



## **The Annual Accounts in the Netherlands**

A guide to Title 9 of the Netherlands Civil Code

2017 Edition

Deloitte

The Annual Accounts in the Netherlands -

A guide to Title 9 of the Netherlands Civil Code - for financial years starting on or after 1 January 2017

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## Preface

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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.

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 changes to the NCC following the implementation of the new European Union Accounting Directive 2013/34/EU. These changes became effective as of 1 January 2016. 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. Extensive cross-references have been added to specific articles to guide the reader through the different articles and sub-articles in Title 9. This publication is intended for financial years starting on or after 1 January 2017.

I would like to express our gratitude to Fred van der Giessen and Dingeman Manschot for sharing their expertise and for their significant efforts in producing this publication. I would also like to express our gratitude to our colleague Nienke Roetert Steenbruggen, who is responsible for Chapter 11 (Company Law) of this publication.

Ralph ter Hoeven

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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 (DASB) 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. However, DASs do not formally have the status of law.

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 whether a group relationship exists, consolidated financial statements shall 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 four categories: large, medium-sized, small and micro companies. Micro, 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.

Micro and 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 (with the exception of micro companies). 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.

Key requirements of the Financial Markets Supervision Act (Wft), including the scope, main provisions and filing deadlines, are outlined in Chapter 10.

Chapter 11 deals with relevant company law topics, such as incorporation, capital requirements, distributions to shareholders and governance.

The appendices include a number of useful tools such as the prescribed formats for the balance sheet and profit and loss account.

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

### 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 6 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 in Chapter 3. Publication and audit requirements are discussed in Chapter 4 and 5 respectively.

Disclosure requirements are dealt with throughout this publication on a high level basis, mainly in Chapter 6. The prescribed models for disclosure and publication of the balance sheet and the profit and loss account are set out in Appendix 2 and explained in Chapter 7.

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

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



The management board's report, the items to be included in the other information section are dealt with in Chapters 8 and 9 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 ('Ondernemingskamer') and the Supreme Court ('Hoge Raad') in various cases. Compliance with DASs is important 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.

### Entities Formally Registered Abroad Act

The Entities Formally Registered Abroad Act (Wfbv) applies to a foreign (non-European Union member state) entity that conducts its activities entirely or almost entirely in the Netherlands and does not have real ties with the state in which the entity was created (article 1-1 Wfbv). If an entity is in scope of the Wfbv, its directors are required to enter such entity in the Trade Register of the Chamber of Commerce in the Netherlands. Amongst other requirements of the Wfbv, directors are required to prepare and file financial statements and a management board's report which shall comply with Title 9 (article 5-2 Wfbv). Reference is made to the Wfbv for more details and other relevant requirements.

### Tax accounting principles

Micro and 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 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 EU if the international entanglement of the group justifies this	Standards that are generally accepted in one of the other member states of the EU 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 under 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. 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, at fair value or in accordance with the

equity method in the company-only financial statements (separate financial statements under IFRS, refer to IAS 27.10). 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. By applying this combination, reconciliation can be maintained between the equity in the company-only financial statements and the equity in the consolidated financial statements.

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 combination 3 company-only financial statements.

The combination 3 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.

Furthermore, the following articles of the NCC apply to the financial statements prepared under combination 3 (article 362-9 NCC):

Article(s) of the NCC	Topic
362-6	Financial statements seriously deficient in providing the legally required insight
362-7	Language
362-10	Disclosure of the basis of accounting
365-2	Legal reserve for capitalised development costs
373	Presentation and disclosure of equity
379-1	Name, place of business and proportion of issued share capital held in other entities
379-2	Shareholders' equity and profit and loss according to the latest adopted financial statements of interests in other entities
380b part d	Name, legal form, domicile and registration number Chamber of Commerce
382	Disclosure of average number of employees, wages and social securities

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<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 DASs.

Article(s) of the NCC	Topic
382a	Audit fee
383 and 383b-383e	Director remuneration
389-8	Legal reserve for currency translation differences
389-10	Disclosure in the company-only financial statements of differences between the 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 micro company and small company applying IFRS-EU in its company-only financial statements cannot use the exemptions of article 395a NCC and 396 NCC<sup>5</sup> respectively (including the exemptions regarding disclosure and the exemption from an audit), nor does Section 11 of Title 9 apply in such situations (article 362-9 NCC). 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, associates and joint ventures are accounted for in the company-only financial statements (separate financial statements under IFRS) at historical cost, at fair value or in accordance with the equity method (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.

For the articles of the NCC applicable to the financial statements prepared under combination 4 (article 362-9 NCC), we refer to the table on the preceding page above. 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).

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<sup>5</sup> Article 396 NCC is explained in Chapter 3 and Chapter 4, paragraph 4.8.

### 3. Company size

#### 3.1 Criteria

Companies are classified by size using three criteria (articles 395a, 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 plus 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 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 four categories:

- large;
- medium-sized;
- small; or
- micro.

#### 3.3 Classification chart

Amounts in EUR	Micro	Small*	Medium-sized**	Large
Total assets***	≤ 350 thousand	≤ 6 million	≤ 20 million	> 20 million
Net turnover	≤ 700 thousand	≤ 12 million	≤ 40 million	> 40 million
Average number of employees	< 10	< 50	< 250	≥ 250

\* and not a micro company

\*\* and not a micro or small company

\*\*\* on a cost basis

A company is classified in a particular category (micro, 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).

A company which applies IFRS-EU using combination 4, cannot use the size exemptions of articles 395a, 396 and 397 NCC (article 362-9 NCC). Consequently, such a company is classified as a large company.

As stated in article 398-3 NCC, articles 395a, 396 and 397 NCC are not applicable to investment companies to which article 401-1 NCC applies. Such investment companies are effectively classified as a large company. Articles 395a, 396 and 397 are furthermore not applicable to public interest entities (article 398-7 NCC):

- that have securities listed on a regulated market in the EU;
- that are credit institutions as per article 4, point 1 of Directive 2013/36/EU and which are not an institution as meant in article 2 part 5 of Directive 2013/36/EU;
- that are insurance companies in the context of article 2 part 1 of Directive 91/674/EEG; or
- that are designated by governmental decree based on size or function by stakeholders ('maatschappelijk verkeer').

Such entities are effectively classified as large companies.

Article 395a NCC is not applicable to participation companies as described in article 2, part 15 of Directive 2013/34/EU.

## 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.

### 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 commercial association, a cooperative or a mutual guarantee association), the body designated in the articles (for a commercial foundation) or the general meeting of shareholders (for an N.V. or a B.V.<sup>6</sup>) may extend the period for preparing the annual accounts for a maximum period of five months (for an N.V. or a B.V.) or a maximum period of four months (for a cooperative, mutual guarantee association or a commercial foundation or association). The maximum extended period for preparing the annual accounts is therefore ten months.

The maximum period for preparing and publishing the financial statements of listed N.V.'s and B.V.'s is four months after the financial year-end (article 5:25c-1 Wft). This maximum period may not be extended.

### 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. and 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, pledge holders or parties entitled to a usufruct ('vruchtgebruik') 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.

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).

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<sup>6</sup> In this publication, the phrase 'general meeting' is used, since other parties than shareholders may also attend the general meeting.

## 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 ten 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 twelve 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) and may, in case of bankruptcy of the company, trigger director liability for the company's deficit.

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.

## 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).

Micro companies and 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 395a-6/8 and article 396-7/8 NCC respectively). Reference is made to Chapter 8.

## 4.7 Special requirements for listed companies

The requirements for preparation, adoption, general publication and filing of the annual accounts of listed companies are detailed in Appendix 5, Schedule C.

## 4.8 What to prepare and what to publish

Micro, small and medium-sized companies may take advantage of certain exemptions if they do not prepare financial statements in accordance with IFRS-EU. 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):

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	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<sup>7</sup>);
- 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.

Medium-sized companies	Preparation	Publication
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	F

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<sup>7</sup> Article 402 NCC is not applicable to companies as referred to in article 398-7 NCC.

Small companies	Preparation	Publication
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	E

Micro companies	Preparation	Publication
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)	E	E
Management board's report (section 7 of Title 9)	E	E
Other information (section 8 of Title 9)	E	E
Audit requirements (section 9 of Title 9)	E	E

### Micro companies

This publication is not intended to cover all requirements and exemptions for companies in each of the four size categories, including micro companies. A high-level summary for micro companies is as follows. The objective of micro companies is to limit the administrative burden on such companies. Therefore, in general, micro companies may use more extensive exemptions than those for small companies. No management board's report in conformity with article 391 NCC, disclosure notes and other information is required (article 395a-6 NCC). Like small companies, there is no audit requirement for micro companies. There are however also areas whereby micro companies may apply less exemptions than for small companies. The annual accounts of micro companies for preparation purposes consist of a (simplified) balance sheet and profit and loss account. The Decree on financial statements formats (BMJ) is not applicable to micro companies. For publication purposes, only the balance sheet is required to be filed with the Trade Register at the Chamber of Commerce (article 395a-8 NCC). Micro companies may 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 395a-7 NCC).

## **5. Audit requirements**

### **5.1 Which companies require an audit**

#### **Micro and 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 the auditor.

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 of the audit 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 financial statements provide the insight required by article 362-1 NCC. He will also verify whether the financial statements 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 and whether it is consistent with the financial statements, and whether the other information referred to in article 392-1 under (b) up to and including (f), has been included (article 393-3 NCC) in the other information section of the annual accounts. In connection with the knowledge and understanding of the company and its environment accumulated in the audit, the auditor shall verify whether the management board's report contains material errors (article 393-3 NCC). The auditor reports the outcome of his audit by means of an opinion whether the financial statements 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 (article 393-5 NCC):

- a statement to which financial statements the audit relates and which legal requirements apply to these financial statements;
- a description of the extent of the audit and which auditing standards were observed when performing the audit;

- a statement whether the financial statements 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 (as referred to in article 393-6b NCC);
- a statement about deficiencies identified in connection with the verification of the management board's report and other information as required by article 393-3 NCC whether the management board's report has been prepared in accordance with Title 9 and whether the other information required pursuant to article 392-1, under (b) up to and including (f) NCC, has been included;
- an opinion whether the management board's report is consistent with the financial statements; and
- an opinion whether, in connection with the knowledge and understanding of the company and its environment accumulated in the audit, material errors were identified including a description of the nature of such errors.

The auditor must issue an opinion and report on the audit to the supervisory and management boards. 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

In accordance with principles generally accepted in the Netherlands, the financial statements must provide an insight<sup>8</sup> 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 a company 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.

The balance sheet date of the consolidated financial statements shall be the same as at 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, entities to be consolidated 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 entities date from less than three months before or after the balance sheet date of the parent company.

#### Events subsequent to the adoption of the financial statements

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

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<sup>8</sup> Insight: the capacity to discern the true nature of the company's financial affairs.

statements seriously fail to provide the insight required, management must inform the 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). Events after the balance sheet date that do not provide evidence of conditions that existed at the balance sheet date with important financial consequences for the entity (including consolidated participating interests) shall be disclosed including the financial effects of such events (article 380a 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 (article 363-4 NCC).

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

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

### **Micro companies**

This Chapter outlines various exemptions on a high-level basis. This summary is not intended to be exhaustive, nor are the differences between exemptions applicable to micro companies versus small companies in scope of this publication. As explained in Chapter 4, micro companies generally have more available exemptions than small companies.

## 6.2 Interests in other entities

### Definitions

#### 1. Participating interest ('deelneming')

- 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: 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). Significant influence is relevant for the measurement of participating interests. 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 ('groepsmaatschappij')

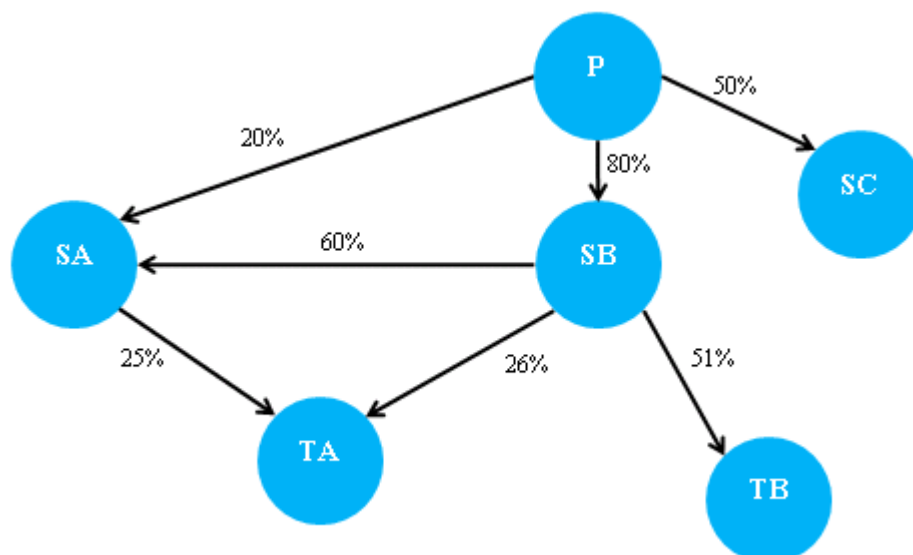
A legal entity or partnership which is part of a group. The law defines a group as a number of legal entities and companies which in practice form one entity for organisational and economic purposes (article 24b NCC). Furthermore, central governance plays a crucial role in the determination of a group company. DAS 217 provides more guidance on group companies and the notion of (power to) control.

#### 3. Subsidiary company ('dochtermaatschappij')

- 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 subsidiary companies ('dochtermaatschappijen') 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.

### Information to be provided regarding participating interests and parent companies

For each legally-presumed participating interest<sup>9</sup> 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):

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

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<sup>9</sup> This term is explained above in paragraph 6.2, section Definitions (participating interests).



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 company 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:

Consolidated companies		
Name	Registered office	Share in issued share capital
-	-	-
-	-	-

Unconsolidated companies		
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 publically available consolidated financial statements

Recapitulation of disclosure requirements regarding the consolidated financial statements:

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

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 subsidiary companies, 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).

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

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 (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 at initial recognition. 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.

#### *Goodwill*

Any goodwill resulting from the use of the net asset value method shall be capitalised as intangible fixed assets and subsequently amortised (article 389-7 NCC) and impaired if necessary. Impairments of goodwill cannot be reversed in the future (article 387-5 NCC). Goodwill must be amortised in accordance with their expected useful lives. In exceptional circumstances where such useful lives cannot be reliably estimated, goodwill is amortised over a maximum period of ten years. In such cases, the reason for the amortisation period shall be disclosed (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

Under this method, the investment shall be re-measured at current value each period end. It should be noted that it is not allowed to measure participating interests with significant influence at current value (article 10-3c BAW). If financial instruments such as participating interests without significant influence are measured at current value, then the fair value is used, unless the fair value is not reliably measurable (article 10 BAW).

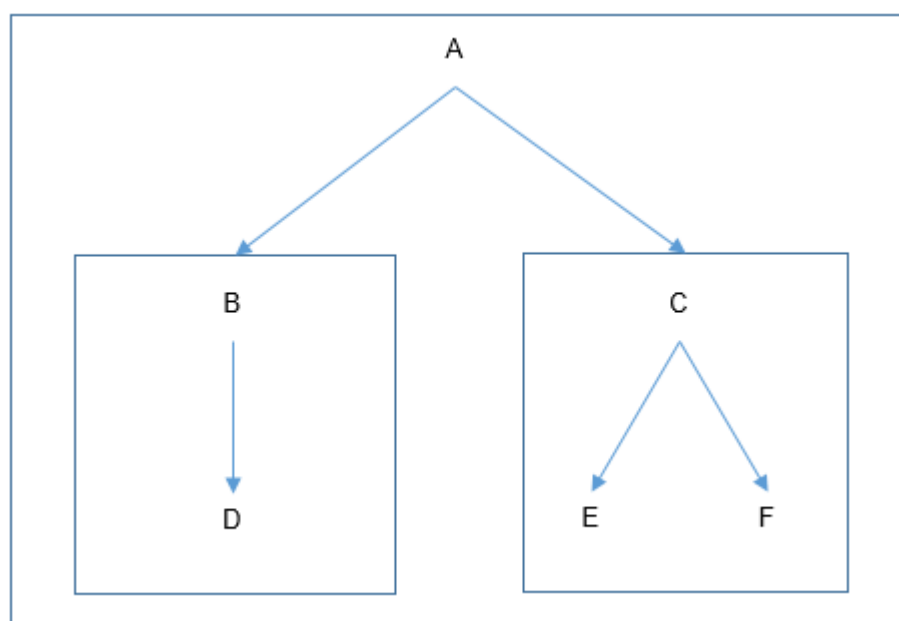
### 6.3 Consolidated financial statements

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 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 NCC)

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

A company that heads a group - alone or jointly with another group company - prepares consolidated financial statements that include the financial data of (article 406-1 NCC):

- the group head;
- the subsidiary companies 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.

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).

### **Consolidation requirement for intermediate holding company (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 subsidiary companies 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 company in its part of the group is obliged to consolidate that part of that sub-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 (407 NCC)**

The following companies do not have to be consolidated (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 micro and small groups (applying the limits of micro companies and small companies respectively) under the following conditions (article 407-2 NCC):

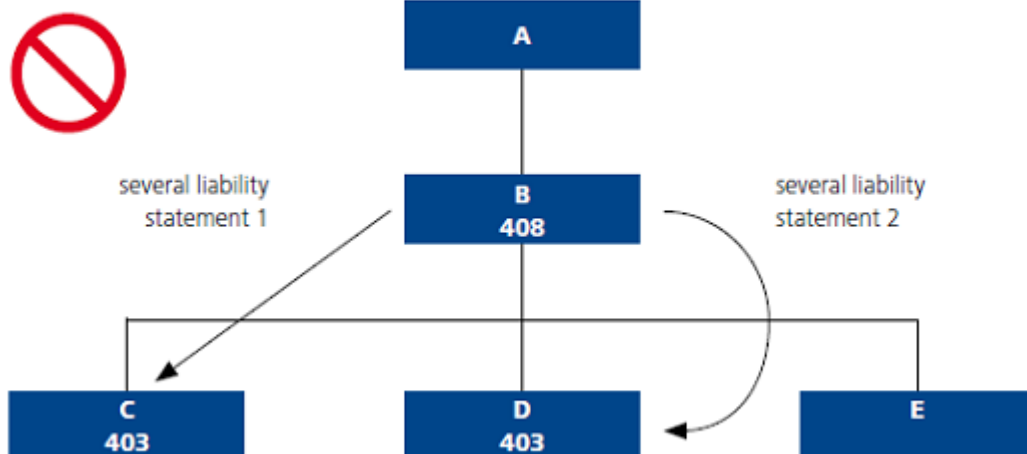
- if none of the companies to be included into the consolidation is an entity as referred to in article 398-7 NCC;
- if no notices of objections have been lodged against the fact that a consolidation will not be carried out, within six months after the commencement of the financial year, by the general meeting.

### **Exemptions for group companies**

A situation may arise in practice where the head of the group has issued a written statement of liability vis-à-vis creditors of 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. 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 Directive 2013/34/EU, or under the Directives for banks and other financial institutions or insurance companies. 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 for instance 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

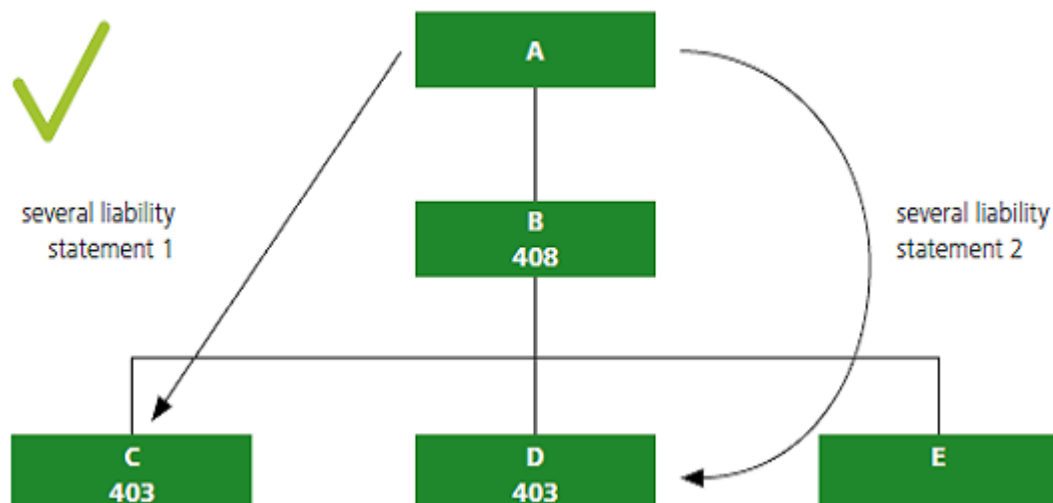
(article 407-2 NCC) and the exemption for intermediate holding companies (article 408 NCC, discussed in the next paragraph below). This is illustrated in the example on the next page:

**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):

- 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;
- 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, Directive 2013/34/EU or the applicable Directive for banks and other financial institutions or insurance companies;
- 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 banks, specific conditions apply. Article 403 does not apply to entities referred to in article 398-7 NCC.

As stated above under item (a), group companies meeting the above conditions must 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 are required.

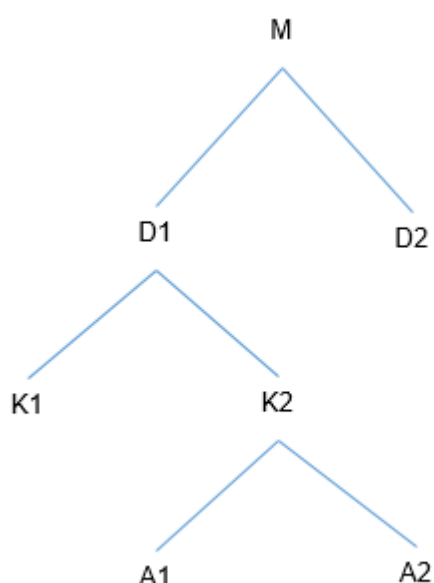
#### **Consolidation exemption for intermediate holding companies (408 NCC)**

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.

This exemption is not available to listed entities (see below).



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 Directive 2013/34/EU 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 Directive 2013/34/EU. 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 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 Directive 2013/34/EU 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.

Article 408 does not apply to a legal entity whose securities are tradable on a regulated market as meant in the Financial Markets Supervision Act (Wft) or a system comparable to a regulated market, from a state that is not a member state (article 408-4 NCC). Examples are intermediate holding companies with listed shares and/or listed bonds. It should be noted that the expiration of the aforementioned consolidation exemption does not apply solely to entities listed in an EU/EEA member state. A listing in a non-EU/EEA member state with external supervision similar to the EU-system (e.g. the New York Stock Exchange) will also eliminate the use of article 408 NCC.

### **Consequences of applying IFRS on exemptions in article 403 and 408**

Reference is made to Chapter 2, paragraph 2.5 for an explanation of applying IFRS and the five combinations of consolidated and company-only financial statements.

If a 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 consolidation exemption. Combination 4 and article 408 NCC are therefore incompatible.

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 is included in Section 12 of Title 9, which is not applicable in that situation.

## **6.4 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
- b. current value.

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

Current value can be the:

- current cost:
  - the actual purchase price including accompanying costs of an asset, less depreciation; or
  - the actual acquisition costs of the raw materials and consumables and other directly attributable costs less depreciation. These costs may include a reasonable allocation of indirect costs and interest on loans over the period of conversion of the 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);
- fair value:
 

the amount for which an asset can be exchanged or a liability settled between knowledgeable parties in an orderly transaction in which the parties are independent of each other (article 4 BAW). Measurement at fair value is not allowed for micro companies (article 5a BAW);
- net realisable value:
 

the amount for which the asset itself can be sold, net of any expenses (article 5 BAW).

If financial instruments are measured at current value, then the fair value is used (article 10 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 banks, 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).

## 6.5 Financial statements, overview

Title 9 contains requirements for:

- the balance sheet (see 6.6);
- the profit and loss account (see 6.7);
- the notes (see 6.8).

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 6.8).

## 6.6 Regulations concerning the balance sheet

### Assets (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.

Amongst other exemptions, the disclosures of article 368-1 NCC and the cumulative total of depreciation or amortisation and amounts impaired at the balance sheet date (article 368-2b NCC) are not required for small companies (article 396-3 NCC) nor for micro companies (article 395a-4 NCC).

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

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

- incorporation and share issue expenses;
- 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 life. In exceptional circumstances where such useful lives cannot be reliably estimated, goodwill is amortised over a maximum period of ten years. In such cases, the reason for the amortisation period shall be disclosed (article 386-3 NCC).

#### *Tangible fixed assets (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 (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 (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 (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 micro and small companies.

Inventories are valued at historical cost. Agricultural inventories are also allowed to be measured at current value. If agricultural inventories are measured at current value, then the net realisable value is used (article 8 BAW).

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 (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 (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 (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 397-5 NCC).

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

The main headings are:

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

**a. Shareholders' equity (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 (373-4 NCC)*

The NCC 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.

*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*

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 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 (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 (375 and 376 NCC)**

For each of the items listed in article 375-1 NCC, which are included separately under liabilities, the amounts due and payable after one year including the interest rate shall be disclosed. For the total amount of liabilities listed in article 371-1 NCC, the amount due and payable after more than five years shall be disclosed (article 375-2 NCC). Medium-sized companies do not have to publish the information in article 375-2 NCC (article 397-5 NCC).

For the total amount of liabilities listed in article 375-1 NCC, 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).

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).

### **6.7 Regulations concerning the 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.

### **6.8 Special regulations concerning the notes**

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);
- subsequent events (article 380a NCC);
- name, legal form, domicile and registration number Chamber of Commerce (article 380b NCC);
- result appropriation (article 380c NCC);
- profit-sharing certificates and similar instruments (article 380d 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 (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).

#### **Subsequent events (380a NCC)**

Events after the balance sheet date with important financial consequences for the entity (including consolidated participating interests) shall be disclosed including the financial effect of such events.

#### **Name, legal form, domicile and registration number Chamber of Commerce (article 380b NCC)**

The following information shall be disclosed:

- the name of the entity;
- the legal form of the entity;
- the legal seat of the entity;
- the entity's registration number with the Chamber of Commerce.

**Result appropriation (article 380c NCC)**

An entity shall provide a statement regarding the profit appropriation or the treatment of the loss or, pending a definitive decision, the proposed appropriation or treatment.

**Profit-sharing certificates and similar instruments (article 380d NCC)**

An entity shall provide 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.

**Contingent assets, contingent liabilities and related party transactions (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. In addition, the contingent assets, contingent liabilities and unrecognized obligations of the entity shall be disclosed (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 of significance which are not at arm's length).

A related party is defined in IAS 24. Micro and small companies are exempt from articles 381-2 and 381-3 NCC (article 395a-6 NCC and 396-5 NCC respectively). Limited exemptions to the disclosure requirements of article 381 may apply to medium-sized companies (article 397-6 NCC).

**Financial instruments (381a and 381b NCC)**

If financial instruments are measured at current value, the company shall disclose (article 381a NCC):

- 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 (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 (382a NCC)**

In the financial statements of large companies information about the audit fee must be disclosed. 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 Directive 2013/34/EU of 26 June 2013. 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 group companies of non-EU enterprises cannot use this exemption.

Micro companies (article 395a-5 NCC), small companies (article 396-5 NCC) and medium-sized companies (article 397-4 NCC) are exempt from disclosing audit fees. An illustrative disclosure format is provided below:

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

### Remuneration of board members (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. 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. Micro companies and small companies are, however, exempt from article 383-1 NCC (article 395a-6 NCC and 396-5 NCC respectively).

Micro companies, 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.

### 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, amounts impaired and amounts waived, 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).

## **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. Micro companies are exempted from the BMJ (article 1-3 BMJ). 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: model E (by nature) and model F (by function). These are in a vertical format. 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 five months.

### **8.2. Publication**

The management board's report is 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).

The management board's report should also include (article 391-3 NCC):

- a description of the significant 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;
- certain non-financial information (only applicable for large listed companies with more than 500 employees, for financial years starting on or after 1 January 2017);
- the company's diversity policy regarding the composition of the management board and supervisory board (only applicable for large listed companies, for financial years starting on or after 1 January 2017).

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 board's report give a true and fair view in accordance with article 5:25c Wft.

## 8.6 Disclosure of unbalanced board seat allocation between women and men

On 1 January 2013 new legislation for N.V.'s and B.V.'s came into effect. This legislation includes regulations for a balanced allocation of board seats between women and men in the management board and supervisory board (article 166 and article 276 NCC respectively). If the seats are not balanced between women and men, the aforementioned legislation required certain disclosures (article 391-7 NCC). The regulation for a balanced allocation of board seats expired on 1 January 2016. However, the Dutch Government decided to retain the target figure for a balanced allocation of board seats and proposed new legislation in this respect. If adopted, this law will reinstate the legislation which expired on 1 January 2016 up to 1 January 2020.

## 8.7 Exemptions

Article 391 NCC (management board's report) does not apply to a micro and small companies (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 management board's 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.

## 8.8 Corporate Social Responsibility

In general, business activities are linked to three social aspects: (1) environmental, (2) social and (3) economic aspects. Companies can contribute to sustainable development by balancing these aspects with the impact of business activities. This is often referred to as Corporate Social Responsibility (CSR). It is recommended to provide disclosure in the management board's report of CSR. DAS 920 provides further guidance.

## 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;
- 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 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 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 other information is published simultaneously with the financial statements (article 394-4 NCC).

### 9.3 Exemptions

Micro companies and small companies are not required to prepare and file other information (article 395a-6 and 396-7). Certain parts of the other information section (i.e. articles 392-1b up to and including 1e 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).

### 9.4 Decree on "Country-by-Country reporting"

As of 2016, large-sized companies and public interest entities ("OOBs") active in the extractive industry and in the felling of primeval forests are required to disclose information with respect to payments to governments in the countries in which they are active. The source of this legislation is referred to as the decree on "country-by-country reporting" (article 2:392a NCC). The objective of the decree is to improve the transparency of payments to governments and thereby improve the responsibilities of good governance by governments. The aforementioned companies shall publish payments to governments by type of payment, by government and by project for the financial year. This pertains to payments in excess of EUR 100.000 in cash or in kind with respect to production rights, taxes, royalties, dividends, signing bonuses, detection bonuses, production bonuses, license fees, concessions and payments for infrastructural improvements. The report of the payments shall be published within six months after the reporting period. The report of the payments must be separate from the management board's report. Accordingly, the company is not required to have the report of payments audited by a registered auditor. The aforementioned report shall be published within twelve months after the end of the financial year with the Trade Register of the Chamber of Commerce (article 392a-2 and 394-1 NCC).

## **10. Financial Markets Supervision Act (Wft)**

### **10.1 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 Markets Supervision Act (Wft, Chapter 5.1A) as of 1 January 2009, with a simultaneous amendment of the Financial Reporting Supervision Act (Wftv).

### **10.2 Scope**

The regulations mentioned above apply 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), Euronext Amsterdam Derivatives Market, Endex and MTS Amsterdam.

The regulations do 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). 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 100,000. Nor does the legislation apply to open-end investment institutions.

### **10.3 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 annual financial reports and half-yearly financial reports. This is elaborated in Appendix 3, Schedule A: 'Disclosure of periodic information'.

### **10.4 AFM Supervision**

The rules of the Wft 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 securities 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'.

### 10.5 Public filing deadlines

Note that the 'ordinary' annual financial reporting obligations of Title 9 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 accounts to the AFM. As discussed in Chapter 4, this must be done within five days of adoption of the annual accounts (article 5:25o-1Wft). The AFM will then send the adopted annual accounts to the Trade Register at the Chamber of Commerce within three days. The deadlines for the preparation and filing of the annual accounts 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 accounts of N.V. or B.V. of which securities are listed on a regulated market in the EU/EEA'.

## 11. Company Law

### 11.1 General

The primary focus of this publication is on the annual accounts of B.V.'s and N.V.'s. Accordingly, this Chapter focusses on both B.V.'s and N.V.'s. Paragraph 11.10 briefly describes other (non-)legal entities.

Both the B.V. and the N.V. are limited liability companies with an issued capital divided into shares. The shares in a B.V. are in principle not freely transferable. However, the articles of association of a B.V. can provide that the shares are freely transferable. The shares in an N.V. are in principle freely transferable. However, the articles of association can provide that the shares are not freely transferable. Unlike the shares in a B.V., the shares in an N.V. can be publicly traded on a stock exchange. A main characteristic of both the B.V. and the N.V. is their legal personality. The assets of these companies are separated from the assets of the shareholders. The shareholders are – in principle – not liable for the debts of the company. Neither are they obliged – in principle – to make any contributions to the company except for the contributions to be made upon subscription for shares. With respect to a B.V., it is possible to include other obligations and additional capital requirements in the articles of association which requirements the shareholders are obliged to observe.

Like the shareholders, the managing director(s) of an N.V. or a B.V. are – in principle – not liable for the debts of the company. Director's liability falls outside the scope of this publication and is not further discussed.

The most important differences between the N.V. and the B.V. are discussed in the next paragraphs. Following substantial changes to B.V. legislation as of 1 October 2012 (known as the "Flex B.V. Act"), the B.V.-format has become more flexible and brought the B.V. in line with other European countries which have introduced simpler and more flexible laws for their limited liability companies. Furthermore, new legislation in respect of the management board and supervisory board of an N.V. and a B.V. entered into force as of 1 January 2013 (known as the "Management and Supervision Act"). The articles of association of an N.V. or a B.V. dated before 1 January 2013 may not yet reflect these new pieces of legislation. In such cases transitional provisions may apply. Such transitional provisions fall outside the scope of this publication and are not further discussed.

### 11.2 Incorporation

Both an N.V. and a B.V. are incorporated through the execution of a notarial deed of incorporation. This deed contains:

- the articles of association, including the name, legal seat and objective of the company;
- details of the incorporators/first shareholders;
- details of the capitalisation of the company (the nominal value of the shares and the issued share capital);
- the appointment of the first managing director(s) and supervisory director(s) (if any);
- the determination of the first financial year of the company.

The minimum share capital for an N.V. is EUR 45,000. There are no minimum capital requirements for the B.V. (this was abolished by the Flex B.V. Act). One or more shares in the capital of the B.V. must be issued. With respect to the nominal value of these shares, there are no minimum requirements (for instance a EUR 0.01 nominal value is allowed).

Payment of the nominal value of the shares issued at incorporation can be made in cash or by means of a contribution in kind.

For an N.V., payments made in cash require an accompanying bank statement. Contributions in kind require a description of the contribution which mentions the valuation of such contribution (including the method of valuation and the date of valuation, which may not be older than 6 months) as well as an accompanying auditor's report.

For a B.V., the obligation to obtain a bank statement or an auditor's report was abolished by the Flex B.V. Act.

A B.V. and – to a lesser extent – an N.V. can be incorporated within a few days time. However, in practice it may take longer to finalise an incorporation procedure because of the time it takes to tailor the articles of association to the needs of the company, getting the relevant powers of attorney including any legalisation and/or apostille requirements to the notary, or – in case of an N.V. – obtaining a bank statement (including complying with the bank's know your client requirements) and/or obtaining an auditor's statement.

### **11.3 Capital requirements**

#### **Capital requirements by an N.V.**

The N.V. must have a minimum issued and paid up capital of at least EUR 45,000. The articles of association are required to include the authorised capital of the company, i.e. the maximum amount for which shares may be issued, which can be changed by amendment of the articles of association after incorporation. The authorised capital may not be more than five times the issued capital. The paid up capital must be at least  $\frac{1}{4}$  of the issued capital, with a minimum of EUR 45,000.

The articles of association are also required to include the nominal value of the shares. The nominal value must be in Euros. Different classes of shares may exist.

Any amount paid in excess of the nominal value of shares is called share premium. For the N.V. the law prescribes that not only the nominal value, but also the share premium must be paid when subscribing for shares (unlike a B.V. where share premium can be paid at any time).

#### **Capital requirements by a B.V.**

Most capital requirements for the B.V. were abolished in the Flex B.V. Act.

The B.V. does not have a minimum capital requirement. The articles of association may mention an authorised capital, but this is not required. In principle, upon the issuance of shares, the full nominal value must be paid up. However, it may be agreed that this amount – or part thereof – only needs to be paid up after a certain period of time or after the B.V. requests the amount to be paid up. The articles of association are required to include the nominal value of the shares. The nominal value can be in any currency. Different classes of shares may exist.

As is the case with the N.V., any amount paid in excess of the nominal value of shares is called share premium. Unlike the N.V., it is not required that the share premium is paid upon subscription of shares, unless this requirement is included in the articles of association.

### **11.4 Distributions to shareholders**

Since the Flex B.V. Act, the rules for distributions by the B.V. are different from the rules for distributions by the N.V.

#### **Distributions by an N.V.**

There are effectively three types of distributions:

- distribution of dividend or reserves;
- capital reductions with repayment;
- purchase of own shares by the N.V.

### **Distribution of dividend or reserves**

An N.V. may only make distributions insofar its equity exceeds the aggregate of the paid up and called up part of the equity increased with the reserves to be maintained by law and/or the articles of association. In other words: distributions may only be made insofar there are any freely distributable reserves. This rule applies both in case a dividend distribution is made (i.e. a distribution out of the profits of the N.V.) and in case a distribution of other freely distributable reserves is made (such as share premium).

The general meeting is authorised to resolve on distributions. A resolution to distribute a dividend is generally taken in conjunction with the adoption of the annual accounts.

The general meeting may also decide to make an interim dividend distribution under two conditions. Firstly, the articles of association should allow interim dividend distributions. Secondly, sufficient freely distributable reserves should be available based on the (interim) financial statements. The interim financial statements should reflect the financial position of the N.V. on a date not earlier than the first day of the third month before the resolution to distribute an interim dividend was made public. The statements must be prepared in accordance with generally accepted valuation methods and must be signed by all managing directors of the company. In the absence of the signature of any of them, the reasons for such absence must be mentioned in the statements. Furthermore, the statements should be filed with the Trade Register within eight days after the resolution to distribute an interim dividend was made public.

A resolution to distribute an interim dividend has a provisional character. If in retrospect, on the basis of the finally adopted annual accounts, it turns out that insufficient freely distributable reserves were available to make the distribution, the interim dividend should be repaid to the extent of the deficit, but only if the shareholder knew or should have known that the distribution was not allowed.

Although not enacted for the N.V., the principles underlying the rules on distributions within the B.V. (as further discussed below) may apply to the N.V. as well. This would mean that the management board of an N.V. should also consider whether, after the proposed distribution, the N.V. is still reasonably expected to be capable of meeting its obligations.

### **Capital reduction with repayment**

There are two methods of reducing capital: (i) cancellation of shares and (ii) reduction of the nominal value of shares. Both methods of reducing capital can take place by way of a repayment to the shareholders.

The general meeting is authorised to resolve on a reduction of capital with a repayment. However, such resolution may only be effectuated after a formal procedure has been followed. This procedure involves the filing of the resolution with the Trade Register and the announcement of such filing in a national newspaper. Creditors of the N.V. have two months (which commences once the announcement is made) to oppose the capital reduction by filing an application with the court.

### **Purchase of own shares by the company**

An N.V. may purchase shares in its own capital, provided that such shares have been fully paid up and as long as the equity of the N.V. minus the purchase price exceeds the aggregate of the paid up and called up part of the capital increased with the reserves to be maintained by law and/or the articles of association. An N.V. listed on a stock exchange is not allowed to purchase more than 50% of the shares in its own capital.

The management board of an N.V. is only authorised to purchase shares in the capital of the N.V. as long as the general meeting has authorised the management board to do so. The general meeting may also delegate the authority to purchase shares in the capital of the N.V. to the management board for a maximum period of five years. For an N.V. listed on a stock exchange, such authority may only be delegated for a maximum period of eighteen months.

If allowed in the articles of association, the management board is also authorised to purchase shares that are to be transferred to employees of the N.V. or one of its group companies without delegation of such authority by the general meeting.

### **Distributions by a B.V.**

For the B.V. the rules on the different types of distributions – distribution of dividend or reserves, capital reduction with a repayment and purchase of own shares – are in essence similar albeit that the implementation thereof may differ. Such distributions require a balance sheet test and a distribution test. Specific rules on liability of managing directors and shareholders also apply. We will focus on the distribution of dividend or reserves. This will effectively also cover the main rules applicable to capital reduction and purchase of own shares by the B.V.

### **Distribution of dividend or reserves**

In principle, the general meeting is authorised to resolve on a distribution of dividend or reserves. However, the articles of association may also designate another corporate body as the body authorised to resolve on such distribution. For purposes of this publication, we assume that the general meeting is authorised to resolve on distributions.

The general meeting is only authorised to resolve on a distribution as long as the equity of the B.V. exceeds the reserves to be maintained by law and/or the articles of association. This is also called the balance sheet test. Other than under former legislation, the paid up and called up part of the capital no longer forms part of the restricted capital, unless the articles of association still contain the former dividend distribution requirements. The balance sheet test does not need to be performed if the B.V. has no reserves to be maintained by law and/or the articles of association. In such case it is argued that the general meeting may even resolve on a distribution which leads to a negative equity (subject to management board approval as discussed below).

A shareholders' resolution for a distribution remains without legal effect as long as it has not been approved by the management board. The management board must withhold permission, if it knows or should reasonably expect that, after the distribution, the company will no longer be able to meet its due and payable obligations. This is also called the distribution test. In deciding whether or not to grant this permission, the board must take into consideration all relevant information known to it as well as all foreseeable developments. Relevant factors to be taken into account are *inter alia* liquidity, solvability and profitability. The assessment made by the management board does not need to be approved by an auditor; it is up to the board whether or not to involve an auditor.

Although the distribution test is in practice documented before the actual payment of the distribution is effectuated, the distribution test should also be performed on the day of the actual payment of the distribution. If the actual payment of the distribution is made to the shareholders, the distribution is deemed to be approved by the management board.

If a B.V. is unable to pay its debts upon a distribution, the managing directors who knew or reasonably could have foreseen this at the time of the distribution, will be jointly and severally liable for the deficit caused by the distribution (increased with statutory interest). This does not apply to a managing director who can prove that he or she did not approve such distribution and, in addition, that he or she has not been negligent in taking measures to avert the consequences thereof. The shareholders are liable up to a maximum of the deficit caused by the distribution, limited to the amount of the distribution received by each shareholder (increased with statutory interest), if, at the time of the distribution, they should have known or reasonably could have foreseen that the distribution would lead to the B.V.'s inability to pay.



### **Capital reduction with repayment and purchase of own shares**

Capital reduction with a repayment basically follows the aforementioned rules with respect to the distribution of dividend and reserves (i.e. performance of – possibly – a balance sheet test and in any case a distribution test). The rules on liability of managing directors and shareholders also apply.

Likewise, purchase of own shares by a B.V. basically follows the aforementioned rules with respect to the distribution of dividend and reserves. A difference is that the management board is authorised to resolve on the purchase of own shares, instead of the general meeting. Consequently, the management board must perform both the distribution test and the balance sheet test in accordance with the above.

### **11.5 Transactions with shareholders**

Dutch law stipulates that transactions between an N.V. or a B.V. and its sole shareholder must be in writing. If not, they can be annulled by the company. An important exception to this rule is that it does not apply to transactions which fall within the scope of the ordinary course of business of the company.

For the N.V. additional requirements apply to an acquisition of assets which belong to an incorporator of the company one year prior to the incorporation of the N.V. if such acquisition takes place within two years after registration of the N.V.'s incorporation in the Trade Register. Such transactions must be approved by the general meeting. Furthermore, such transactions must be accompanied by an auditor's report stating – in short – that the value of the acquired assets at least equals the value of the consideration. If these requirements are not met, the acquisition may be annulled by the N.V.

Certain information on significant related party transactions needs to be disclosed in the annual accounts of an N.V. or a B.V. if these transactions have not been entered into at arm's length.

### **11.6 Share transfers**

Shares in the capital of a B.V. are always registered shares. Shares in the capital of an N.V. may either be registered shares or bearer shares.

The transfer of a registered share requires the execution of a notarial deed by a Dutch civil-law notary. The transfer of a bearer share takes place by means of delivery of the document embodying the bearer share. Additional rules apply to the transfer of shares in the capital of a listed company.

The transfer of B.V. shares is in principle restricted. Often this restriction is in the form of a pre-emption right for the other shareholders. The articles of association may also provide for another type of restriction, such as the requirement that the transfer should be approved by a corporate body (e.g. the general meeting, the management board or supervisory board). Note that the articles of association may also stipulate that B.V. shares are freely transferable.

Bearer shares in the capital of an N.V. are always freely transferable. The transfer of registered shares in the capital of an N.V. may, however, be restricted. Such transfer restrictions must be set out in the articles of association.

Transfer restrictions with respect to shares in the capital of a B.V. or an N.V. may not render a transfer impossible or extremely difficult.

## 11.7 Governance

The corporate bodies of an N.V. and a B.V. include a general meeting and a management board. A supervisory board is an optional corporate body, unless the company qualifies as a large company which has a specific statutorily prescribed governance structure (see paragraph 11.8).

### The general meeting

The general meeting has the rights that are not attributed to the management board or the supervisory board. Without going into the details of some possible deviations, the rights of the general meeting include (resolving on):

- appointment, dismissal and suspension of managing and supervisory directors;
- adoption of the annual accounts;
- distribution of profits or reserves;
- issuance of shares;
- amendment of the articles of association;
- legal merger;
- legal demerger or split-off;
- dissolution;
- for the N.V.: provide general instructions to the management board;
- for the B.V.: provide specific instructions to the management board;
- insofar required under the articles of association: approval of decisions by the management or supervisory board;
- for the N.V.: approval of certain important decisions by the management board (such as the transfer of the business of the company and acquisitions with a value of at least 1/3 of the assets of the company).

### The management board

The management board is responsible for the management of the company. It is responsible for the day-to-day affairs of the company and determining the strategy and future policy of the company.

More specifically the management board has - *inter alia* - the following tasks and responsibilities:

- maintaining an administration of the financial condition of the company and of everything relating to its activities;
- keeping the books, records and other data carriers pertaining to the administration in such a manner that the company's rights and obligations can be ascertained at any time (for a period of at least 7 years);
- preparing the annual accounts of the company and filing these with the Trade Register;
- providing the general meeting with all information requested by it, unless an important interest of the company dictates otherwise;
- signing the annual accounts (they must be signed by all managing directors; in the absence of the signature of any of them, mention thereof must be made, stating the reasons for such absence);
- for the B.V.: approving shareholders' resolutions on distributions;
- registration of certain data with respect to the company with the Trade Register;
- convening meetings of the general meeting.

Within the limitations of the law, the management board is authorised to represent the company.

In principle, individual managing directors are authorised to represent the company as well, but the articles of association may determine that they are jointly instead of solely authorised to represent the company.

It should be noted that the management of the company is, in principle, the duty of all managing directors together, for which each individual managing director carries responsibility. This is known as the principle of the 'collective' or 'collegial board'. If the articles of association of the company allow for a division of tasks between managing directors such division of tasks is possible, but all managing directors need at least to be informed about the performance of the tasks by the other managing directors. Furthermore, each managing director is entitled to request that a decision by the entire

management board is taken with regard to a subject which in first instance was delegated to an individual managing director. Please note that the financial policy of the company is always the responsibility of all managing directors together and cannot be attributed to only one managing director, such as the Chief Financial Officer.

In fulfilling their tasks, the managing directors should be guided by the interests of the company and its business and not only the interests of the shareholders.

In the event of a conflict of interest between a personal matter of a managing director and the interests of the company, such managing director is not allowed to participate in the discussion and decision making about the matter concerned. If, as a result thereof, no board decision can be adopted, the matter shall be referred to the supervisory board. If no supervisory board exists, the decision shall be taken by the general meeting, unless the articles of association stipulate otherwise.

### **The supervisory board**

The supervisory board is – in principle – an optional corporate body. A supervisory board exists if so determined by the articles of association.

The supervisory board has two main duties: supervision and advice. It advises the management board and supervises the policy conducted by the management board and the general course of affairs in the company and its business. The management board is required to provide the supervisory board, on a timely basis, with any information required by the supervisory board for a proper performance of its duties. In addition, the management board has the obligation to inform the supervisory board in writing at least once a year on the strategic management, general and financial risks and administration and control system of the company.

The following specific tasks and responsibilities are applicable to the supervisory board and its supervisory directors:

- the supervisory board should provide the general meeting with all information requested by it, unless an important interest of the company dictates otherwise;
- the annual accounts must be signed by all supervisory directors; in the absence of the signature of any of them, mention thereof must be made, stating the reasons for such absence.

Furthermore, the articles of association may stipulate that certain decisions by the management board require the prior approval by the supervisory board.

In fulfilling their tasks, the supervisory directors shall let themselves be guided by the interests of the company and its business and not only the interests of the shareholders.

Should with respect to a certain matter the personal interest of a supervisory director conflict with the interests of the company, such supervisory director is not allowed to participate in the discussion and decision making about the matter concerned. If, as a result thereof, no supervisory board decision can be taken, the matter shall be referred to the general meeting, unless the articles of association stipulate otherwise.

### **The one-tier board**

Traditionally, supervision within Dutch N.V.'s and B.V.'s is carried out by a supervisory board, as just described. This system is generally known as the 'two-tier' or 'dualistic' structure. However, on the basis of the Management and Supervision Act companies may also implement a 'one-tier' or 'monistic' structure.

A one-tier structure entails that the management board consists of executive and non-executive directors (the one-tier board). Just like a supervisory board in a two-tier structure supervises the performance of the management board, non-executives in a one-tier board supervise the performance of the executives.

After 1 January 2013 a company can still opt for a traditional two-tier structure. Obviously, a company is not allowed to implement a one-tier structure and a two-tier structure at the same time. If an existing company wishes to implement a one-tier structure, this requires an amendment of its articles of association.

### **Limitation of positions**

According to the Management and Supervision Act a person cannot be a managing/executive director of a large<sup>10</sup> N.V. or B.V. if (i) he or she has two or more supervisory positions with other large legal entities or (ii) he or she is a chairman of the supervisory board or a one-tier board of a large entity.

Furthermore, a person cannot be a supervisory/non-executive director of a large N.V. or B.V. if he or she has five or more supervisory positions with other large legal entities. In this regard, the position of chairman equals two positions.

## **11.8 The statutorily prescribed governance structure for large companies**

In the event that an N.V. or a B.V. meets the criteria to qualify as a large company (as defined below), these companies will need to comply with a statutorily prescribed governance structure. Such governance structure includes a mandatory supervisory board, whereby – instead of the general meeting – the supervisory board is authorised to appoint, dismiss and suspend the managing directors of the company. Under this regime there are also strict rules on the appointment and dismissal of supervisory directors. Further, the prior approval of the supervisory board is required with respect to certain decisions of the management board.

The governance structure for large companies needs to be adopted by those companies within three years upon registration with the Trade Register that the company meets the criteria for application of the statutorily prescribed governance structure, provided that such registration remained applicable during this entire period. Registration is required if the company meets the following criteria:

- according to the company balance sheet with the disclosure notes the issued capital increased with the reserves amounts to at least EUR 16 million;
- the company or a dependent company has instituted a works council pursuant to a legal obligation thereto; and
- the company and its dependent company together normally employ at least 100 employees in the Netherlands.

For the application of the above, a dependent company means a (subordinate) company:

- to which the company or a dependent company provides at least 50% of the issued capital;
- a company of which a business has been registered in the Trade Register and in respect of which the company or a dependent company is jointly or severally liable for all debts (most notably: a general partnership or a limited partnership of which the company is a general partner).

A number of exemptions from application of the governance structure for large companies exist which allows the exempt large companies to apply a mitigated regime. Under the mitigated regime the general meeting remains entitled to appoint, dismiss and suspend the managing directors of the company. The mitigated regime applies to companies of which at least 50% of the shares are held by a company of which the majority of employees are employed outside the Netherlands.

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<sup>10</sup> Reference is made to Chapter 3.

## 11.9 The Corporate Governance Code

Dutch companies listed on a stock exchange (whether in the Netherlands or abroad) fall under the scope of the Dutch Corporate Governance Code. This code contains a variety of Principles and Best Practices with regard to the governance of the company. Examples are:

- conflicts of interest;
- remuneration;
- risk management and control;
- composition of the supervisory board;
- committees (such as the audit committee);
- information requirements vis-à-vis the general meeting;
- the relation with the external auditor of the company.

The Corporate Governance Code has a so-called comply or explain principle. In their annual report companies need to report about their compliance with the Principles and Best Practices of the Corporate Governance Code. Insofar these Principles and Best Practices are not complied with, companies need to explain this.

## 11.10 Other (non-)legal entities

The following provisions applicable to the N.V. and B.V., are also applicable to other (non-)legal entities under Dutch law such as the cooperative and the foundation:

- the general provisions (including liquidation);
- merger and demerger;
- dispute resolution and right of inquiry; and
- the annual accounts and annual report (only applicable to foundations maintaining one or more enterprises and limited partnerships of which all general partners are foreign companies with a capital divided into shares).

The provisions relating to the annual accounts and annual report can be applicable to limited partnerships as well.

### Cooperative

A cooperative, formerly known as a cooperative association, is a form of the Dutch association. A cooperative has legal personality and must, pursuant to its articles, aim to fulfill certain material needs of its members, such in accordance with agreements concluded with the members within the framework of the cooperative's business. A traditional example of a cooperative is a dairy cooperative which produces dairy products out of milk purchased from farmers who are the members of the cooperative. Currently, cooperatives are used for very different types of businesses and also function as investments vehicles. Some argue that the cooperative is the most flexible legal entity under Dutch law.

It is worth noting that three liability regimes exist for the cooperative. It may either be a cooperative with excluded, limited or statutory liability of its members. The name of the cooperative must indicate which liability regime applies. If the statutory liability regime applies, members and former members are liable towards the cooperative in case of dissolution or bankruptcy. In respect of former members this applies – in principle – only to those who were members within one year prior to the dissolution or bankruptcy.

Quite similar to the cooperative is the mutual fund association. It can be characterised as a cooperative employing activities in the field of insurance.

## **Foundation**

A foundation is a legal entity without members which purports to realise an object as defined in its articles of association. The object is not allowed to be the distribution of funds to incorporators or members of corporate bodies of the foundation. Neither is it allowed to distribute funds to others, save insofar these distributions are of an idealistic or social nature. Many types of foundations exist. For instance foundations with objects in the field of charity, health, science, culture and religion.

Within corporate structures foundations are frequently used to create a separation between the legal ownership of shares (including the right to vote) and the beneficial ownership of the shares (including the right to distributions). In such case a shareholder transfers shares to the foundation which in turn issues depository receipts to the former shareholder. The foundation (and effectively its management) is entitled to vote on the shares, but has committed itself to distribute all proceeds from the shares to the holders of depository receipts.

## **General partnership**

A general partnership has no legal personality, but is a combination of partners who made contributions to the partnership with a view to running a business under a common name. An important characteristic of a general partnership is the joint and several liability of its partners towards creditors of the partnership.

## **Limited partnership**

A limited partnership is a specific type of the general partnership, the distinguishing characteristic being that it consists of one or more general partners and one or more limited partners. The general partner is jointly and severally liable towards creditors of the company, whereas the limited partner is – in principle – not liable towards creditors of the company. Obviously, like a shareholder in an N.V. or a B.V., in case of bankruptcy of the limited partnership, a limited partner can lose his contribution to the partnership.

The name of the limited partner may not be included in the name of the limited partnership and the limited partner is not allowed to be active in the operations of the limited partnership. Should any of these requirements not be met, the limited partner may lose his protection against liability and may be liable towards creditors of the partnership just like a general partner.

In international group structures limited partnerships are often used for tax purposes. By using a limited partnership, an international group may benefit from the fact that a limited partnership is in principle transparent for Dutch corporate income tax, whereas under certain foreign tax regimes a limited partnership is seen as a taxable entity.

## Appendix 1 - 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 11.

### **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 cost**

The current cost is:

- the actual purchase price including accompanying costs of an asset, less depreciation; or
- the actual acquisition costs of the raw materials and consumables and other directly attributable costs less depreciation. These costs may include a reasonable allocation of indirect costs and interest on loans over the period of conversion of the asset.

### **Current value**

The value that is based on current market prices or data which may be deemed relevant for the value at the date of measurement.

### **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.

### **Fair value**

The amount for which an asset can be exchanged or a liability settled between knowledgeable parties in an orderly transaction in which the parties are independent of each other.

### **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.

### **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 20 million;
- net turnover more than EUR 40 million;
- average number of employees at least 250.

**Legal reserve**

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

**Listed N.V. or B.V.**

An N.V. or B.V. of which the securities (e.g. shares and/or bonds) are listed on a regulated market as meant in the Financial Markets Supervision Act (Wft).

**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 micro and small company and that meets at least two of the following three criteria on two consecutive balance sheet dates:

- total assets not more than EUR 20 million;
- net turnover not more than EUR 40 million;
- average number of employees less than 250.

**Micro 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 not more than EUR 350 thousand;
- net turnover not more than EUR 700 thousand;
- average number of employees less than 10.

**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.

**Net realisable value**

The amount for which the asset itself can be sold, net of any expenses.

**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.

**OOB (Organisatie van Openbaar Belang)**

Public Interest Entity:

- an entity domiciled in the Netherlands of which the securities are traded on a regulated stock exchange as referred to in article 1:1 Wft;
- a bank domiciled in the Netherlands as referred to in article 1:1 Wft for which a licence was granted in connection with that law;
- a central credit institution domiciled in the Netherlands as referred to in article 1:1 Wft for which a licence was granted in connection with that law;
- a reinsurer, life insurance company, or indemnity insurer domiciled in the Netherlands as referred to in article 1:1 Wft for which a licence was granted in connection with that law; or
- a company, institution, or public body designated as such by governmental decree.

**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.

### **Small company**

Legal entity that, on a consolidated basis, is not a micro company and that meets at least two of the following three criteria:

- total assets not more than EUR 6 million;
- net turnover not more than EUR 12 million;
- average number of employees less than 50.

### **Statutory reserve**

A reserve required to be maintained by the articles of association of a company.

### **Subsidiary company**

- 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 present value of the estimated future cash flows through continuing use of an asset or group of assets.

### **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.

### **Wfbv (Wet op de Formeel Buitenlandse Vennootschappen)**

Entities Formally Registered Abroad Act.

### **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.

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#### Balance sheet as at

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#### A. Fixed assets

##### I. Intangible fixed assets

1.	incorporation and share issue expenses	...
2.	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	_____	...
				...
<i>II.</i>		<i>Receivables</i>		
	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 income	_____	...
				...
<i>III.</i>		<i>Securities</i>		...
<i>IV.</i>		<i>Cash</i>		_____
<i>V.</i>		<i>Total current assets</i>		...
<b>C.</b>		<b>Short-term liabilities</b>		
	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	_____	...
			...
<b>D.</b>	<b>Balance of current assets less short-term liabilities</b>		_____
<b>E.</b>	<b>Total assets less short-term liabilities</b>		_____
<b>F.</b>	<b>Long-term liabilities</b>		
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	_____	...
			...
<b>G.</b>	<b>Provisions</b>		
1.	pensions	...	
2.	taxation	...	
3.	other provisions	...	

**H. Shareholders' equity**

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

**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**

<b>Assets</b>	<b>Shareholders' equity, provisions and liabilities</b>
<b>A. Fixed assets</b>	<b>A. Shareholders' equity</b>
<i>I. Intangible fixed assets</i>	<i>I. Share capital paid up and called up</i> ...
1. incorporation and share issue expenses ...	<i>II. Share premium (paid-in surplus)</i> ...
2. development costs ...	<i>III. Revaluation reserves</i> ...
3. concessions, licences and intellectual property rights ...	<i>IV. Legal and statutory reserves</i>
4. goodwill ...	1. legal reserves ...
5. prepayments on intangible fixed assets ...	2. statutory reserves ...
...	...
<i>II. Tangible fixed assets</i>	<i>V. Other reserves</i> ...
1. land and buildings ...	<i>VI. Unappropriated profits</i> ...
2. plant and machinery ...	...
3. other operating fixed assets ...	...
4. tangible fixed assets under construction and prepayments on tangible fixed assets ...	<b>B. Provisions</b>
5. tangible fixed assets not used in operations ...	1. pensions ...
...	2. taxation ...
	3. other provisions ...



<p><i>III. Financial fixed assets</i></p> <p>1. participations in group companies ...</p> <p>2. receivables from group companies ...</p> <p>3. other participating interests ...</p> <p>4. receivables from shareholders and participating interests ...</p> <p>5. other securities ...</p> <p>6. other receivables <u>...</u></p>	<p><b>C. Long-term liabilities</b></p> <p>1. convertible loans ...</p> <p>2. other debenture loans and private loans ...</p> <p>3. banks ...</p> <p>4. payments received on account ...</p> <p>5. trade creditors ...</p> <p>6. bills of exchange and cheques payable ...</p> <p>7. amounts due to group companies ...</p> <p>8. amounts due to shareholders and participating interests ...</p> <p>9. taxes and social security contributions ...</p> <p>10. pension liabilities ...</p> <p>11. other liabilities ...</p> <p>12. accrued liabilities and deferred income <u>...</u></p>
<p><b>B. Current assets</b></p> <p><i>I. Inventories</i></p> <p>1. raw materials and consumables ...</p> <p>2. work in progress ...</p> <p>3. finished goods and goods for resale ...</p> <p>4. prepayments on inventories <u>...</u></p>	
...	...

<p><i>II. Receivables</i></p> <p>1. trade debtors ...</p> <p>2. group companies ...</p> <p>3. shareholders and participating interests ...</p> <p>4. other receivables ...</p> <p>5. called up share capital not yet paid in ...</p> <p>6. prepayments and accrued income <u>...</u></p> <p>...</p> <p><i>III. Securities</i> ...</p> <p>IV. Cash ...</p> <p>...</p> <p><b>Total</b> <u><u>...</u></u></p>	<p><b>D. Short-term liabilities</b></p> <p>1. convertible loans ...</p> <p>2. other debenture loans and private loans ...</p> <p>3. banks ...</p> <p>4. payments received on account ...</p> <p>5. trade creditors ...</p> <p>6. bills of exchange and cheques payable ...</p> <p>7. amounts due to group companies ...</p> <p>8. amounts due to shareholders and participating interests ...</p> <p>9. taxes and social security contributions ...</p> <p>10. pension liabilities ...</p> <p>11. other liabilities ...</p> <p>12. accrued liabilities and deferred income <u>...</u></p> <p>...</p> <p><b>Total</b> <u><u>...</u></u></p>
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**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**

<b>A. Fixed assets</b>		
I. Intangible fixed assets	...	
II. Tangible fixed assets	...	
III. Financial fixed assets	_____	...
IV. Total fixed assets		...
<b>B. Current assets</b>		
I. Inventories	...	
II. Receivables, including prepayments	...	
III. Securities	...	
IV. Cash	_____	...
V. Total current assets		...
<b>C. Short-term liabilities and accrued liabilities</b>		_____
<b>D. Balance of current assets less short-term liabilities</b>		_____
<b>E. Balance of assets less short-term liabilities</b>		...
<b>F. Long-term liabilities</b>		...
<b>G. Provisions</b>		...
<b>H. Shareholders' equity</b>		
I. Share capital paid up and called up	...	
II. Share premium (paid-in surplus)	...	
III. Revaluation reserves	...	
IV. Legal and statutory reserves	...	
V. Other reserves	...	
VI. Unappropriated profits	_____	...
		_____
		=====

**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**

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

**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	_____	...
<b>Total operating income</b>		...
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	_____	...
<b>Total operating expenses</b>		_____
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 before taxation</b>		...
taxation		...
share in result of participations*		_____
<b>Net result for the year</b>		=====

\* 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>	...
selling expenses	...
administrative expenses	_____...
Total selling and administrative expenses	_____...
<b>Net turnover result/Net margin</b>	...
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 before taxation</b>	...
taxation	...
share in result of participations *	_____...
<b>Net result for the year</b>	=====

\* 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 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	_____	...
<b>Total operating expenses</b>		_____
		...
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 before taxation</b>		...
taxation		...
share in result of participations *		_____
		_____
<b>Net result for the year</b>		=====

\* 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 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.

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#### Profit and loss account for the year

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<b>Gross margin</b>		...
selling expenses		...
administrative expenses		.....
<b>Total selling and administrative expenses</b>		.....
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 before taxation</b>		.....
taxation		.....
share in result of participations *		.....
<b>Net result for the year</b>		=====

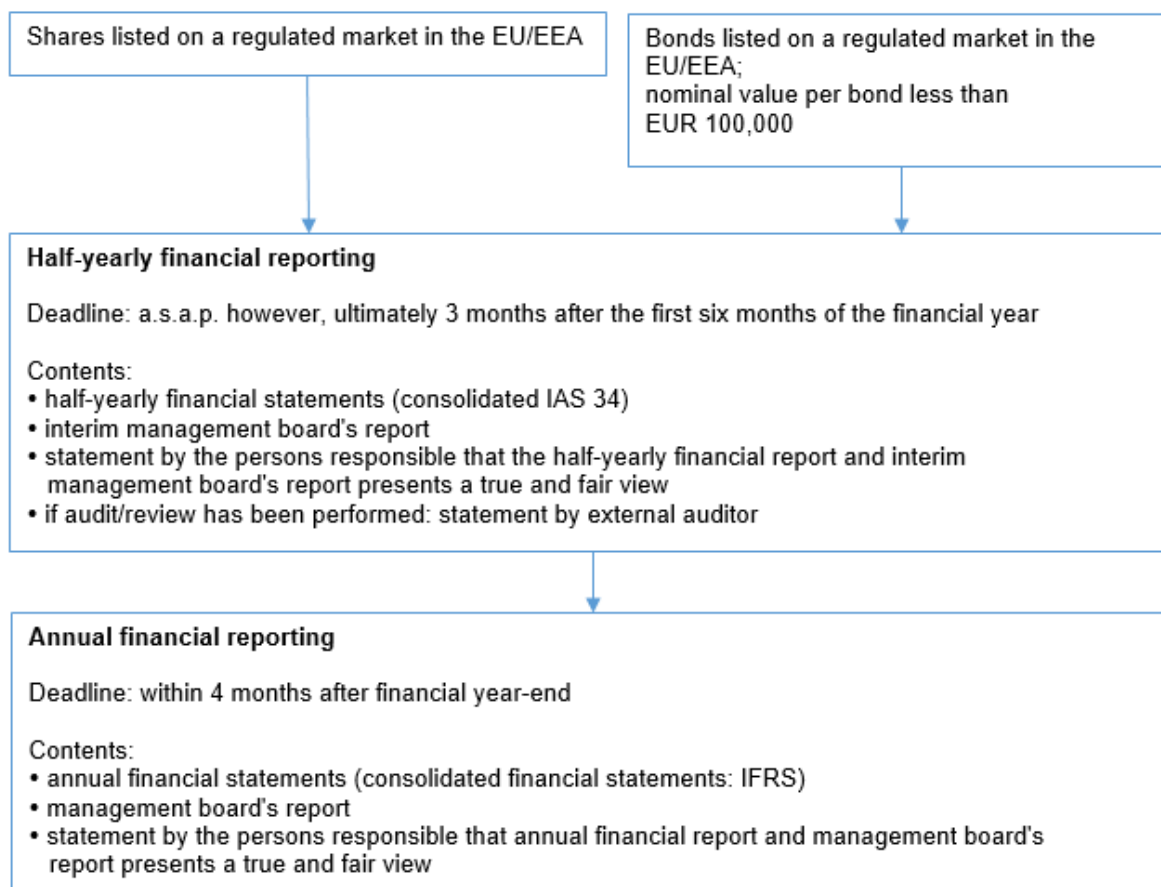
\* Only the income or loss from participating interests that are valued using the net asset value method (article 389-2 NCC) is included in this item. Income from participating interests valued differently must be shown separately as the first item of the financial income section, as 'income from participating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



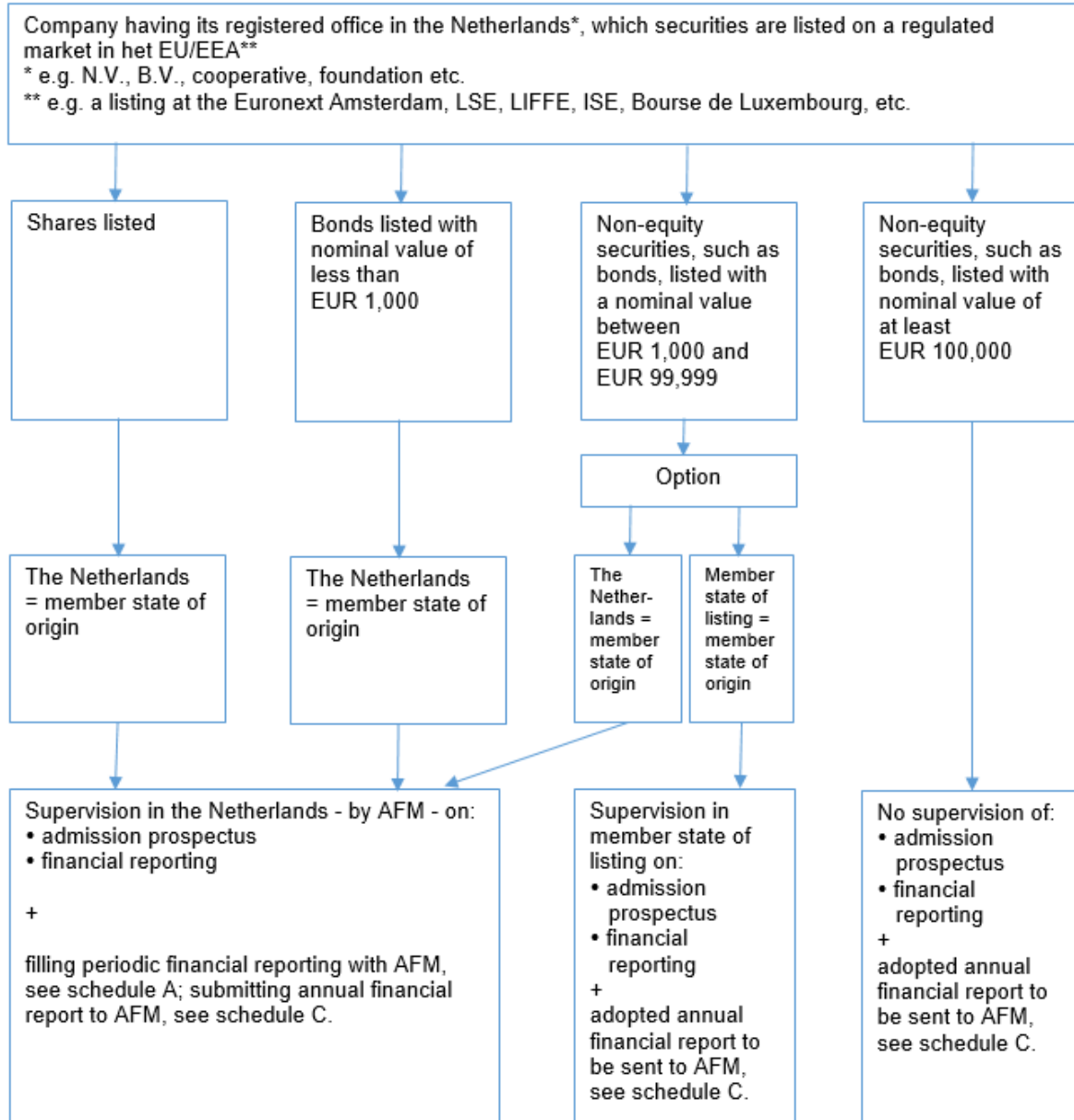
### **Other models**

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



## Appendix 5 - Schedule C: Deadline for preparation, adoption, general publication and filing of annual accounts of N.V. or B.V. which securities are listed on a regulated market in the EU/EEA

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 accounts:	Preparation (MB): Within 4 months after financial year-end.	Adoption (AGM): Within 2 months after preparation.	General publication: <b>Prepared annual accounts</b> within 4 months after financial year-end, Contents: <ul style="list-style-type: none"> <li>• financial statements;</li> <li>• management board's report;</li> <li>• responsibility statements.</li> </ul> + <b>Adopted annual accounts</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual accounts have 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.
3. N.V. or 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 accounts:	Preparation (MB): Within 4 months after financial year-end.	Adoption (AGM): Within 2 months after preparation.	General publication: <b>Adopted annual accounts</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual accounts have not yet been adopted (ultimately 6 months after financial year-end).	Filing with: AFM ultimately 6 months after financial year-end.

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 accounts	Preparation (MB):	Adoption (AGM):	General publication:	Filing with:
	Within 4 months after financial year-end.	Within 2 months after preparation.	<p><b>Prepared annual accounts</b> within 4 months after financial year-end,</p> <p>Contents:</p> <ul style="list-style-type: none"> <li>• financial statements;</li> <li>• management board's report;</li> <li>• responsibility statements.</li> </ul> <p>+</p> <p><b>Adopted annual accounts</b> within 5 days after adoption, but ultimately 6 months after financial year-end, or a notification that the annual accounts have not yet been adopted (ultimately 6 months after financial year-end).</p>	<p>AFM: ultimately 4 months after financial year-end.</p> <p>AFM ultimately 6 months after financial year-end.</p>

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