foreseeable liabilities and potential losses, on the other hand, are to be included;
- going concern concept:  
in the absence of evidence to the contrary, the company must be treated as a going concern;
- concept of prudence:  
all accounting principles should be applied with prudence.

### **Valuation principles**

Valuation can be based on:

- a. cost or market value, whichever is lower;
- b. current value.

The current value to be used in specific situations for tangible fixed assets and inventories is set out in the Decree on Current Value (BAW).

Current value can be the:

- replacement value:  
the amount needed to replace the asset used in the activities of the business by an item of the same economic significance as the present asset (article 2 BAW);
- value in use:  
the present value of the estimated future cash flows through continuing use of an asset or group of assets (article 3 BAW).  
This valuation method must be used where it is anticipated that business activities are to be terminated in the long term and that therefore replacement of the asset will not take place;
- market value:  
the amount for which an asset can be exchanged or a liability settled between knowledgeable parties in an orderly transaction and which parties are independent of each other (article 4 BAW);
- net realisable value:  
the amount for which the asset itself can be sold, net of any expenses (article 5 BAW).

The notes must disclose the way in which the current value(s) of assets used in the activities of the company have been determined (article 9 BAW).

For credit institutions, insurance companies and investment companies, separate provisions apply.

Where certain assets are valued at current value, a revaluation reserve must be set up (article 390-1 NCC). Reference is further made to the section on legal reserves in paragraph 6.5 below.

### **Changes in accounting principles**

Accounting principles, once adopted, must be applied consistently (articles 362-2 and 362-3 NCC). Accounting policies may only be changed when there are sound reasons for a change. These reasons must be set out in the notes. Furthermore, insight must be provided into the effect of the change on the financial position and the financial results; this must be done with retrospective effect. Retrospective adjustment equates to the recalculation of closing equity of the preceding financial year with adjustment of comparative figures (article 363-4 and 363-5 NCC).

### **Disclosure of principles in the financial statements**

The principles underlying the valuation of assets and liabilities and the determination of the financial results must be disclosed for each item. The principles used in translating foreign currencies and the treatment of exchange differences, must also be disclosed (article 384-5 NCC).

## **6.4 Financial statements, overview**

Title 9 contains requirements for:

- the balance sheet (see 6.5);
- the profit and loss account (see 6.6);
- the notes (see 6.7).

Various formats for the balance sheet and the profit and loss account are prescribed by the Decree on financial statements formats (BMJ). The BMJ is discussed in Chapter 7 and the BMJ formats are included in this publication as Appendix 2.

The other disclosure requirements are related to the size of the company. Furthermore, certain specific information not directly related to the balance sheet or the profit and loss account must be disclosed in the notes (see paragraph 6.7).

## 6.5 Regulations concerning the balance sheet

### Assets (articles 365-372 NCC)

Assets must be divided in the balance sheet into:

- a fixed assets;
- b current assets.

#### *a. Fixed assets*

Fixed assets are assets intended to be used for the purpose of the company's activities on a continuing basis. The assets comprise (article 364-2 NCC):

- intangible fixed assets;
- tangible fixed assets;
- financial fixed assets.

For large and medium-sized companies, each of these groups of fixed assets must be subdivided. Medium-sized companies do not have to publish this subdivision fully in the financial statements filed with the Trade Register at the Chamber of Commerce (article 397-5 NCC).

For each of the items shown separately a statement must be provided showing (article 368-1 NCC):

- the book value at the beginning of the financial year;
- the total amount of assets acquired during the financial year and the total amount of disposals made, at book value, during the financial year;
- revaluations made during the financial year;
- depreciation or amortisation;
- adjustments reflecting decreases in value, and corrections thereon;
- the book value at the end of the financial year.

For each fixed asset item shown separately, the following must also be stated (article 368-2 NCC):

- the cumulative total of revaluations of assets held at the reporting date;
- the cumulative total of depreciation or amortisation and amounts impaired at the balance sheet date.

The above information is not required for small companies (article 396-3 NCC).

### *Intangible fixed assets (article 365 NCC)*

Some important items listed in article 365-1 NCC are:

- incorporation and share issue expenses;
- research and development costs;
- goodwill.

When the first two items are capitalised, a legal reserve has to be set up (see the section on legal reserves below) for the amount capitalised (article 365-2 NCC).

Goodwill must be amortised in accordance with its expected useful economic life. If it is possible to allocate goodwill to a substantially longer period than five years, it is amortised over that longer period. In that case the period of amortisation and the reasons for its length should be disclosed in the notes (article 386-3 NCC).

Goodwill may also be charged directly to reserves or to the profit and loss account.

### *Tangible fixed assets (article 366 NCC)*

This category includes:

- land and buildings;
- plant and machinery;
- other operating fixed assets;
- tangible fixed assets under construction and prepayments on tangible fixed assets;
- tangible fixed assets not used in business operations.

If a large or medium-sized company has only a limited right of permanent use of tangible fixed assets, this must be disclosed (article 366-2 NCC).

*Financial fixed assets (article 367 NCC)*

This category includes:

- participations in group companies;
- receivables from group companies;
- other participating interests;
- receivables from shareholders and participating interests;
- other securities;
- other receivables.

The most important items in this category are typically shares in and loans to group companies. The valuation and disclosure requirements with respect to participations in group companies in the unconsolidated financial statements were discussed earlier in paragraph 6.2 above.

The category in which a receivable is placed under article 367 NCC is determined according to the purpose for which the credit concerned was granted. If the purpose was, for instance, to finance (on a long-term basis) the production process, the receivable is classified as a financial fixed asset. If, on the other hand, the receivable results from regular business transactions (on a short-term basis), in principle it will be classified as a current asset.

Large and medium-sized companies must disclose receivables from and advances to holders of registered shares, but medium-sized companies do not have to publish this information in their Trade Register filing (article 397-5 NCC).

***b. Current assets (articles 369-372 NCC)***

Current assets (unlike fixed assets) are not intended to be used for the purpose of the company's business activities on a continuing (long-term) basis. Current assets consist of:

- inventories;
- receivables;
- securities;
- cash.

### *Inventories (article 369 NCC)*

Inventories are sub-divided into:

- raw materials and consumables;
- work in progress;
- finished goods and goods for resale;
- prepayments on inventories.

This sub-division does not have to be disclosed by small companies.

Inventories may be valued at historical cost or at current value (article 384-1 NCC). Historical cost is the cost of purchase or the cost of conversion.

Work in progress on construction contracts for third parties must be presented in the balance sheet as the balance of the project costs incurred and profit allocated per project, net of any recognised losses and invoiced instalments. Work in progress on construction contracts that shows a debit balance must be presented as an asset; a credit balance is presented separately under current liabilities. It is also considered acceptable to present the aggregate of all work in progress as an asset (if the aggregate shows a debit position) or a liability (if the aggregate shows a credit position).

A debit position is presented separately in the balance sheet under current assets between inventories and receivables.

### *Receivables (article 370 NCC)*

Receivables consist of, amongst other items, amounts due from trade debtors, group companies, participants, other participating interests and other associated companies belonging to the company.

The above-mentioned items are included here only to the extent that they are not included in financial fixed assets (see section above). Amounts receivable from members of cooperative associations or holders of registered shares, by reason of loans and advances made to them, must be disclosed separately by large and medium-sized companies.

For each group of receivables presented as current assets mentioned in article 370, paragraph 1 NCC, the amounts becoming due and payable after more than one year must be disclosed separately (article 370-2 NCC).

#### *Securities (article 371 NCC)*

Securities, as part of current assets, consist of:

- shares, trust certificates and other forms of participation in group companies if such investments are considered to be temporary only;
- other investments, with separate disclosure of the aggregate value of securities listed on a Dutch or foreign stock exchange.

If securities are not at the free disposal of the company, that fact has to be disclosed by large and medium-sized companies (article 371-2 NCC). Medium-sized companies do not have to publish this information.

#### *Cash (article 372 NCC)*

Cash includes cash in hand, balances at bank, bills of exchange, and unbanked cheques. If balances are not at the company's free disposal, this must be disclosed by large and medium-sized companies. Medium-sized companies do not have to publish this information (article 372-5 NCC).

### **Shareholders' equity, provisions and liabilities (articles 373-376 NCC)**

The main headings are:

- a. shareholders' equity (share capital, reserves etc.);
- b. provisions;
- c. liabilities.

#### ***a. Shareholders' equity (article 373 NCC)***

Under this heading the following must be shown separately:

- issued capital, as well as capital paid up and called up if different from the issued amount;
- share premium (paid-in surplus);
- revaluation reserves;

- other legal reserves (sub-divided according to their nature);
- statutory reserves (that is, reserves required by the company's own articles of incorporation-charter and bylaws);
- other reserves;
- unappropriated profits.

The legal reserves are explained below.

If the balance sheet does not include the allocation of the result for the year, the net result for the year must be disclosed separately in the balance sheet (article 373-1 NCC).

For each of the items comprising shareholders' equity that have to be disclosed separately in the balance sheet or in the notes thereto, a breakdown must be given showing (article 378-1 NCC):

- amount at the beginning of the year;
- additions and deductions made during the year, sub-divided according to their nature;
- amount at the end of the year.

There are a number of specific disclosure requirements for the following items in shareholders' equity, for example:

- shares not fully paid up (article 373-2 NCC);
- own shares held (article 378-2 NCC).

### ***Legal reserves (article 373-4 NCC)***

The Netherlands Civil Code requires the formation of a number of legal reserves. Legal reserves are reserves that cannot be distributed to the shareholders and are intended to protect the company's equity, and by doing so, to protect third party (e.g. creditors) interests.

Legal reserves are listed in article 373-4 NCC by means of references to the corresponding articles where they are introduced. The legal reserves are summarised below with numeric references to their respective sources in Title 9 NCC.

*Article 67a-2 NCC and 67a-3 NCC (N.V.'s): reserves for euro-conversion differences*

This legal reserve (applicable to N.V.'s) relates to the rounding differences from converting share capital from the Dutch Guilder to the Euro in 2002. Typically, such rounding differences were immaterial.

*Article 94a-6f NCC: unaudited contribution in kind regarding an N.V.*

This legal reserve relates to the foundation of an N.V. by means of a contribution of capital in kind (i.e. non-cash). If the contributing founders decide not to prepare a contribution statement which means that no auditor is involved in the process, then this triggers the legal reserve at the level of the contributing founders. The contributing company forms a legal reserve for the nominal amount of its shares acquired (which were contributed in kind). Since auditors are mostly involved in such contributions in kind, this legal reserve is very rare in practice.

*Article 98c-4 NCC: financial support by an N.V.*

Under certain circumstances, described in article 98c-2 NCC, it is permissible for an N.V. to provide a loan (financial support) to another party to acquire shares in that N.V. A legal reserve must be formed by the N.V. for the amount of such loans provided by the N.V.

*Article 365-2 NCC: reserve intangible assets*

A legal reserve is to be formed for share issue expenses and costs of research and development to the extent they are capitalised.

*Article 389-6 NCC: reserve participating interests*

This legal reserve is triggered by the use of the net asset value method as described in articles 389-2 and 389-3 NCC with respect to an investor's participating interest. The investor may not have power (control) to instruct payments of dividend from post-acquisition (undistributed) profits. This implies that a parent company (investor) may only distribute profits earned by its participating interests to the extent that either the parent can instruct payment of a dividend or, in the absence of such a power, the participating interests have distributed their profits to the parent (article 389-6 NCC). Consequently, a legal reserve is formed for the undistributed profits from participating interests and

direct capital increases (since the initial recognition) measured in accordance with the net asset value method. Subsequent to initial recognition, this reserve is reduced by:

- distributions to which the company has become entitled (up to the date of adoption of the company's financial statements);
- direct equity reductions at the level of the participating interest;
- distributions which the company can arrange without restrictions.

*Article 389-8 NCC: currency translation reserve*

Participating interests and foreign operations with a different currency than the reporting entity are translated into the presentation currency of the reporting entity. The resulting foreign currency translation differences on the net investment in such (foreign) participating interests or foreign operations are included in a legal reserve.

*Article 390-1 NCC: revaluation reserve*

This legal reserve is triggered by the use of current values for certain assets (e.g. tangible fixed assets, intangible fixed assets, inventories and certain financial instruments). Current value increases of such assets are included in this legal reserve.

*Article 390-1 NCC: fair value (hedging) reserve*

This legal reserve pertains to fair value increases in connection with financial instruments which are accounted under the cash flow hedge accounting model (as hedging instruments).

*Article 401-2 and 423-4 NCC: currency translation reserves investment companies*

These legal reserves relate to investment companies which measure other investments at market value (article 401-2 NCC) and the translation by banks of fixed assets in foreign currencies or certain currency forward exchange contracts (article 423-4 NCC).

***b. Provisions (article 374 NCC)***

The balance sheet shall include provisions for liabilities which are clearly described in their nature. Provisions are formed for liabilities which are deemed probable or certain at the balance sheet date, but which are still unknown as to the amount or timing of outflow of funds. Provisions may be included also for expenses to be incurred in subsequent financial years, provided such expenses originate from an event before the end of the financial year and the provision seeks to ensure even profit and loss charges over a number of years (article 374-1 NCC).

A reduction in the value of an asset should not be accounted for by creating a provision (article 374-2 NCC).

Large and medium-sized companies must give a breakdown of provisions according to their nature. These companies must disclose separately (article 374-4 NCC):

- provisions for deferred tax liabilities;
- provisions for pension liabilities.

Wherever possible, the notes of large and medium-sized companies must disclose to what extent provisions are to be regarded as long-term.

***c. Liabilities (articles 375 and 376 NCC)***

For each of the items shown separately in the prescribed formats the amount and the nature of any collateral must be indicated. Moreover, if the company has committed itself (conditionally or unconditionally) to encumber or not to encumber its assets in future to provide collateral for other liabilities, those liabilities must be identified if this is necessary for the insight to be provided (article 375-3 NCC).

Each of the items included under liabilities, shown separately in the balance sheet or in the notes, must be subdivided into:

- amounts due and payable within one year;
- amounts due and payable after more than one year.

Of the latter, amounts due and payable after more than five years must be disclosed separately (article 375-2 NCC).

In the case of loans due and payable after more than one year, the rate of interest and the amount of instalments due and payable within one year from the balance sheet date must be disclosed by large and medium-sized companies. Medium-sized companies do not have to publish this information (article 397-5 NCC).

Additional quantitative or qualitative disclosures requirements are required for subordinated loans (article 375-4 NCC), discounted loans (article 375-5 NCC) and convertible loans (article 375-7 NCC).

If the company has accepted liability for the debts of others, the obligations arising from such commitments must be disclosed, insofar as no provision has been made for them in the balance sheet. These obligations must be grouped according to the form of security furnished. Commitments entered into for the benefit of group companies and other companies must be disclosed separately. Disclosure is required of the amount of bills of exchange in respect of which the company is still at risk after they have been discounted (article 376 NCC).

## **6.6 Regulations concerning profit and loss account**

The profit and loss account may be prepared using the 'by nature' or 'by function' format (see Appendix 2). We refer to Chapter 7 'Decree on financial statements formats'.

Disclosure requirements differ according to the size of the company, and reference is made to article 377 NCC for the items that have to be stated separately in the profit and loss account.

## **6.7 Special regulations concerning the notes to the accounts**

### **General**

In addition to the information that has to be disclosed in the balance sheet, profit and loss account or notes thereto, a number of specific requirements are applicable to the notes.

Some of these requirements have already been discussed in the preceding paragraphs. The most important remaining items are:

- breakdown of net revenues (article 380 NCC);
- contingent liabilities (article 381 NCC);
- financial instruments (article 381a NCC);
- the average number of employees of the company and its subsidiaries, subdivided by category as appropriate (article 382 NCC);
- audit fee (article 382a NCC);
- remuneration of, loans to and guarantees given for present and former supervisory board members and present and former management board members of the company (article 383 NCC).

#### **Breakdown of net revenues (article 380 NCC)**

If the company operates in various industry sectors, insight must be provided, in figures, into the extent to which each type of activity has contributed to net turnover (article 380-1 NCC). Net turnover must similarly be broken down by the geographical areas in which the company operates (article 380-2 NCC). Only large companies must provide the information on types of activities and geographical areas (articles 397-4 and 396-5 NCC).

#### **Contingent liabilities and related party transactions (article 381 NCC)**

Any major financial commitments entered into by the company for a number of years to come and not shown in the balance sheet, such as those arising out of long-term contracts, must be disclosed, with separate disclosure of commitments to group companies (article 381-1 NCC). Furthermore, the nature and business purpose and financial consequences of such off balance sheet arrangements are disclosed if (article 381-2 NCC):

- the risks and benefits of such arrangements are of significance; and
- insofar disclosure of such risks and benefits are necessary for the assessment of the financial position of the company.

In accordance with article 381-3 NCC, a company shall disclose related party transactions of significance which have not been entered into under normal market conditions (i.e. related party transactions which are not at arm's length).

A related party is defined in International Accounting Standard 24. Small companies are exempt from articles 381-2 and 381-3 NCC (article 396-5 NCC). Limited exemptions to the disclosure requirements of article 381 may apply to medium-sized companies (article 397-6 NCC).

### **Financial instruments (article 381a NCC)**

If financial instruments are measured at current value, the company shall disclose:

- the assumptions used to determine current value (if valuation models and techniques are used);
- the current value, the current value changes recorded in the profit and loss account and in the revaluation reserve and the current value changes deducted from the other reserves for each category of financial instruments;
- information about the nature and extent and certain conditions for each category of financial instruments.

If financial instruments are not measured at current value, certain disclosures are required, such as the current value determined in accordance with article 384-4 NCC and information about the nature and extent for each category of financial instrument (article 381b-a NCC).

### **Average number of employees (article 382 NCC)**

The average number of employees employed by the company during the financial year must be disclosed, divided in a manner appropriate to the organisation of the company. The company must disclose the number of employees employed outside the Netherlands.

### **Audit fee disclosure (article 382a NCC)**

In the financial statements of large companies information about the audit fee must be disclosed. According to the EC Directive, the objective of this disclosure is: 'to render the relationship between the statutory auditor or audit firm and the audited company more transparent'.

The fees must be broken down into the following categories: audit of the financial statements, other audit engagements, tax advisory services and other non-audit services.

Under certain conditions disclosure of professional fees may be omitted in financial statements of companies that are consolidated. This exemption applies for companies whose financial data is included in consolidated financial statements, which under applicable law are subject to the Regulation of the European Parliament and the Council regarding application of international financial reporting standards (IFRS Regulation) or the Seventh EC Directive on Company Law. In order to apply the exemption in article 382a-3 NCC, the consolidated financial statements referred to in the previous sentence, must disclose the audit fees. This means, for instance, that subsidiaries of non-EU enterprises cannot use this exemption.

Small companies are exempt from disclosing audit fees (article 396-5 NCC) as are medium-sized companies; the latter subject to the condition that information about the audit fees must be provided to the Netherlands Authority for the Financial Markets (AFM) upon its request (article 397-4 NCC). An illustrative disclosure format is provided below:

	Dutch audit firm 2:382a NCC	Other network firms	Total network firm
Audit of the financial statements	...	...	...
Other audit engagements	...	...	...
Tax advisory services	...	...	...
Other non-audit services	...	...	...
Total	...	...	...

### Remuneration of board members (article 383 NCC)

The aggregate amount for the remuneration of (former) members of the management board as well as the (former) members of the supervisory board must be disclosed, including amounts charged to subsidiary companies or group

companies included in the consolidated accounts (article 383 NCC). This disclosure of article 383 NCC cannot be omitted due to immateriality (neither quantitatively nor qualitatively). Reference is made to article 363-3 NCC last sentence. Small companies are, however, exempt from article 383-1 NCC (article 396-5 NCC).

Small companies and companies applying article 403 NCC are exempt from disclosing this information. Large and medium-sized companies do not have to disclose this information where such information would make it possible to identify the remuneration of a single natural person. Based on Dutch legislative history, it can be concluded that 'identifiability to a single natural person' is only possible in a limited number of cases. The following illustrative examples deal with this issue.

***Example 1:***

A legal entity voluntarily discloses the relationship between the remuneration of directors. For example that the two directors have the same remuneration. Can the director remuneration be omitted due to identifiability to a single natural person?

No. Identifiability cannot be artificially 'created' by voluntary disclosure in the annual accounts (i.e. that both directors received the same remuneration). In our opinion, the aforementioned practice is not compatible with the overall objective and spirit of the law in this area.

***Example 2:***

An entity employs two natural persons as statutory director. The management board contends that it is 'common knowledge' (i.e. generally known) that one of the directors receives no remuneration. They infer that the remuneration of the other director (natural person) can be identified to a single natural person. Can the director remuneration be omitted?

Based on Dutch legislative history, it can be concluded that 'generally known' information needs to be part of the common body of public knowledge. This means that common knowledge of the remuneration of directors within

only the company itself, is insufficient. In our opinion, the answer to the aforementioned question depends on the reason behind the 'general knowledge'. If this general knowledge was artificially created by voluntary disclosure, the answer is no. In other cases, the answer may be yes.

***Example 3:***

A large company has one director-entity and one director-natural person. The director-entity does not receive any remuneration. The director-entity does not charge any management fee to the company either. The annual accounts disclose that the director-entity receives no management fees in accordance with article 381-3 NCC (related party transaction of significance which did not take place at arm's length). Disclosure was made since the director-entity's compensation/management fee is nil, which is not considered to be 'at arm's length'. Can the director remuneration be omitted?

Yes, in this situation article 381-3 NCC requires disclosure of the related party transaction (i.e. the not at arm's length transaction with the director-entity). Disclosure of the total director remuneration would cause the remuneration to be identifiable to a single natural person (i.e. the director-natural person). Consequently, it is acceptable to omit the disclosure of the total director remuneration.

***Example 4:***

A large company has one director-entity and one director-natural person. The director-entity receives remuneration. Furthermore, the director-entity provided other services (administrative and ICT-related) to the company. These other services were charged to the company by the director-entity. The director-natural person is also remunerated. The company voluntarily follows the recommendation in DAS 330.201 (disclosure of related party transactions which are at arm's length). Consequently, the company discloses the director-entity's remuneration and compensation for other services, which it deems to be a related party transaction of significance. Can the director remuneration be omitted?

No. In our view, this is a voluntary disclosure in the annual accounts.

**Example 5:**

Mr. A owns 100% of the shares in company Z by means of his personal holding company (PH). The PH is the sole director of company Z. The PH charges a management fee to company Z. Mr. A is the sole statutory director of his PH and he receives a remuneration (from the PH). The PH has no other activities. The PH does not disclose the director remuneration in accordance with article 383-1 NCC (identifiability to a single natural person). Can the director remuneration be omitted by company Z?

No. The management fee is a remuneration of a director-entity and not a natural person. The management fee cannot be identified to a single natural person.

**Example 6:**

As example 5, except for the following. Z has a management agreement with Mr. A instead of the PH. Mr. A is the sole director of Z. Mr. Z's remuneration is paid to its PH. Can the director remuneration be omitted by company Z?

Yes. The amount paid by Z to the PH is the remuneration of a natural person. The fact that Mr. Z requests his remuneration to be paid to his PH, does not infringe on the fact that the remuneration can therefore be identified to a single natural person (Mr. A).

**Example 7:**

Company A owns 100% of the shares in company B. Both A and B are large companies. Mr. P is the director of both company A and B. Mr. P receives his remuneration for managing both A and B from company A. Mr. P therefore does not receive his remuneration (for directing B) directly from company B. Company A recharges Mr. P's remuneration (with respect to B) to company B. In accordance with Dutch law, company A does not disclose the remuneration of Mr. P (identifiability to a single natural person). Can the director remuneration be omitted by company B?

Yes. Consistent with example 6, Mr. P decided that his remuneration (for directing B) is paid to company A. The amount charged pertains to the remuneration of a single natural person. Only the payment is made to a company, upon request by Mr. P.

### **Remuneration of directors and supervisory directors of Open N.V.'s**

An Open N.V. (refer to the glossary of terms) shall disclose the remuneration of each individual director and of each individual supervisory director, divided into the following categories (article 383c NCC):

- periodically paid remuneration;
- remuneration payable in the future;
- termination benefits;
- profit-sharing and bonus payments.

This disclosure is required to the extent that these amounts were charged to the Open N.V. including its subsidiaries and group companies (article 383c-1 NCC) and apply equally to former directors and former supervisory directors as well (article 383c-2 NCC). Whether or not the amounts charged to the profit and loss account have already been paid or not is irrelevant.

### **Loans, advance payments and guarantees to directors**

With the exception of the last sentence, article 383-1 NCC also applies to the amount of loans, advance payments and guarantees granted to directors and supervisory directors of the entity, issued by the entity, its subsidiaries and companies of which it consolidates data. The outstanding amount, the interest rate, the most important other conditions and the repayments made during the financial year shall be disclosed (article 383-2 NCC). It should be noted that, in contrast to the director remuneration (article 383-1 NCC), there is no exemption to this disclosure if these amounts can be identified to a single natural person.

For Open N.V.'s, this disclosure shall be made for each individual director and for each individual supervisory director (article 383e NCC).

A literal interpretation of article 383-2 NCC would imply that a loan granted and repaid in the same financial year still needs to be disclosed.

# 7. Decree on financial statements formats

## 7.1 The Decree

Article 363-6 NCC lays down financial statements formats and further regulations, by general administrative order, which are applicable to the legal entities defined therein. This Decree on financial statements formats is called ‘Besluit Modellen Jaarrekening’ (BMJ). In the implementation of those models and regulations, the layout, nomenclature and definitions of the items included therein must be adapted to the nature of the company’s business to the extent permitted by the BMJ.

In principle, the BMJ has the status of law and full compliance is mandatory. The layout of the balance sheet and the profit and loss account may deviate from that of the preceding year only where there are valid reasons for doing so; in the notes the differences must be indicated and the reasons that have led to the change must be disclosed (article 363-4 NCC).

## 7.2 Scope

The BMJ is applicable to the N.V. and B.V. (article 1 BMJ) and partially applicable to banks (article 16 BMJ), insurance companies (article 16a BMJ) and investment companies (article 16b BMJ). The BMJ is not applicable to companies which apply IFRS as endorsed by the EU (article 362-9 NCC) in their consolidated financial statements. However, for companies applying ‘combination 3’ (refer to Chapter 2, paragraph 2.5 above), the BMJ is applicable to the company-only financial statements.

## 7.3 Balance sheet models

There are two balance sheet models: model A (a vertical format) and model B (a horizontal format). For the N.V. and B.V., large and medium-sized companies must use balance sheet model A or model B (article 1 BMJ). Reference is made to Appendix 2 of this publication.

## 7.4 Profit and loss account models

There are different profit and loss account models: by nature (model E and model G) and by function (model F and model H). These are available in a vertical (model E and model F) and horizontal format (model G and model H). Reference is made to Appendix 2 of this publication.

## 7.5 Other requirements

A selection of other BMJ requirements is summarised as follows:

- line items without figures may be omitted, unless a figure needs to be shown for the preceding year (article 4.3 BMJ);
- the descriptions 'fixed assets', 'current assets', 'short-term liabilities', 'long-term liabilities', 'provisions' and 'shareholders' equity' may not be altered. The other descriptions may only be altered if in the specific circumstances they are at least equally clear to the users of the financial statements (article 5.1 and 5.2 BMJ);
- sub-totals may be included and named (article 5.3 BMJ);
- in principle, the sequence and order of the line items may not be altered. Only the line item 'share in results of participations' may precede all line items of financial gains and losses (article 6.1 BMJ);
- line items may be added to the models and required line items may be bifurcated (article 7.1 BMJ);
- line items may be included insofar their content is not covered by another line item in the model not described as 'other' (article 7.2 BMJ);
- every uninterrupted sequence of Arabic numbers (1, 2, 3 etc.) in a model may be partially or fully included in the notes to the financial statements (article 8.1 BMJ);
- every uninterrupted sequence of line items in small capitals (a, b, c etc.) in the profit and loss account models may be included partially or fully in the notes to the financial statements (article 8.2 BMJ);
- whether or not the allocation of the result for the year has been included, must be stated at the top of the balance sheet (article 11 BMJ).

# 8. Management board's report

## 8.1 Preparation

An N.V. (article 101-1 NCC) and B.V. (article 210-1 NCC) shall present the management board's report for inspection by its shareholders annually and within five months after the financial year-end. In exceptional circumstances (e.g. loss of accounting records due to a natural disaster), this period may be extended by the general meeting for a maximum period of six months.

## 8.2 Publication

The management board's report and other information are published simultaneously and in the same manner as the financial statements (article 394-4 NCC).

## 8.3 Language

The management board's report must be in Dutch, unless the general meeting has decided to use another language. A management board's report that has to be published can be prepared in Dutch, French, German or English, but must always be in the same language as that of the published financial statements.

A management board's report to be presented to the Works Council must always be prepared in Dutch (article 391-1 NCC).

## 8.4 Requirements concerning the information to be provided

Article 391 NCC sets out a number of requirements for the information to be provided in the management board's report of large and medium-sized companies. The management board's report must provide an overview of the state of affairs of the company at the balance sheet date and of the development of its business during the financial year. This overview has to be given of the company itself and of subsidiaries and group companies whose financial data is included in the company's consolidated financial statements (article 391-2 NCC).

Other information required includes (article 391-3 NCC):

- a description of the risks and uncertainties to which the company is exposed;
- expected business developments, especially regarding capital investments, financing, number of employees and the factors which determine turnover and profitability;
- the effect of significant events that have occurred since the balance sheet date, in relation to the expected developments referred to above;
- research and development activities;
- subsequent events;
- risk management with respect to financial instruments: objectives and policies;
- exposure to price risk, credit risk, liquidity risk and cash flow risk;
- for Open N.V.'s: remuneration policy of statutory directors and those charged with governance, including implementation of that policy during the year.

The management board's report may not be inconsistent with the financial statements (article 391-4 NCC). Further specific guidance is included in DAS 400 Management board's report.

### **8.5 Listed companies**

In addition to the requirements above, listed companies must include the following information in the management board's report:

- whether the company applies the Dutch Corporate Governance Code;
- information regarding the capital structure, special voting rights and agreements which may have consequences in a public offering.

It should be noted that companies in scope of the Financial Markets Supervision Act (Wft) must include a responsibility statement that the financial statements and the management's board report give a true and fair view in accordance with article 5:25c Wft.

### **8.6 Disclosure of uneven board seat allocation between men and women**

Articles 166 (for N.V.'s) and 276 NCC (for B.V.'s) specify when the allocation of seats between men and women in the management board and the supervisory board is balanced. An equal distribution by gender exists when at least 30% of

the seats are allocated to women and at least 30% to men, insofar such seats are allocated to natural persons.

A company that meets two or three of the size criteria for a large company (we refer to paragraph 3.3) must (as far as possible) take this target into account upon the appointment and nomination of management board members (both executive and non-executive) and supervisory board members and when preparing a profile for the non-executive board members and a profile for the size and composition of the supervisory board. If the target has not been met, such a company must disclose in its management board's report:

- why the allocation of board seats between men and women is not balanced;
- in which way the entity tried to achieve an equal distribution of board seats between men and women;
- in which way the entity aims to achieve such a balance in the future (article 391-7 NCC).

These requirements also apply to an N.V. or a B.V. that is appointed as member of the management board of (i) an N.V. or B.V. that meets two or three of the size criteria for a large company, or (ii) an N.V. or B.V. that is appointed as management board member of an N.V. or B.V. that meets two or three of the size criteria for a large company.

The effective date of this requirement is 1 January 2013. This requirement therefore applies to a management board's report which is prepared on or after this date (which could be the management board's report for financial year 2012 or earlier). This legislation will automatically expire on January 1, 2016.

## 8.7 Exemptions

The content requirements in article 391 NCC do not apply to a small company's management board report (article 396-7 NCC). The management board's report of medium-sized and large companies do not have to be filed with the Trade Register at the Chamber of Commerce, provided the documents concerned are kept at the office of the company for public inspection and a copy thereof is obtainable upon request at no more than cost price. The company must register a notice of this procedure with the Trade Register at the Chamber of Commerce

(article 394-4 NCC), which means that the board report is (effectively) made publicly available (upon request). Medium-sized companies do not need to include information on non-financial performance indicators in the management board's report (article 397-8 NCC), as well as disclosure of uneven board seat allocation between men and women.

Reference is further made to Chapter 4 'Preparation, adoption and publication of annual accounts', paragraph 4.6 and 4.7.

## 9. Other information

Article 392 NCC lists the other information items that management must provide along with the financial statements and the management board's report.

### 9.1 Items to be included

- The auditor's report, or a statement setting out the fact that, and the legal reasons why, the auditor's report is not included;
- Details of the provisions in the articles of association relating to the profit appropriation;
- A statement regarding the profit appropriation or the treatment of the loss or, pending a definitive decision, the proposed appropriation or treatment;
- Details of the provisions in the articles of association of a cooperative or mutual guarantee association regarding the contribution to be made to cover any deficit of such an association, where these differ from the legal rules;
- A list of names of those to whom a special right to control the company is granted by the articles of incorporation, with a description of the nature of that right;
- A statement of the number of profit-sharing certificates and similar instruments, the number of shares without voting rights and the number of shares without profit rights or with limited profit rights, with an indication of the rights they confer;
- A statement of events with important financial consequences that have occurred since the balance sheet date, indicating the extent of these consequences;
- A statement of the existence of branch establishments and of the countries where there are branch establishments and of the trading names thereof if different from that of the company (article 392-1 NCC).

### 9.2 General requirements

The other information must not be inconsistent with the financial statements and the management board's report (article 392-2 NCC). The management board's report and other information are published in the same manner and simultaneous with the financial statements (article 394-4 NCC).

### 9.3 Exemptions

Certain parts of the other information section (i.e. articles 392-1b and 392-1d up to and including 1f NCC) contained in the annual accounts of medium-sized and large companies do not have to be filed with the Trade Register at the Chamber of Commerce, provided the documents concerned are kept at the office of the company for public inspection and a copy thereof is obtainable upon request at no more than cost price. The company must register a notice of this procedure with the Trade Register at the Chamber of Commerce (article 394-4 NCC), which means that this information is (effectively) made publicly available (upon request). Medium-sized companies may, however, elect to apply an exemption to make publicly available certain sections of the other information section (article 397-7 NCC).

# 10. Specific industries

## 10.1 Caveat

In this Chapter, we will discuss certain requirements of Title 9 of the Netherlands Civil Code applicable to specific industries such as insurance companies, banks and investments companies. This analysis is intended to provide only a high level overview of these provisions. It is therefore not comprehensive and it furthermore does not address other laws and regulations which govern these specific entities. Please note that these specific industries typically fall under the scrutiny of the Netherlands Authority for the Financial Markets (AFM) and Dutch National Bank (DNB), respectively.

## 10.2 Insurance companies

### Definition (article 427 NCC)

An insurance company is defined as a financial enterprise with a legal seat in the Netherlands which may engage in insurance activities or perform activities for an entity in connection with risk acceptance in accordance with the Wft (article 427-1 NCC).

### Financial statements (section 15)

Insurance companies prepare their financial statements and management board's report in accordance with the requirements of Title 9, except for sections 3, 4, 11 and 12. Section 15 gives detailed regulations for the balance sheet, the profit and loss account and the notes of an insurance company's financial statements.

Insurance companies are automatically classified as large companies, because section 11 is not applicable. This means that simplifications to the financial statements are not applicable and an audit is required. Furthermore, the audit fees shall be disclosed (unless the exemption of article 382a-3 NCC applies).

Companies which are not insurance companies, but which are consolidated in the financial statements of an insurance company, are required to apply the rules for financial statements of insurance companies (article 445-1 NCC).

If the head of the group itself is not an insurance company, but solely functions as holding company of an insurance group, this holding is consolidated as if it is an insurance company (article 445-2 NCC).

insurance companies should comply with the standard formats determined by Ministerial Decree (article 16a part 2 BMJ). The balance sheet to be used is model N, which includes investments and technical provisions. The profit and loss account to be used is model O, which includes a liability insurance technical account, a life assurance technical account and a non-technical account.

### 10.3 Banks

#### **Definition (article 415 NCC)**

A bank is defined as a financial company with a legal seat in the Netherlands with a licence to perform the activities of a credit institution as stated in article 1:1 of the Wft.

#### **Financial statements (section 14)**

Banks prepare their financial statements and management board's report in accordance with the provisions of Title 9, except for sections 3, 4, 11 and 12. Section 14 gives detailed regulations for the balance sheet, the profit and loss account and the notes for banks.

Banks are automatically classified as large companies, because section 11 is not applicable. This means that simplifications to the financial statements are in principle not applicable and an audit is required. Furthermore, the audit fees must be disclosed (unless the exemption of article 382a-3 NCC applies).

Banks should comply with the standard formats determined by Ministerial Decree (article 16 part 2 BMJ). The balance sheet to be used is model K. The profit and loss account to be used is model L or M.

## 10.4 Investment companies

### Definition (article 401 NCC)

An investment company is an enterprise to which the Decree on Conduct of Supervision Financial Companies FMSA ('Besluit Gedragstoezicht Financiële Ondernemingen') is applicable (article 401-1 NCC).

### Financial statements

Investments companies must meet the requirements of Title 9. Because their activities are specialised and differ materially from those of other companies, they are allowed to change the order of the items in the formats as prescribed by Ministerial Decree. For the balance sheet of an investment company, model Q or R must be used. For the profit and loss account model S must be used (article 16b part 2 BMJ).

# 11. Financial Markets Supervision Act (Wft)

## 11.1 Background to the Wft

The European Transparency Directive includes regulations for the supervision of financial reporting of companies listed on a regulated market in Europe. In the Netherlands, these regulations were incorporated in the Financial Supervision Act (Wft) as of 1 January 2009, with a simultaneous amendment of the Financial Reporting Supervision Act ('Wet toezicht financiële verslaggeving').

## 11.2 Scope Wft

The Wft applies to companies that are listed on a regulated market in one of the 27 member states of the EU or one of the three EEA countries: Norway, Iceland, and Liechtenstein. The Official Journal of the EU periodically publishes an overview of regulated markets. This overview can be accessed via the following link: <http://bit.ly/fmsawft>

The regulated markets in the Netherlands are: Euronext Amsterdam Cash Market, Euronext Amsterdam Derivatives Market, Endex and MDS Amsterdam.

The Wft does not apply to companies with a listing on a stock exchange outside the EU/EEA or with a listing on a multilateral trading facility (MTF), such as Alternext. The legislation aims to protect non-professional investors, and hence does not apply to companies that only have non-equity securities, such as non-convertible bonds, which are listed with a nominal value per unit of at least EUR 50,000. Nor does the legislation apply to open-end investment institutions.

## 11.3 Main provisions

The main provision of this legislation is the disclosure of accurate, comprehensive and timely information to investors. Such regulated information is divided into ad hoc, specific and periodic information. Ad hoc information concerns, for example, changes in rights of share or bond holders and specific information the time and agenda of the general meeting. An important regulation is the general publication of an annual document which includes – references to – regulated information published during the preceding twelve months.

The regulations regarding periodic information stipulate the obligations relating to preparation and general publication of i) annual financial reports, ii) half-yearly financial reports and iii) interim – quarterly – reports. This is elaborated in Appendix 3, Schedule A: ‘Disclosure of periodic information’.

#### **11.4 AFM Supervision**

The rules of the Financial Supervision Act regarding timely general publication and filing of periodic information apply to companies whose domestic member state is the Netherlands. The supervisory body in the respective domestic member state is charged with the supervision of financial reporting – and the supervision of admission prospectuses. In the Netherlands, this supervisory body is the AFM. A Dutch legal entity - N.V., B.V. and suchlike whose shares or bonds are listed on a regulated market in the EU/EEA will mostly have the Netherlands as its domestic member state and will hence fall under AFM supervision. However, if bonds or other non-equity securities with a nominal value of more than EUR 1,000 per unit are listed outside the Netherlands, the company may opt for the EU member state where its securities are listed on a regulated market as its domestic member state, instead of the Netherlands. In such instances, the supervision is exercised in that other member state. This is elaborated in Appendix 4, Schedule B: ‘Transparency and prospectus supervision in member state of origin’.

#### **11.5 Public filing deadlines**

Note that the ‘ordinary’ annual financial reporting obligations of Title 9 of the Netherlands Civil Code apply to any Dutch legal entity, irrespective of whether or not the Netherlands is the home member state. Moreover, a Dutch company, i.e. having its registered office in the Netherlands, of which securities are listed must submit its adopted annual financial report to the AFM. As discussed in Chapter 4, this must be done within five days of adoption of the annual financial report (article 5:25o-1 Wft). The AFM will then send the adopted annual financial report to the Trade Register within three days. The deadlines for the preparation and filing of the annual financial report of an N.V. or B.V. that is listed on a regulated market are set out in Appendix 5, Schedule C: ‘Deadline for preparation, adoption, general publication and filing of annual financial report of N.V. or B.V. of which securities are listed on a regulated market in the EU/EEA’.

# 12. Flex-bv Act

## 12.1 Scope and effective date

New legislation was enacted in 2012 to simplify and increase the flexibility of Dutch law with respect to B.V.'s ('Flex-bv Act'). This legislation aims to decrease the administrative burden on companies in the Netherlands. Furthermore, the Flex-bv Act aims to retain or increase the attractiveness of the Netherlands as country of domicile for companies. This legislation was enacted with an effective date of 1 October 2012.

## 12.2 Key Flex-bv Act provisions

The Flex-bv Act provisions introduced a number of changes to the previous legislation. The main changes to Dutch law as a result of the Flex-bv Act are outlined as follows:

- No requirement of a minimum issued share capital (currently EUR 18,000). It is furthermore no longer required for B.V.'s to have an authorised share capital. Consequently there is no longer a requirement for the issued share capital to exceed 20% of the authorised share capital or the minimum share capital of EUR 18,000. Accordingly, the legal reserve for minimum share capital has been eliminated;
- The par value of a share may be a currency other than the Euro. It is therefore possible that the articles of association state the share capital in a different currency than the reporting currency of the financial statements. In that case, the issued share capital shall also be disclosed in that other currency together with the applicable exchange rate (article 373-5 NCC);
- The capital protection requirements (i.e. protecting the creditors of a B.V.) have been simplified. The key question is now whether an intended equity distribution to shareholders creates a risk that the B.V. will no longer be able to continue paying its outstanding debts;
- The audit requirement for a contribution in kind in a B.V. has been abolished. However, the requirement for a description of the contribution in kind by the statutory directors will continue to exist;
- A 'distribution test' must first be performed for all distributions to shareholders, which shall form the basis for management to approve such distributions. The Flex-bv Act does not provide specific guidelines for this test. Such test will involve an assessment of the liquidity and solvency of the

company. Significant management judgement is required taking into account all facts and circumstances;

- If a B.V. is required to maintain one or more legal or statutory reserves (refer to Chapter 6, Paragraph 6.5, Shareholders' equity) it must perform not only a distribution test, but also a 'balance sheet test'. The balance sheet test determines whether the B.V.'s equity exceeds the total of its legal and statutory reserves, which is a prerequisite for any distribution. The interaction between the distribution test, balance sheet test and management's approval of a distribution are depicted by means of a flowchart in Appendix 6;
- The so-called 'Nachgründung' provision in article 204c NCC has been eliminated. Nachgründung pertains to legal acts which may not be performed until two years after formation of a company without the approval of the general meeting, relating to the acquisition of goods belonging to the founder or shareholder before the company's formation;
- If it turns out that the company cannot continue to pay its outstanding debts after the distribution, the management board members who were aware of this (or should reasonably have foreseen this) are jointly and severally liable towards the B.V. for the deficit created by the distribution. Any shareholders who were aware of this (or should reasonably have foreseen this) must repay to the B.V. as a maximum the full amount of the distribution received;
- The legal limitations for a B.V. to provide financial assistance to an acquirer of its own equity instruments have been removed, including the related legal reserve (article 207c NCC);
- The requirement for the articles of association to include a 'blocking-clause' for the transferability of shares has been eliminated. If the articles of association do include such a blocking clause, then transferability can be arranged, albeit within certain restrictions. The articles of association may not, however, make it impossible or extremely difficult to transfer shares (article 195 NCC);

- It is permitted to issue shares with different types of rights. The following options are available:
  - shares with both voting rights and (full or limited) profit rights.
  - shares with only voting rights.
  - shares with only (full or limited) profit rights.
- Each year, at least one shareholders' meeting must be held or a decision must be reached without such a meeting (which may include the adoption of the financial statements). The financial statements may therefore be adopted without holding a shareholders' meeting;
- The deadline for calling a general meeting has been reduced from 15 days to 8 days;
- If all shareholders are also directors of the company, the signing of the financial statements by all management board members and (if applicable) supervisory board members qualifies as the formal adoption of those financial statements, if the following conditions have been met:
  - all other parties with a right to attend the general meeting (e.g. share certificate holders, pledgeholders or parties entitled to a usufruct) have been given the opportunity to read the prepared financial statements; and
  - such parties have given their consent to such simplified adoption of the financial statements (article 210-5 NCC).
- The general meeting is authorised to decide on the appropriation of result and to prepare any distributions. However, the management board must approve the distribution decision of the general meeting, based on an assessment whether the company will be in a position to continue paying its debts after the distribution has been made.



# Glossary of terms

## **AFM**

Netherlands Authority for the Financial Markets. The AFM, a semi-governmental agency that falls under the political responsibility of the Ministry of Finance, is the independent supervisory authority for the savings, borrowing, investment, pension and insurance markets.

## **Annual accounts**

The financial statements, management board's report and the other information section presented together.

## **BAW (besluit actuele waarde)**

Decree on Current Value.

## **B.V. (besloten vennootschap)**

A private limited liability company, which can only issue registered shares or registered trust certificates. In principle, shares and trust certificates of a B.V. are not freely transferable and they cannot be listed. Reference is further made to Chapter 12.

## **Cash flow statement**

An overview of the cash and cash equivalents which became available during the reporting period including the use made of such resources. The cash flow statement does not have a legal basis in the NCC. However, a cash flow statement is required for medium-sized and large companies, based on DAS 360.104.

## **Consolidated financial statements**

The financial statements which include the consolidated financial data of subsidiary companies and which can also include, by consolidation, the financial data of group companies other than subsidiary companies and the parent company.

## **Cooperative**

Cooperative association.

### **Credit institution**

A company that has been recorded in the register referred to in the Credit Institutions Supervision Act. A credit institution may be described as any corporate body, partnership or natural person which/who in the course of business accepts funds, whether or not in the form of saving accounts, repayable on demand or on terms of less than two years and which/who on its or his own account grants loans and invests funds.

### **Current value**

The replacement value, the value in use, or the net realisable value of an asset.

### **C.V. (commanditaire vennootschap)**

A limited partnership based on an agreement between two or more partners who may be individuals or corporations. A partnership is not a legal entity. The managing partners are individually liable for the partnership's liabilities. The partners who contribute only capital are only liable for their capital contribution to the partnership. The purpose of the partnership is to make profit. The partners have to contribute either capital property, labour or goodwill.

### **DASs (Richtlijnen voor de jaarverslaggeving)**

Dutch Accounting Standard(s).

### **DASB (Raad voor de Jaarverslaggeving)**

Dutch Accounting Standards Board.

### **Financial year**

Usually, the financial year of Dutch incorporated bodies coincides with the calendar year, unless the articles of association state otherwise.

### **Financial statements**

The balance sheet, profit and loss account and notes. They are a part of the annual accounts.

### **Flex-bv (wet Vereenvoudiging en flexibilisering van het B.V.-recht)**

New legislation enacted in 2012 to simplify and increase the flexibility of Dutch law with respect to B.V.'s.

### **Goodwill**

The excess of the amount paid for a company over its net asset value at the time of acquisition.

### **Gross profit or loss**

The balance of net turnover, change in inventories of finished goods and work in progress, raw materials and consumables used, and other external charges.

### **Group**

An organisational and economic unit of legal entities and companies.

### **Group company**

A legal entity or partnership which is part of a group.

### **Historical cost**

The amount paid for an asset sometimes increased by certain additional direct and indirect costs.

### **Insurance company**

A legal entity to which article 28 of the Insurance Supervision Act is applicable.

### **Investment company**

A legal entity having as its sole object the investment of funds in such a way as to spread the risks involved and enable the members or shareholders to share in the proceeds.

### **Large company**

A legal entity that, on a consolidated basis, meets at least two of the following three criteria on two consecutive balance sheet dates:

- total assets more than EUR 17.5 million;
- net turnover more than EUR 35 million;
- average number of employees at least 250.

### **Legal reserve**

A reserve, required by law, that cannot be distributed to the shareholders. Some legal reserves can be converted into share capital.

### **Management board's report**

A report written by the management board which gives an overview of the state of affairs at the balance sheet date, the development of the business during the financial year and expected major developments in the near future. This report forms part of the annual accounts.

### **Medium-sized company**

A legal entity that, on a consolidated basis, is not a small company and that meets at least two of the following three criteria<sup>14</sup> on two consecutive balance sheet dates:

- total assets not more than EUR 14 million;
- net turnover not more than EUR 35 million;
- average number of employees less than 250.

### **Net asset value**

Net asset value is the fair value of the individual assets and liabilities of the participating interest. This value is subsequently adjusted for the share in the result of the participating interest and dividends in accordance with the accounting principles of the investor.

<sup>14</sup> In October 2011 the European Commission issued a proposal for a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (Accounting Directive). In April 2013 a preliminary agreement was reached with the European Parliament Commission. In the final compromise text the maximum amounts of the small companies category have been set at EUR 4 million (total assets) and EUR 8 million (net turnover); member states may increase these amounts, although they should not exceed EUR 6 million and EUR 12 million, respectively. The maximum amounts for the medium-sized companies category have been set at EUR 20 million (total assets) and EUR 40 million (net turnover). At the time of writing, the Directive had not yet been adopted; implementation into Dutch law must take place within two years after adoption of the Directive.

**Net realisable value**

The amount for which the asset itself can be sold, after deduction of sale costs.

**Net turnover**

Turnover after the deduction of rebates, discounts, VAT and similar taxes.

**NCC (burgerlijk wetboek)**

Netherlands Civil Code.

**NL GAAP**

Generally Accepted Accounting Standards in the Netherlands, comprising the Netherlands Civil Code and the Dutch Accounting Standards published by the DASB.

**N.V. (naamloze vennootschap)**

A public limited liability company, which can have both bearer and registered shares or trust certificates. Shares are negotiable and can be listed.

**Open N.V.**

An N.V. of which the shares are listed on a stock exchange.

**Other information**

Information that management must include in a section accompanying the financial statements and the management board's report. It is a part of the annual accounts.

## Participating interest

Participating interest:

- a company to which the participating company, or one or more of its subsidiaries, has provided capital for its own account, for the purpose of furthering its own business activities by establishing a long-term relationship (article 24c-1 NCC);
- an interest in a partnership in which the participating company, or one of its subsidiaries, accepts full liability as a (general) partner for the partnership's liabilities (article 24c-2a NCC); or
- an interest in a partnership in which the participating company, or one of its subsidiaries, is a partner for the purpose of furthering its own business activities by establishing a long-term relationship (article 24c-2b NCC).

## Publication

Filing a copy of the legally required information with the Trade Register at the Chamber of Commerce of the district in which the company has its statutory domicile or registered address according to its articles of association. For listed companies, the adopted financial statements need to be filed with the Netherlands Authority for the Financial Markets.

## Rebuttable legal presumption of a participating interest

Where an interest, as defined by law, of at least twenty per cent of the issued capital is held in an entity, it will be presumed to be a participating interest of the investing company. This legal presumption may be rebutted depending on the individual facts and circumstances.

## Replacement value

The amount needed to replace the asset by an item of the same economic value as the present asset.

## Small company

A legal entity that, on a consolidated basis meets at least two of the following three criteria:

- total assets not more than EUR 4.4 million;

- net turnover not more than EUR 8.8 million;
- average number of employees less than 50.

### **Subsidiary**

- A legal entity in which the company (by itself or together with a subsidiary company) is authorised to exercise more than half of the voting rights in the general meeting; this majority may be the consequence of an agreement with others entitled to vote.
- A legal entity in which the company (by itself or together with a subsidiary company) is authorised to appoint or dismiss more than half of the members of the management or supervisory board.
- A partnership of which the investing company is a fully liable partner.

### **Value in use**

The value of that part of net turnover that may be generated by using the asset in the activities of the business that are to be terminated in the long term.

### **V.O.F. (vennootschap onder firma)**

A general partnership based on an agreement between two or more partners who may be individuals or corporations. A partnership is not a legal entity. The partners are individually liable for the partnerships liabilities. The purpose of the partnership is to make profit. The partners have to contribute either capital property, labour or goodwill.

### **Wft (wet op het financieel toezicht)**

Financial Markets Supervision Act.

### **WED (wet economische delicten)**

Economic Offences Act.

### **WOR (wet op de ondernemingsraden)**

Works Councils Act.

## Appendix 2

### Prescribed formats for the balance sheet and the profit and loss account

# Model A

## Balance sheet of a large or medium-sized company

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Balance sheet as at

#### A Fixed assets

##### *I Intangible fixed assets*

1. incorporation and share issue expenses
2. research and development costs
3. concessions, licences and intellectual property rights
4. goodwill
5. prepayments on intangible fixed assets

##### *II Tangible fixed assets*

1. land and buildings
2. plant and machinery
3. other operating fixed assets
4. tangible fixed assets under construction and prepayments on tangible fixed assets
5. tangible fixed assets not used in operations

##### *III Financial fixed assets*

1. participations in group companies
2. receivables from group companies
3. other participating interests
4. receivables from shareholders and participating interests
5. other securities
6. other receivables

##### *IV Total fixed assets*

#### B Current assets

##### *I Inventories*

1. raw materials and consumables
2. work in progress
3. finished goods and goods for resale
4. prepayments on inventories

##### *II Receivables*

1. trade debtors
2. group companies
3. shareholders and participating interests
4. other receivables
5. called up share capital not yet paid in and called up
6. prepayments and accrued income

##### *III Securities*

##### *IV Cash*

##### *V Total current assets*

**C Short-term liabilities**

1. convertible loans
2. other debenture loans and private loans
3. banks
4. payments received on account
5. trade creditors
6. bills of exchange and cheques payable
7. amounts due to group companies
8. amounts due to shareholders and participating interests
9. taxes and social security
10. pensions
11. other liabilities
12. accrued liabilities and deferred income

**D Balance of current assets less short-term liabilities****E Total assets less short-term liabilities****F Long-term liabilities**

1. convertible loans
2. other debenture loans and private loans
3. banks
4. payments received on account

5. trade creditors
6. bills of exchange and cheques payable
7. amounts due to group companies
8. amounts due to shareholders and participating interests
9. taxes and social security
10. pensions
11. other liabilities
12. accrued liabilities and deferred income

**G Provisions**

1. pensions
2. taxation
3. other provisions

**H Shareholders' equity**

*I Share capital paid up and called up*

*II Share premium (paid-in surplus)*

*III Revaluation reserves*

*IV Legal and statutory reserves*

*1. legal reserves*

*2. statutory reserves*

*V Other reserves*

*VI Unappropriated profits*

# Model B

## Balance sheet of a large or medium-sized company

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Balance sheet as at

#### Assets

##### **A Fixed assets**

###### *I. Intangible fixed assets*

1. incorporation and share issue expenses
2. research and development costs
3. concessions, licences and intellectual property rights
4. goodwill
5. prepayments on intangible fixed assets

###### *II. Tangible fixed assets*

1. land and buildings
2. plant and machinery
3. other operating fixed assets
4. tangible fixed assets under construction and prepayments on tangible fixed assets
5. tangible fixed assets not used in operations

###### *III. Financial fixed assets*

1. participations in group companies
2. receivables from group companies
3. other participating interests
4. receivables from shareholders and participating interests
5. other securities
6. other receivables

##### **B Current assets**

###### *I. Inventories*

1. raw materials and consumables
2. work in progress
3. finished goods and goods for resale
4. prepayments on inventories

###### *II. Receivables*

1. trade debtors
2. group companies
3. shareholders and participating interests
4. other receivables
5. called up share capital not yet paid in
6. prepayments and accrued expenses

###### *III. Securities*

###### *IV. Cash*

**Total**

## Shareholders' equity, provisions and liabilities

### **A Shareholders' equity**

*I. Share capital paid up and called up*

*II. Share premium (paid-in surplus)*

*III. Revaluation reserves*

*IV. Legal and statutory reserves*

1. legal reserves
2. statutory reserves

*V. Other reserves*

*VI. Unappropriated profits*

### **B Provisions**

1. pensions
2. taxation
3. other provisions

### **C Long-term liabilities (> 1 year)**

1. convertible loans
2. other debenture loans and private loans
3. credit institutions
4. payments received on account
5. trade creditors
6. bills of exchange and cheques payable
7. amounts due to group companies
8. amounts due to shareholders and participating interests

9. taxes and social security contributions

10. pension liabilities

11. other liabilities

12. accrued liabilities and deferred income

### **D Short-term liabilities (< 1 year)**

1. convertible loans
2. other debenture loans and private loans
3. banks
4. payments received on account
5. trade creditors
6. bills of exchange and cheques payable
7. amounts due to group companies
8. amounts due to shareholders and participating interests
9. taxes and social security contributions
10. pension liabilities
11. other liabilities
12. accrued liabilities and deferred income

**Total**

# Model C

## Balance sheet of a small company

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Balance sheet as at

#### A Fixed assets

I Intangible fixed assets	-	
II Tangible fixed assets	-	
III Financial fixed assets	-	
IV Total fixed assets	<u>-</u>	X

#### B Current assets

I Inventories	-	
II Receivables, including prepayments	-	
III Securities	-	
IV Cash	-	
V Total current assets	<u>-</u>	X

#### C Short-term liabilities and accrued liabilities

X

#### D Balance of current assets less short-term liabilities

X

#### E Balance of assets less short-term liabilities

X

#### F Long-term liabilities

X

#### G Provisions

X

#### H Shareholders' equity

I Share capital called up	-	
II Share premium (paid-in surplus)	-	
III Revaluation reserves	-	
IV Legal and statutory reserves	-	
V Other reserves	-	
VI Unappropriated profits	-	
	<u>-</u>	

X

X

# Model D

## Balance sheet of a small company

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Balance sheet as at

Assets		Shareholders' equity, provisions and liabilities	
<b>A Fixed assets</b>		<b>A Shareholders' equity</b>	
I Intangible fixed assets	-	I Share capital called up	-
II Tangible fixed assets	-	II Share premium (paid-in surplus)	-
III Financial fixed assets	-	III Revaluation reserves	-
	<hr/>	IV Legal and statutory reserves	-
	X	V Other reserves	-
		VI Unappropriated profits	-
			<hr/>
			X
<b>B Current assets</b>		<b>B Provisions</b>	
I Inventories	-		X
II Receivables, including prepayments	-		
III Securities	-		
IV Cash	-		
	<hr/>		
	X	<b>C Long-term liabilities</b>	X
		<b>D Short-term liabilities and accrued liabilities</b>	X
			<hr/>
			X
<b>Total</b>	<hr/>	<b>Total</b>	<hr/>
	X		X

# Model E

## Profit and loss account of a large or medium-sized company (expenses presented by nature)

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

<b>Net turnover</b>		-
change in inventories of finished goods and in work in progress	-	
capitalised production (on behalf of own business)	-	
other operating income	-	
	<hr/>	X
<b>Total operating income</b>		<hr/> X
raw materials and consumables	-	
other external charges	-	
wages and salaries	-	
social security costs	-	
amortisation/depreciation of intangible and tangible fixed assets	-	
other changes in value of intangible and tangible fixed assets	-	
impairment of current assets	-	
other operating expenses	-	
	<hr/>	X
<b>Total operating expenses</b>		<hr/> X
income from receivables included in fixed assets and from investments	-	
other interest income and similar income	-	
changes in value of receivables included in fixed assets and of investments	-	
interest expenses and similar charges	-	
	<hr/>	X
<b>Result of ordinary activities before taxation</b>		<hr/> X
taxation on result of ordinary activities	-	
share in result of participations*	-	
	<hr/>	X
<b>Result of ordinary activities after taxation</b>		X
extraordinary income	-	
extraordinary expenses	-	
taxation on extraordinary result	-	
	<hr/>	X
<b>Extraordinary result after taxation</b>		X
<b>Net result for the year</b>		<hr/> X

- \* Only the income or loss from participating interests that are valued using the net asset value method (article 389-2 NCC) is included in this item. Income from participating interests valued differently must be shown separately as the first item of the financial income section, as 'income from participating interests, not valued using the net asset value method' (article 7-4 BMJ).

# Model F

## Profit and loss account of a large or medium-sized company (expenses presented by function)

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

<b>Net turnover</b>	-
cost of sales	-
<b>Gross turnover result/Gross margin</b>	<u>X</u>
selling expenses	-
administrative expenses	-
<b>Total selling and administrative expenses</b>	<u>X</u>
<b>Net turnover result/Net margin</b>	X
other operating income	-
income from receivables included in fixed assets and from investments	-
other interest income and similar income	-
changes in value of receivables included in fixed assets and of investments	-
interest expenses and similar charges	-
<b>Result of ordinary activities before taxation</b>	X
taxation on result of ordinary activities	-
share in result of participations *	-
<b>Result of ordinary activities after taxation</b>	X
extraordinary income	-
extraordinary expenses	-
taxation on extraordinary result	-
<b>Extraordinary result after taxation</b>	<u>X</u>
<b>Net result for the year</b>	<u>X</u>

\* refer to note on page 105

# Model G

## Profit and loss account of a large or medium-sized company (expenses presented by nature)

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

#### Expenses

decrease in inventories of finished goods and in work in progress	-	
raw materials and consumables	-	
other external charges	-	
wages and salaries	-	
social security costs	-	
amortisation/depreciation of intangible and tangible fixed assets	-	
other changes in value of intangible and tangible fixed assets	-	
impairment of current assets	-	
other operating expenses	-	
		<hr/>

**Operating expenses** X

changes in value of receivables included in fixed assets and of investments	-	
interest expense and similar charges	-	
		<hr/>

**Financial expenses** X

taxation on result of ordinary activities	-	
share in result of participations *	-	
extraordinary expenses	-	
taxation of extraordinary result	-	
result on ordinary activities after taxation	-	
extraordinary result after taxation	-	
		<hr/>

**Profit after taxation** X

**Total** X

## Income

<b>Net turnover</b>	-	
increase in inventories of finished goods and in working progress	-	
capitalised production (on behalf of own business)	-	
other operating income	-	
	<hr/>	
<b>Operating income</b>		X
income from receivables included in fixed assets and from investments	-	
other interest income and similar income	-	
changes in value of receivables included in fixed assets and of investments	-	
	<hr/>	
<b>Financial income</b>		X
taxation on result of ordinary activities	-	
share in result of participations *	-	
extraordinary income	-	
taxation on extraordinary result	-	
result on ordinary activities after taxation	-	
extraordinary result after taxation	-	
	<hr/>	
<b>Loss after taxation</b>		<hr/> X
<b>Total</b>		<hr/> X

\* refer to note on page 105

# Model H

## Profit and loss account of a large or medium-sized company (expenses presented by function)

Please refer to the section 'Resolution on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

#### Expenses

cost of sales	-
selling expenses	-
administrative expenses	-
	<hr/>
Total expenses	X

#### Operating expenses

changes in value of receivables included in fixed assets and of investments	-
interest expense and similar charges	-
	<hr/>

#### Financial expenses

taxation on result of ordinary activities	-
share in result of participations *	-
extraordinary expenses	-
taxation on extraordinary result	-
result on ordinary activities after taxation	-
extraordinary result after taxation	-
	<hr/>

#### Profit after taxation

	X
	<hr/>

#### Total

	X
	<hr/>

## Income

<b>Net turnover</b>	-
other operating income	-
	<hr/>
<b>Operating income</b>	X
income from receivables included in fixed assets and from investments	-
other interest income and similar income	-
changes and value of receivables included in fixed assets and of investments	-
	<hr/>
<b>Financial income</b>	X
taxation on result of ordinary activities	-
share result of participations *	-
extraordinary income	-
taxation on extraordinary result	-
result on ordinary activities after taxation	-
extraordinary result after taxation	-
	<hr/>
<b>Loss after taxation</b>	X
	<hr/>
<b>Total</b>	X
	<hr/>

\* refer to note on page 105

# Model I

## Profit and loss account of a small company (expenses presented by nature)

Please refer to Chapter 7 'Decree on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

<b>Gross margin</b>	-
wages and salaries	-
social security costs	-
amortisation/depreciation of intangible and tangible fixed assets	-
other changes in value of intangible and tangible fixed assets	-
impairment of current assets	-
other operating expenses	-
	<hr/>
<b>Total operating expenses</b>	<u>X</u>
	X
income from receivables included in fixed assets and from investments	-
other interest income and similar income	-
changes in value of receivables included in fixed assets and of investments	-
interest expense and similar charges	-
	<hr/>
	X
<b>Result of ordinary activities before taxation</b>	X
taxation on result of ordinary activities	-
	<hr/>
	X
share in result of participations *	-
	<hr/>
<b>Result of ordinary activities after taxation</b>	X
extraordinary income	-
extraordinary expenses	-
taxation on extraordinary result	-
	<hr/>
<b>Extraordinary result after taxation</b>	<u>X</u>
<b>Net result for the year</b>	<u>X</u>

\* refer to note on page 105

# Model J

## Profit and loss account of a small company (expenses presented by function)

Please refer to the section 'Resolution on financial statements formats' above and the BMJ for further details.

### Profit and loss account for the year

<b>Gross margin</b>	-
selling expenses	-
administrative expenses	-
<b>Total selling and administrative expenses</b>	<u>X</u>
	X
income from receivables included in fixed assets and from investments	-
other interest income and similar income	-
changes in value of receivables included in fixed assets and of investments	-
interest expense and similar charges	-
	<u>X</u>
<b>Result of ordinary activities before taxation</b>	X
taxation on result of ordinary activities	-
	<u>X</u>
share in result of participations *	-
	<u>-</u>
<b>Result of ordinary activities after taxation</b>	X
extraordinary income	-
extraordinary expenses	-
taxation on extraordinary result	-
	<u>-</u>
<b>Extraordinary result after taxation</b>	<u>X</u>
<b>Net result for the year</b>	<u>X</u>

\* refer to note on page 105

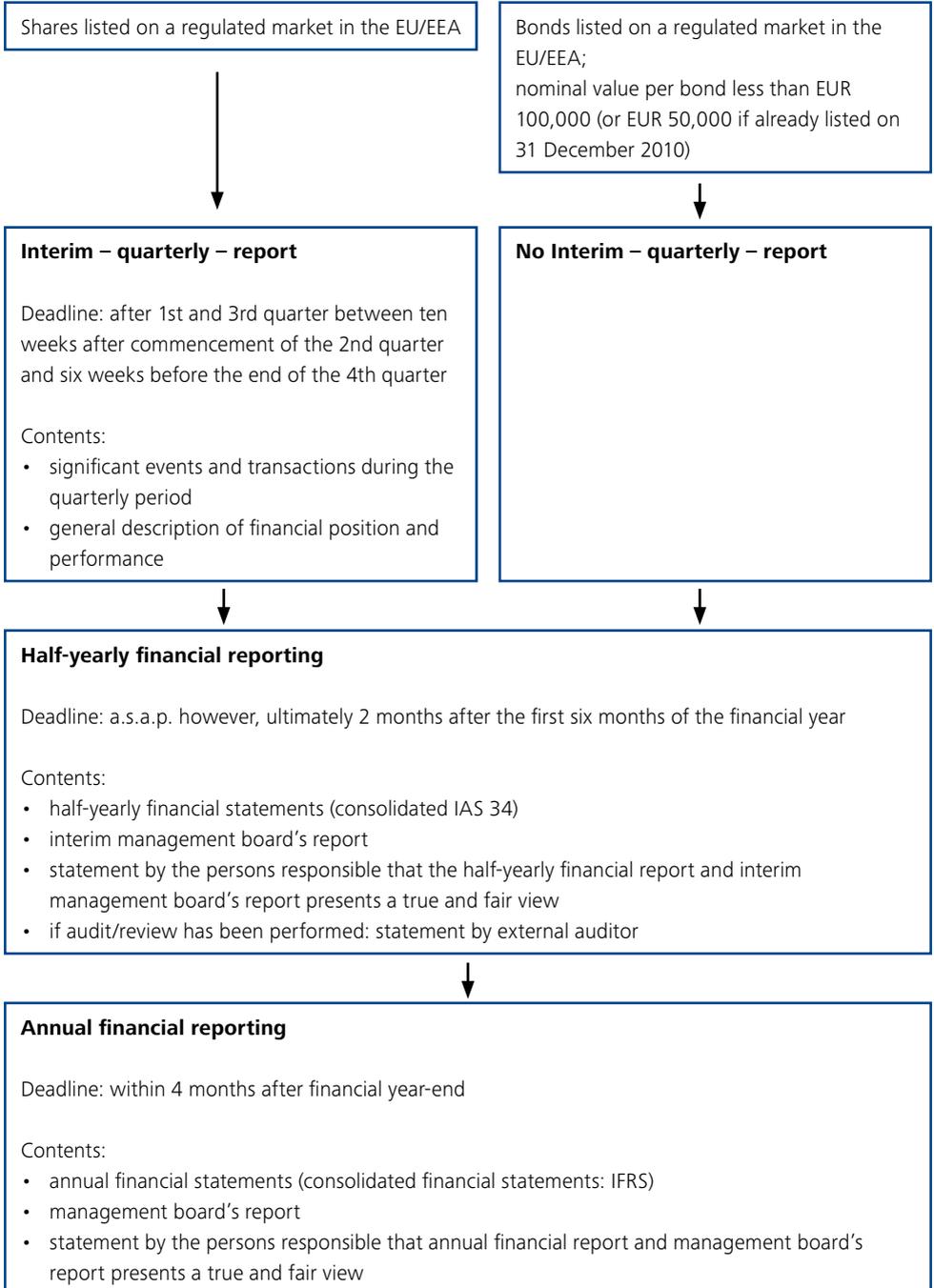
# Other models

The BMJ furthermore includes balance sheet models K, N, Q and R and profit and loss account models L, M, O, P and S. These models pertain to specific industries such as financial institutions etc. The latter are out of scope of this publication.

# Appendix 3

## Schedule A: Disclosure of periodic information

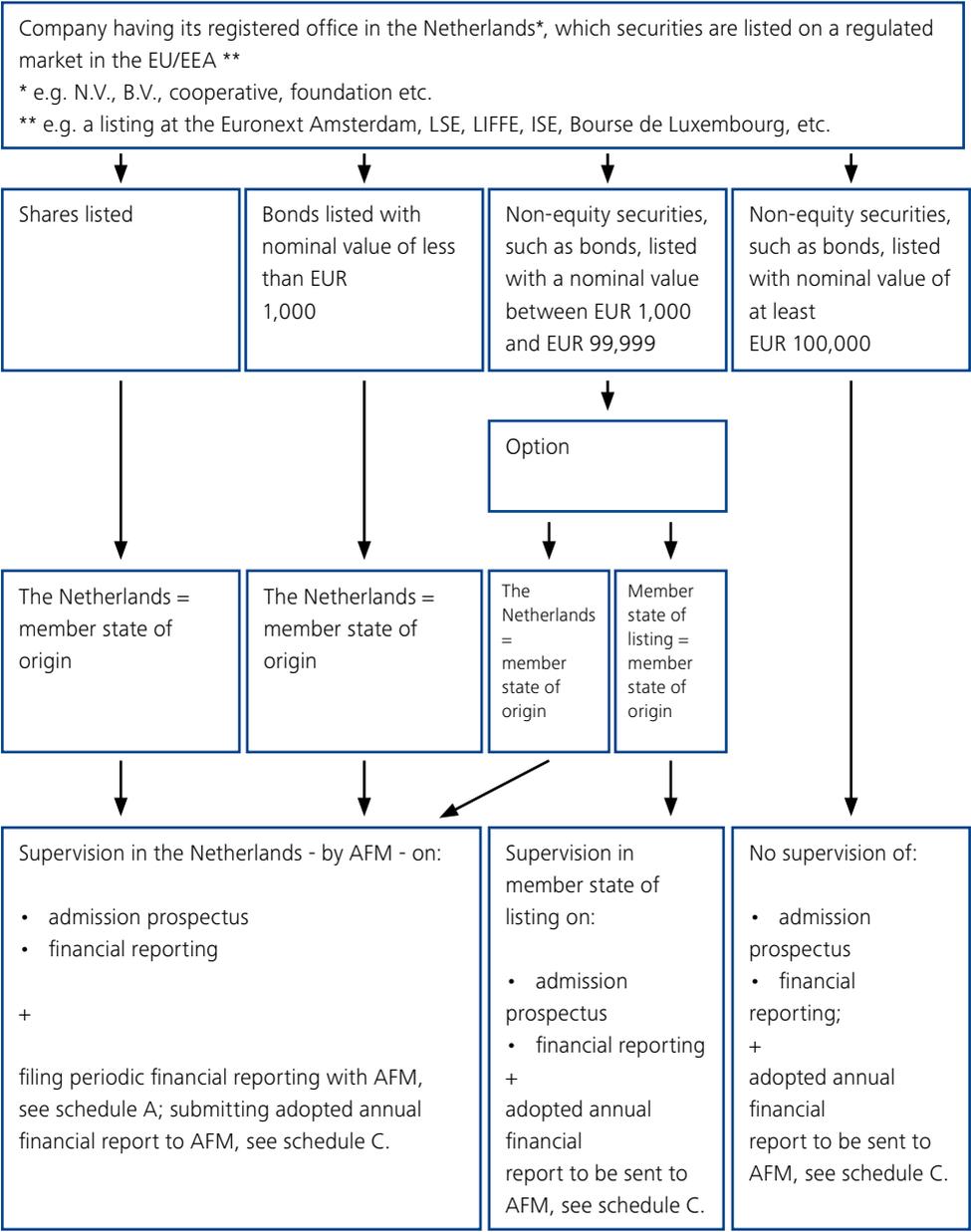
# Appendix 3



# Appendix 4

## Schedule B: Transparency and prospectus supervision in member state of origin

# Appendix 4





# Appendix 5

1. N.V. whose shares or depositary receipts for shares are listed on a regulated market in the EU/EEA
2. N.V. whose non-equity securities, such as bonds, with a nominal value of less than EUR 100,000 are listed on a regulated market in the EU/EEA

Deadlines annual financial report	Preparation (MB): Within 4 months after financial year-end.	Adoption (AGM): Within 2 months after preparation.	General publication:  <b>Prepared annual financial report</b> within 4 months after financial year-end, Contents: - financial statements; - management board's report; - responsibility statements. + <b>Adopted annual financial report</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual financial report has not yet been adopted (ultimately 6 months after financial year-end).	Filing with:  AFM ultimately 4 months after financial year-end.  AFM ultimately 6 months after financial year-end.
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3. N.V. whose non-equity securities, such as bonds, with a nominal value of at least EUR 100,000 are listed on a regulated market in the EU/EEA

Deadlines annual financial report:	Preparation (MB): Within 4 months after financial year-end.	Adoption (AGM): Within 2 months after preparation.	General publication:  <b>Adopted annual financial report</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual financial report has not yet been adopted (ultimately 6 months after financial year-end).	Filing with:  AFM ultimately 6 months after financial year-end.
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4. B.V. whose non-equity securities, such as bonds, with a nominal value of less than EUR 100,000 are listed on a regulated market in the EU/EEA

Deadlines annual financial report	Preparation (MB): Within 4 months after financial year-end.	Adoption (AGM):  Within 2 months after preparation.	General publication:  <b>Prepared annual financial report</b> within 4 months after financial year-end, Contents: - financial statements; - management board's report; - responsibility statements. + <b>Adopted annual financial report</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual financial report has not yet been adopted (ultimately 6 months after financial year-end).	Filing with:  AFM ultimately 4 months after financial year-end.  AFM ultimately 6 months after financial year-end.
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5. B.V. whose non-equity securities, such as bonds, with a nominal value of at least EUR 100,000 are listed on a regulated market in the EU/EEA

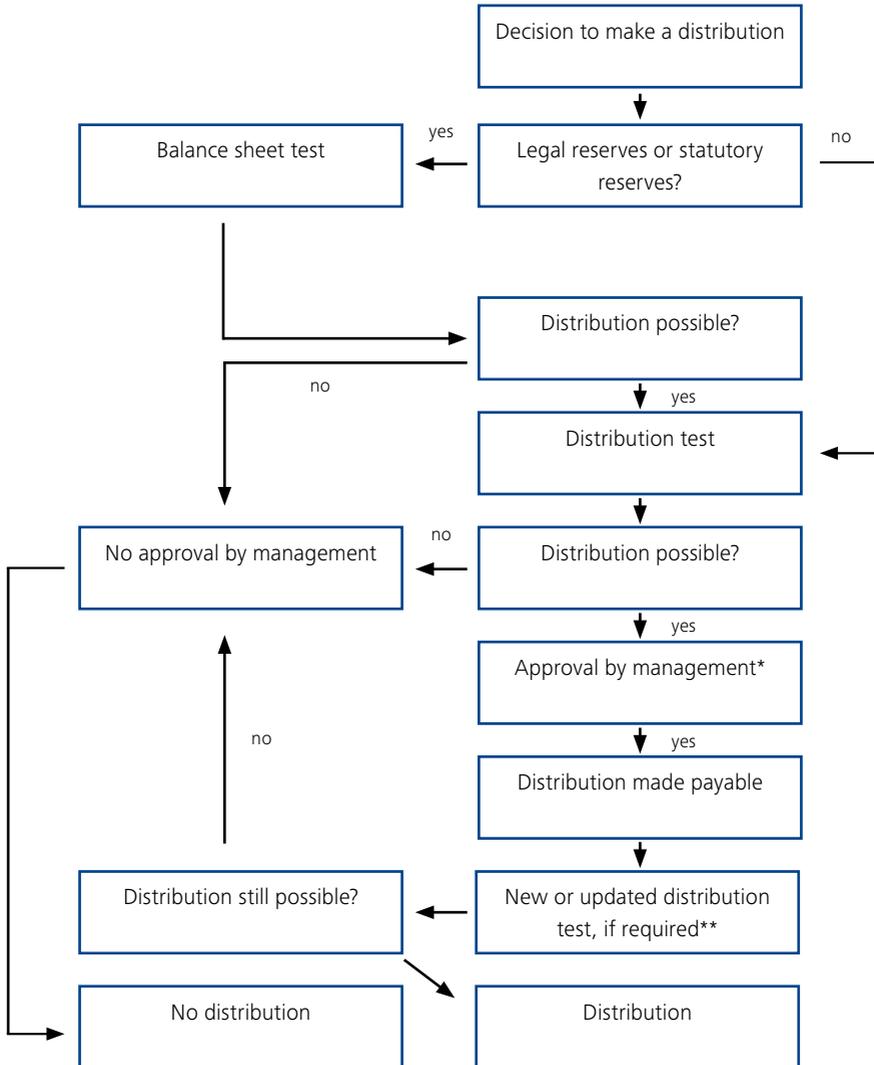
Deadlines annual financial report:	Preparation (MB): Within 5 months after financial year-end, possibility to extend deadline (by AGM) up to 6 months until 11 months after financial year-end ultimately.	Adoption (AGM):  Within 2 months after preparation, so ultimately 7 or (after extension) 13 months after financial year-end.	General publication:  <b>Adopted annual financial report</b> within 5 days after adoption, but notification that financial report has not yet been adopted ultimately 6 months after financial year-end.	Filing with:  AFM notification ultimately 6 months after financial year-end / adopted financial report ultimately 13 months after financial year-end.
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# Appendix 6



\* Reference is made to Chapter 12.

\*\* a new balance sheet test may also apply.



# Appendix 7

## Dutch law checklist company-only financial statements for companies which apply 'combination 3' or 'combination 4'

# Appendix 7

This checklist applies to the company-only financial statements of Dutch companies, which apply the so-called ‘combination 3’ or ‘combination 4’ option shown in the table below:

	Consolidated financial statements	Company-only financial statements
3	IFRS-EU	Title 9 NCC with application of the option to apply the accounting principles which the company used for preparing the consolidated financial statements
4	IFRS-EU	IFRS-EU plus certain applicable articles from Title 9 NCC

Under combination 3 or 4, the company-only financial statements are understood to be financial statements prepared under the provisions in article 362-8 and 362-9 of the NCC.

## Scope

This checklist is not suitable for company-only financial statements with respect to ‘combination 1’ or ‘combination 2’. Reference is further made to Chapter 2, Paragraph 2.5 of this publication. Under combination 3, all presentation and disclosure requirements of Title 9 apply to the company-only financial statements. In addition, the Decree on financial statements formats applies to the company-only financial statements. This checklist (for company-only financial statements) deals with the Title 9 requirements of the NCC. It does not address recognition and measurement.

Combination 3 preparers should also consider the Deloitte ‘IFRS Compliance, Presentation & Disclosure Checklist’ for the consolidated financial statements. This checklist can be downloaded free of charge on [www.IASPLUS.com](http://www.IASPLUS.com).

Combination 4 preparers should also consider the Deloitte ‘IFRS Compliance, Presentation & Disclosure Checklist’ for both the consolidated financial statements and the company-only financial statements.

## Abbreviations

The following abbreviations are used in this checklist (third column in the tables presented below):

- w – legal requirement
- w\* – legal requirement for listed public limited liability companies (N.V.'s) only
- a – recommendation in the DASs
- s – definitive status statement in the DASs

## Shareholders' equity

NCC	Presentation & disclosure item:	Yes / No / N/A
373-1	The balance sheet item shall be split as follows: a. issued capital; b. share premium; c. revaluation reserves; d. other legal reserves; analysed by their nature; e. statutory reserves; f. other reserves; g. undistributed profits; h. specific mention of after-tax profit insofar as the appropriation thereof has not been shown in the balance sheet.	w
373-2	If the issued capital has not been paid up in full, the paid-up capital shall be stated instead. If calls for payment have been made the paid-up and called capital shall be stated. The issued capital shall be stated in these instances.	w
373-3	Deductions of own shares or certificates thereof held by the legal entity or a subsidiary may not be applied to the issued capital.	w
373-4	Legal reserves shall be held in the following situations:	w
67a-2	– applicable to N.V.'s only: negative addition to and minimum capital deficit as a result of translation of the share capital into the euro;	
67a-3		
94a-6f	– applicable to N.V.'s only: contribution in kind without description of what has been contributed;	
98c-4	– applicable to N.V.'s only: loans granted with the purpose of subscribing for or acquiring shares in the capital of the legal entity or depositary receipts of these shares;	

365-2	– intangible fixed assets: capitalised costs connected with the incorporation of the company, the issuance of shares or costs for research and development;	
389-6	– non-distributed results of participations and direct movements in the equity in respect of participations whose distribution cannot be achieved without restriction;	
389-8	– reserve for translation differences;	
390-1	– revaluation of assets;	
390-1	– fair value (hedging) reserve;	
401-2	– investment companies: currency translation reserve of investments at market value of an investment company ('beleggingsmaatschappij') in the context of article 1:1 Financial Markets Supervision Act (Wft);	
423-4	– banks: a legal reserve shall be formed (by banks) for the foreign currency translation of fixed assets or certain currency forward exchange contracts.	
373-5	If financial statements are prepared in a foreign currency, state the issued capital in such currency at the rate of exchange on the balance sheet date. The articles of association may state the issued capital in a currency different from the currency in which the financial statements have been presented. In that case, the exchange rate and amount of that foreign currency shall be stated with respect to the issued capital.	w
389-8	Translation differences of foreign associates are recognised in a reserve for translation differences. Exchange differences on loans entered into to hedge exchange risks of foreign associates, are recognised in a reserve for translation differences as well.	w
389-10	Differences between the shareholders' equity according to the company-only balance sheet and the consolidated balance sheet and between the result after taxes according to the company-only profit and loss account and the consolidated profit and loss account should be disclosed in the company-only financial statements.	w
390 387-5	The revaluation reserve is determined per individual asset. No negative reserve is allowed to arise per individual asset. Recognition of amortisation are accounted for in the profit and loss account.	w

390-1	Increases in value of tangible fixed assets, intangible fixed assets and inventories (excluding agricultural inventories) are recognised in a revaluation reserve. Increases in value of other assets that are measured at current cost, are recognised in the revaluation reserve, unless they are recognised in the profit and loss account under article 384 NCC.	w
390-1	Additionally, the entity forms a revaluation reserve deducting from the freely distributable reserves or deducting from the result for the year, with respect to increases in value of assets taken to result during the year, insofar such assets still exist at the balance sheet date. For the increases in value of financial instruments for which frequent market rates exist no revaluation reserve is formed. If no frequent market rates exist a revaluation reserve is formed.	w
384-8 390-1	An entity may account for certain financial instruments under the cash flow hedging accounting model (as hedging instruments). To the extent that deferred losses on such hedge instruments have been deducted from the revaluation reserve, no distributions can be made from the reserves. The revaluation reserve can be decreased by deferred tax liabilities with respect to assets which have been revalued to a higher amount.	w
390-3	The revaluation reserve does not exceed the difference between the carrying amount based on the acquisition or construction cost and the carrying amount based on current cost applied upon the measurement of the assets to which the revaluation reserve relates. This reserve is decreased by the amount recognised in the reserve on account of a certain asset if the related asset is disposed of. An impairment of an asset measured at current cost, is recognised in the revaluation reserve to the extent this asset has been remeasured upward in the revaluation reserve prior to this.	w
390-4	The decreases of the revaluation reserve that are recognised in the profit and loss account, are included in a separate item.	w
390-5	The revaluation reserve can be decreased by deferred tax liabilities in respect of assets that have been measured at a higher amount.	w
390-5	The disclosure explains whether and by what method in connection with the revaluation, the effect of taxation on equity and result has been taken into account.	w

**Average number of employees, wages and social securities, audit fee disclosure and remuneration of managing directors / supervisory board members**

NCC	Presentation & disclosure item:	Yes / No / N/A
<b>Average number of employees</b>		
382	The entity shall disclose the average number of employees during the year, categorised in a way which is consistent with the way the company is structured. The entity discloses the number of employees working outside the Netherlands.	w
<b>Wages and social securities</b>		
382	If article 377-3 NCC was not applied in the profit and loss account (i.e. the profit and loss account is prepared by function) then the 'wages' and 'social securities with separate disclosure of the pension charges' shall also be disclosed.	w
<b>Audit fee disclosure</b>		
382a	<p>A statement is provided of the aggregate fees charged to the legal entity during the financial year for:</p> <ul style="list-style-type: none"> <li>– the audit of the financial statements;</li> <li>– other audit engagements;</li> <li>– tax advisory services; and</li> <li>– other non-audit services,</li> </ul> <p>that have been performed by the external auditor and the audit firm, as referred to in article 1, first paragraph, under a and e, of the Act on the supervision of audit firms.</p> <p>If the legal entity has subsidiaries or consolidates the financial data of other companies, the fees charged to those companies during the financial year are included in the statement.</p>	w
<p>The fees need not be disclosed by a legal entity whose financial data has been consolidated into consolidated financial statements to which pursuant to the applicable law the regulation of the European Parliament and the standards for financial statements applies, or the Seventh Company Law Directive of the Council of the European Community, and the audit fees referred to in article 382a-1 NCC have been disclosed in the aforementioned consolidated financial statements.</p>		

<b>Remuneration of managing directors / supervisory board members</b>		
383-1	Disclosure of the aggregate amount of remuneration (including pensions and other benefits), unless this can be reduced to one single natural person, split into: a. collective and former managing directors; b. collective and former supervisory board members.	w
383-2	Disclosure of loans, advances and guarantees on behalf of directors, and (separately) loans, advances and guarantees on behalf of supervisory directors: – aggregate amount; – amounts outstanding; – interest rate; – the principal other terms and conditions; – repayments made during the financial year.	w
383b 383c-1 383c-2 383c-4	Only for public N.V.'s, not being N.V.'s whose articles solely know registered shares, contain share transfer restrictions and do not allow the company to co-operate with the issue of bearer depositary receipts: Statement per individual (former) managing director and per individual (former) supervisory board member of: a. short-term benefits; b. long-term benefits; c. termination benefits; d. profit sharings and bonus payments; to the extent that these amounts have been charged to the company in the financial year. If the company has paid a remuneration in the form of a bonus based on achieving set goals, this will be announced. In addition, the company will disclose whether these goals have been achieved during the year under review.	w
383c-3	If the public N.V. has granted a supervisory board member a remuneration in the form of a profit sharing or a bonus, it will disclose this separately, including a statement of the reasons for granting a supervisory board member the remuneration in this particular form.	w
383c-5	If the entity has subsidiaries or consolidates the financial data of other entities, the amounts of article 383 NCC or 383c-e NCC which have been taken to the profit and loss account of such consolidated entities, shall be included in the disclosure and allocated to the respective category of remuneration.	w

383d-1-2	<p>Under art. 2:383d NCC a public N.V. must separately state for each individual managing director and each individual supervisory board member and for the employees together the following information about the options on shares of the legal entity itself and on shares of subsidiaries:</p> <ul style="list-style-type: none"> <li>– the exercise price of the rights and the price of the underlying shares in the capital of the legal entity if that exercise price is lower than the price of those shares at the moment of granting the rights;</li> <li>– the number of share options not yet exercised at the beginning of the financial year;</li> <li>– the number of share options the company granted in the financial year including the related main conditions; if such conditions are changed during the financial year, these changes must be disclosed separately: the number of share options exercised during the financial year, with which in any case the number of shares related to that exercise, and the exercise prices are disclosed;</li> <li>– the number of share options not yet exercised at the end of the financial year, with which the following is disclosed: <ul style="list-style-type: none"> <li>• the exercise price of the options granted;</li> <li>• the remaining period of the options not yet exercised;</li> <li>• the main conditions that apply to exercising the options;</li> <li>• a finance arrangement made upon granting the options;</li> <li>• other data that is significant to the appraisal of the value of the options; and</li> <li>• if applicable: the criteria that the legal entity has used, which apply to granting or exercising the options.</li> </ul> </li> </ul>	w
383-d3	<p>The entity shall disclose the number of shares in the capital of the entity which have been purchased as of the balance sheet date, or how many new shares have been issued as of the balance sheet date or which will be issued after the balance sheet date with respect to the rights in article 383c-1 NCC and 383c-2 NCC.</p>	w
383-d4	<p>For the application of article 383d NCC, 'shares' also include depositary receipts of shares issued by the entity.</p>	w
383e	<p>The entity shall disclose the amount of loans, prepayments ('voorschotten') and guarantees (including amounts granted by the entity's subsidiaries and other consolidated entities). The still outstanding amounts, the interest rate and other key clauses, and the redemptions during the year shall be disclosed. As regards public N.V.'s this information is provided for each separate director and each separate supervisory director.</p>	w

391-2	In addition, the public N.V. announces the company's policy in respect of the remuneration of its directors and supervisory board members and the how this policy has been implemented in the financial year.	w
389-9	Banks shall apply article 421-5 NCC.	w
	<p>N.B.:</p> <p>The Dutch Accounting Standards Board (DASB) issued DASB-statement 2013-1: 'Crisis levy'. DASB-statement 2013-1 finalises DASB-statement 2012-5 without any substantive changes.</p> <p>DASB-statement 2013-1 deals with the accounting, allocation and disclosure of the crisis levy ('crisisheffing' article 32bd of the 'Wet op de loonbelasting 1969'). The disclosure with respect to the crisis levy are outlined as follows:</p> <ul style="list-style-type: none"> <li>• disclose whether or not the entity deems the crisis levy to be part of director remuneration in the context of article 383-1 and 383c NCC;</li> <li>• disclose the total amount of crisis levy incurred by the entity (if article 383-1/383c NCC apply).</li> </ul>	

## Management board's report

NCC	Presentation & disclosure item:	Yes / No / N/A
	<p><b>Introduction</b></p> <p>Please note that an entity which applies IFRS, cannot use the size exemptions of article 396 and 397 in Section 11 of the NCC. Consequently, an entity which applies IFRS, must prepare and publish a management board's report (refer to article 362-9 of the NCC, article 396-7 NCC which then does not apply, and consequently article 391 NCC with respect to the management board's report does apply).</p>	

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**Presentation and disclosure: general**

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	<p>The management board's report should contain general information concerning the legal entity and its associated companies. This information shall in any case include:</p> <ul style="list-style-type: none"><li>- the objective;</li><li>- an indication of the core activities of the company, stating the main products, services, geographical areas categories of customers and suppliers; the (international) chain in which the company is active;</li><li>- the legal structure, e.g., the group structure and whether the two-tier regime is applicable;</li><li>- the internal organisational structure and numbers of personnel;</li><li>- principal elements of management policy.</li></ul>	s
391-3	<p>The management board's report should state the objectives and the policy regarding managing the risks of financial instruments. In accordance with article 391-1 of the NCC it regards the objectives and the policy of the legal entity and the group companies of which the financial data has been included in the financial statements. Among the issues that require attention is the policy for hedging risks connected with all major intended transactions. Moreover, attention should be paid to price, credit, liquidity and cash flow risks that the legal entity and the group companies run.</p>	w
391-4	<p>The management board's report should contain references to and additional explanation of items in the financial statements, if this is required for a true and fair view in the management board's report. This information can be integrated with the information as required under art. 2:391, paragraph of the NCC.</p> <p>N.B.: It is not the legislator's intention to have the management board's report contain information that belongs in the financial statements.</p>	w

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**Presentation and disclosure: current state of affairs**

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391-1	<p>The management board's report regards the legal entity and the group companies of which the financial data has been included in the financial statements. The management board's report should present a fair view of:</p> <ul style="list-style-type: none"><li>- the situation as at the balance sheet date;</li><li>- the development during the financial year;</li><li>- the results; and</li><li>- the main risks and uncertainties with which the legal entity and its group companies are confronted.</li></ul> <p>This requires a solid and complete analysis of the aforementioned aspects. This analysis should be in accordance with the size and complexity of the legal entity and group companies.</p>	w
	<p>Describing the main risks and uncertainties in accordance with article 391-1 NCC is not meant to provide an exhaustive explanation of all possible risks and uncertainties, but it involves a selection and representation of the main risks and uncertainties confronting the legal entity. Such selection may include, e.g., the categories:</p> <ul style="list-style-type: none"><li>- strategy: risks and uncertainties forming an impediment to realising the strategy and/or the business model of the legal entity in the long-term (e.g., risks associated with entering new markets or with acquiring or disposing of divisions);</li><li>- operational: risks and uncertainties that affect the effectiveness and efficiency of the legal entity's operations in the short term (e.g., the chance of ICT systems failing or uncertainties regarding the quality of products);</li><li>- financial: risks and uncertainties that arise from, or directly affect, the effectiveness and efficiency of the financial processes (e.g., currency exchange risks, liquidity risks or uncertainties as regards the possibility to raise funds);</li><li>- financial reporting: risks and uncertainties that affect the reliability of the internal and external financial reporting (e.g., uncertainties with complex allocation problems or the extent of subjectivity with measurement issues);</li><li>- legislation and regulations: risks and uncertainties ensuing from legislation and regulations (both internally and externally) and which directly influence the organisation and/or the business processes (e.g., risks due to amendments to tax legislation or the sensitivity to the risk of not complying with information rules or environmental legislation).</li></ul>	a

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	It is recommended for the legal entity to not only disclose the risks and uncertainties it has selected, but to also disclose how it manages these risks and uncertainties.	a
	N.B. The extent of the description depends on the chance of realising the related risk and its (financial) consequences for the legal entity. Under circumstances a quantification of the risks described and a description of the attitude vis-à-vis risks and uncertainties in general, may positively affect the supply of information.	
391-1	If necessary for a fair understanding, the analysis contains performance indicators.	w
391-1	If necessary for a fair understanding, the analysis contains non-financial performance indicators as well, among which environmental and personnel issues.	w
	The management board's report should at least discuss the following aspects, by means of a solid and complete analysis: - the turnover and results achieved; - the situation as at the balance sheet date (solvency and liquidity); - the main risks and uncertainties; and - the cash flows and financing requirements.	s
	It is important in the above discussion to draw a distinction between turnover and results achieved with core activities, ancillary activities and with activities that have been discontinued or from which the company intends to withdraw in due course. It is recommended that developments be described in terms of the absolute amounts as well as the position in the relevant markets.	a
	Attention should be devoted to the actual development in the financial year under review of important matters about which expectations were voiced or substantial uncertainty was mentioned in the preceding management board's report.	s
	In this context, the disclosure of significant differences between trends identified in the preceding management board's report and actual developments is recommended.	a
391-2	The open N.V. additionally provides information in the management board's report about the policy of the company as regards the remuneration of its directors and supervisory board members and the way in which this policy has been effectuated in the financial year under review.	w

	<p>Aspects of socially sound business practice, including the (international) chain management of the legal entity</p> <p>a. general aspects;  b. environmental aspects;  c. social aspects;  d. economic aspects;</p> <p>Per aspect attention shall be paid to the following elements:</p> <ul style="list-style-type: none"> <li>- dialogue with interested parties;</li> <li>- policy in respect of the aspect;</li> <li>- its organisation;</li> <li>- its execution and outcome;</li> <li>- future prospects.</li> </ul> <p>Per aspect distinguish between social aspects of:</p> <p>a. the own business operations and the company's operations;  b. the (international) chain in which the legal entity operates.</p> <p>Upon disclosing aspects of socially sound business practice it may be important to distinguish segments.</p>	a
	<p>Depending on their relevance for the users of the annual reporting the following subjects can also be significant for the management board's report:</p> <ul style="list-style-type: none"> <li>- marketing and distribution;</li> <li>- internal control of processes and procedures;</li> <li>- risk management;</li> <li>- quality control;</li> <li>- internal and external supply of information;</li> <li>- computerisation; and</li> <li>- financing.</li> </ul>	a
<b>Presentation and disclosure: outlook paragraph</b>		
391-2	<p>Information shall be given concerning the business outlook with particular attention being paid to:</p> <ul style="list-style-type: none"> <li>- investments;</li> <li>- financing;</li> <li>- number of personnel;</li> <li>- circumstances affecting future turnover and profitability;</li> <li>- activities in the field of research and development.</li> </ul>	w
	<p>N.B. Making statements about the research and development operations applies irrespective of whether the costs of research and development have been included under intangible fixed assets on the balance sheet.</p>	

391-2	If compelling reasons oppose this information being disclosed, this information may be omitted.	w
	It is recommended that the information should include information on the nature of the research and development activities and their significance for the legal entity's position and business outlook.	a
	Disclosures to separate items of the balance sheet and the profit and loss account form part of the disclosure as section of the financial statements and must not instead be included in the management board's report.	s
391-2	The effect of unusual events, which do not need to be taken into account in the financial statements, shall be disclosed.	w
<b>Presentation and disclosure: corporate governance</b>		
	The legal entity states whether specific codes of conduct are followed and which codes of conduct are applied. In addition, the legal entity states whether these codes of conduct are mandatory or voluntary. In the annual report (or in the contents) the legal entity includes a reference to the information available about compliance with the codes of conduct (e.g., to the website). Codes of conduct explicitly include international conventions and Guidelines, e.g., the ILO statement on fundamental principles and entitlements to work, the Tripartite International Labour Office (ILO) statement on multinational enterprises and social policy, the OESO Guidelines for Multinational Enterprises and the Guideline on responsible sourcing of the International Chamber of Commerce (ICC).	a
391-5	The following Governmental Decrees state more detailed requirements for certain listed N.V.'s as regards the content of the annual report: - the 'Corporate Governance Decree' and the 'Corporate Governance Code'; and - the 'Decree Article 10 EU Takeover Directive'.	w*
	The Corporate Governance Decree applies to financial years that have started on or after 1 April 2008 and applies for public limited liability companies whose (depository receipts on) shares have been admitted to the trade on a regulated market in one of the EU/EEA member states or a system comparable to a regulated market in a non-EU/EEA member state. Under the Decree these companies publish a statement relating to corporate governance: (i) as specific part of (or as appendix to) the annual report; or (ii) electronically as a result of which the statement is directly and permanently accessible, subject to the condition that the annual report discloses where the public can access the statement.	w*

<p>The Corporate Governance Decree obliges the company to issue a corporate governance statement discussing its compliance with the principles and best practice provisions of the corporate governance code and any other codes of conduct and corporate governance practices that the company voluntarily complies with or not.</p>	w*
<p>Under the Corporate Governance Decree in the company must disclose the following information in the corporate governance statement:</p> <ul style="list-style-type: none"> <li>-the most important characteristics of the management and control system of the company in connection with the financial accounting process of the company and of the group whose financial data has been recorded in the financial statements;</li> <li>-the performance of the shareholders' meeting and its main competences and the rights of the shareholders and how these can be exercised, insofar as this does not immediately ensue from the law; and</li> <li>-the composition and the performance of the management board and the supervisory board and their committees (e.g., nominations, remunerations, and audit committees).</li> </ul>	w*
<p>In addition, the corporate governance statement contains – insofar as applicable – all information that must be included under the Decree Article 10 EU Takeover Directive.</p>	w*
<p>Public limited liability companies of which solely securities, not being shares, are allowed to be traded on a regulated market in one of the EU member states are exempted from preparing a full corporate governance statement. This exemption has two exceptions: (i) the exemption does not apply if the company's shares are also traded on a multilateral trading facility within the meaning of article 1:1 of the Financial Supervision Act, and (ii) the exemption relates to the obligation to provide information about the management and control system and the statements pursuant to the Decree Article 10 EU Takeover Directive.</p>	w*
<p>The corporate governance code applies to financial years starting on or after 1 January 2009. N.B. The banks' code of conduct is the 'Banking code'. This Checklist does not discuss this code.</p>	w*

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### Management board's statement

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Public limited liability companies with a listing on a regulated market in one of the EU/EEA member states are likewise subject to obligations on account of the European Transparency Directive (2004/109/EG) as laid down in Dutch law as from 1 January 2009. As a result, since 1 January 2009 a company not only has the obligation to publish an annual report (and interim report), it also needs to publish an explicit statement declaring that the financial statements (or interim financial statements respectively) are correct and complete, that the annual report provides a fair view and that the substantial risks and uncertainties facing the company have been described. It is generally assumed that such a statement only needs to be signed by the directors appointed in accordance with the articles of association of the company. Therefore, this (management board's) statement is usually often included as part of the annual report.

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\* This provision solely applies to listed public limited liability companies.

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### Disclosure of uneven board seat allocation between men and women

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391-7 The following disclosure item is applicable when article 166 NCC (for N.V.'s) or article 276 NCC (for B.V.'s) applies to an entity that meets two or three of the size criteria for a large company and where the allocation of seats in the board of directors or the supervisory board between men and women is not balanced (as defined in article 166 NCC or 276 NCC respectively). In that case, the entity shall disclose:

- why the allocation of board seats between men and women is not balanced;
- in which way the entity tried to achieve an equal distribution of board seats between men and women;
- in which way the entity aims to realise such a balance in the future.

The effective date of this requirement is 1 January 2013. This requirement therefore applies to a management board's report which is prepared on or after this date (which could be the management board's report for financial year 2012 or earlier).

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## Other information

NCC	Presentation & disclosure item:	Yes / No / N/A
<b>Other information</b>		
392-1	The Other information to be appended consists of:	
	a. the auditor's report or a statement as to the reason for its absence;	w
	b. details of the provisions of the articles of association relating to the appropriation of the profit;	w
	c. the (proposed) appropriation of the profit or the treatment of the loss;	w
	d. the provisions of the articles of association relating to the share in the deficit of a co-operative or a mutual guarantee association, insofar as they differ from the legal provisions;	w
	e. a list of names of those having special rights of control over the legal entity pursuant to the articles of association and particulars of the nature of those rights;	w
	f. disclosure of the number of profit certificates ('winstbewijzen') and similar rights, the number of non-voting shares ('stemrechtloze aandelen') and the number of shares with no or only a limited right to sharing in the profit or reserves of the entity, including the powers conferred thereby;	w
	g. post-balance-sheet events that have material financial consequences for the legal entity, including (an estimate of) the financial consequences (or a statement that such is not possible) and the consolidated companies;	w
	h. disclosure of the existence of branch establishments, the countries where they are located and the names under which they trade (if different from that of the legal entity).	w
392-2	The data shall not be inconsistent with the financial statements and management board's report.	w
392-3	If a special right pursuant to the articles of association is embodied in a share, the number of such shares held by each of the parties shall be stated. If the shareholder is a legal entity, the names of the directors thereof shall be stated.	w

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392-4	<p>If ministerial dispensation has been granted, the information below need not be disclosed:</p> <ul style="list-style-type: none"><li>- names of holders of special rights of control pursuant to the articles of association and the nature of those rights;</li><li>- if special rights of control pursuant to the articles of association are embodied in shares; disclosure of the number of such shares with each shareholder. If the shareholder is a legal entity, disclosure of the names of its directors.</li></ul>	w
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