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Reporting Requirements in the Netherlands

FOR DISCUSSION PURPOSES ONLY

The purpose of this paper is to provide an introduction to the financial reporting requirements in the Netherlands. Although this document has been prepared with diligently and with due care, the paper is intended for discussion purposes only and may not be relied upon in any capacity.

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1. Executive summary

The largest part of the reporting requirements for entities in the Netherlands is laid down in Part 9 of Book 2 (Part 9) of the Dutch Civil Code (DCC). Part 9 DCC is applicable to the annual accounts of certain types of legal entities, such as the public limited liability entity (N.V.) and the private limited liability entity (B.V.).

Additional guidance for the reporting is provided through decrees. The most relevant decrees govern the formats for financial statements, the application of current value ('fair value') and the application of tax accounting for financial statements.

As the DCC describes the requirements only globally, the market participants (companies, analysts, auditors) have decided that additional guidance was required. Therefore, the 'Raad voor de Jaarverslaggeving' was created. This organization maintains the Dutch Accounting Standards ('Richtlijnen voor de Jaarverslaggeving' or DASs) which together with the mentioned Part 9 of Book 2 of the Dutch Civil Code and the decrees comprise the Netherlands Generally Accepted Accounting Principles (Dutch GAAP). Entities are well advised to comply with DASs and are furthermore recommended to use the DASs for reference when interpretation of Part 9 of the DCC is required.

The annual accounts consist of the management board report, the financial statements and the other information. The financial statements consist of the balance sheet, the profit and loss account, the notes and the cashflow statement (if applicable). Depending on whether a group relationship exists, consolidated financial statements shall be prepared.

The management board of an entity 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. An entity must file its annual accounts within certain time limits following the adoption of its financial statements. Entities are classified into four categories: large, medium-sized, small and micro entities. Micro and small entities have no legal audit requirements if they apply Dutch GAAP in the separate financial statements. The financial statements of medium-sized and large entities must be audited unless the group exemption in article 403 DCC is applied (*refer to the "7. Exemptions" section*).

2. General principles of reporting in the Netherlands

The following principles are key for understanding reporting in the Netherlands:

1. An entity can choose between Dutch GAAP and IFRS as their basis for reporting. However, if the entity chooses IFRS, IFRS has to be applied in full and a lot of exemptions that are granted under Dutch GAAP may not be applicable (e.g. simplified financial statements due to the size of the entity and the exemption for the requirement to have the financial statements audited).

2. Under Dutch GAAP, the key article is article 362. According to sub 1 "…the financial statements provide such an insight that a responsible opinion can be formed about the capital and the result, as well as, insofar as the nature of the financial statements permits, about the solvency and the liquidity of the legal entity" and sub 4 even continues with "If this is necessary to provide such insight, the legal entity deviates from these regulations; the reason for this deviation is set out in the notes to the financial statements, to the extent necessary with a statement of its effect on equity and result", this makes Dutch GAAP one of the most principle based accounting policies in the world.

3. Section 11 of Part 9 DCC allows a lot of exemptions for smaller entities. Entities are classified into 4 categories: large, medium-sized, small and micro entities. Depending on their classification, there are certain exemptions applied.

3. Administration and bookkeeping requirements

The main principle is that an entity maintains accounting records in order to determine the entity's financial position and its activities at any given point in time. In general, accounting records should be kept for at least seven years.

Except for some specific cases, accounting records may be kept outside the Netherlands. However, these records should be made available immediately in the Netherlands upon request of the Dutch Tax Authorities.

The management board is responsible for the preparation and filing of the annual accounts as determined in articles 101.1 and 210.1 Part 9 DCC. Financial statements of an N.V. and a B.V. need to be adopted by the general meeting as stated in articles 101.3 and 210.3 Part 9 DCC[1]. By filing the annual accounts with the Dutch Chamber of Commerce ('KvK')[2], these are regarded as published. The filed copy must contain the date of the adoption of the financial statements as determined in article 394 Part 9 DCC.

4. Reporting requirements

Introduction

The legal requirements relating to the annual accounts are included in Part 9 DCC, based on the EU Accounting Directive 2013/34/EU. The annual accounts comprise of:

- Financial statements
- Management board report (which may not contradict the financial statements)
- Other information (which may not contradict the financial statements and the management board report)

[1] This is different in the case of "Structuur vennootschappen" where the Board of Supervisory Directors takes the place of the shareholders.

[2] Unless the company has issued securities that are traded on a regulated market. In this case the financial statements have to be filed with the AFM.

Although not specifically mentioned, based on the requirement of article 392 that the other information shall be added to the financial statements and the management board report, it can be concluded that these three reports are to be seen as a joint document. In practice, these three reports are combined into the annual accounts or annual report that is published. Please note that the term annual report is not mentioned in Dutch Law.

Financial Statements

The financial statements comprise of the following elements:

- Balance sheet
- Profit and loss account
- Cash flow statement
- Notes to the financial statements

A cash flow statement is required for medium sized and large entities based on DAS 360.104. The cash flow statement is not mentioned in the DCC as a primary financial statement although in practice, medium sized and large entities present the cash flow statement together with the balance sheet and profit and loss account as a third primary financial statement.

Large entities also have to prepare a statement of total result which is comparable with a statement of comprehensive income as required under IFRS.

An entity that is the head of a group is required to prepared consolidated financial statements as well as separate financial statements unless an exemption applies.

Management Board Report

According to article 391, the management board report consists of:

- A balanced and comprehensive analysis of the situation on:
    - the balance sheet date;
    - the developments during the financial year; and
    - the results.

  This analysis has to be in accordance with the size and complexity of the entity and its group entities, has to give a true and fair view and may include both financial and non-financial performance indicators.
- Description of the main risks and uncertainties with which the entity is confronted
- Announcements concerning the expected course of events (so forward-looking) in particular regarding investments, financing and employment and to the circumstances on which the development of turnover and profitability depends
- The objectives and the policy regarding risk management if financial instruments being used

An N.V (article 101-1 Part 9 DCC) and a B.V (article 2101 DCC) shall present the management board report for inspection by its shareholders annually and simultaneously with the annual accounts.

Other Information

The management board must include the following other information (article 392 Part 9 DCC) with the financial statements and the directors' report:

- The auditor's report
- A statement of the rules laid down in the articles of association regarding:
    - the appropriation of the profit; o the contribution to a deficit of a cooperative or mutual insurance company, insofar as this deviate from the statutory provisions;
    - a list of names of those to whom a special right with respect to control of the company accrues.

- A statement of the number of shares without voting rights and the number of shares giving no or only a limited right to share in the profits or reserves of the company, stating the powers they confer
- A statement of the existence of branch offices and of the countries in which there are branch offices, as well as their trade name if this differs from that of the legal person

If a notification for the absence of an audit opinion with a legitimate reason is not included in the Other Information, it is not possible for shareholders to adopt financial statements without an audit opinion.

Notes

In choosing the notes that need to be included, an entity needs to determine whether these notes are necessary for the user of the annual accounts to understand the capital position and performance of the entity. Very often, this is linked to the size of a certain item in the balance sheet or profit and loss account. There are a few notes that always need to be included, regardless of materiality:

- Equity movement schedule
- Average number of employees
- Director's renumeration.

Usually, the notes are divided into the following sections:

- Accounting policies

  This section is critical for users to understand the accounting rules that have been applied by the entity. It includes descriptions on:

  - recognition and measurement principles applied in the financial statements;
  - depreciation and amortization methods for fixed assets;
  - consolidation principles applied; o principles applied for translation of foreign currency.

- Notes to the balance sheet

  The main items are:

  - movement tables for fixed assets, provisions and long-term liabilities;
  - details on the participations held by the entity;
  - details on current assets and liabilities, depending on their materiality;
  - details on assets that are not freely available to the entity (e.g. due to mortgages or fixed term deposits).

- Notes to the profit and loss account

  Important items for the profit and loss account are:

  - analysis of the net turnover (e.g. per geography or business lines);
  - break-down of staff expenses in wages and salaries, social security expenses and pension costs;
  - disclosures on remuneration and loans to (Supervisory) directors;
  - break-down of audit fees.

- Contingent liabilities

  The content depends on the activities of the entity. However, items that appear regularly are:

  - commitments due to lease agreements; o legal cases, description of the case and assessment of the possible impact.

5. Financial statements

Format

The format of the financial statements, in particular, the balance sheet and the profit and loss account is laid down in the Decree on Formats[3]. Additional guidance on the cash flow statement can be found in DAS 360.

Per type of report, a limited amount of choices is available. For the balance sheet a choice is possible between a vertical or double-sided format and for the Profit and loss account between a presentation according to cost category (e.g. salaries, depreciation) or a function (e.g. sales, administrative expenses).

An entity is only allowed to change the format it has chosen if a good reason is provided. In the case of a change, the comparative figures need to be restated as well. When an item in the balance sheet or profit and loss account is further explained in the notes, a reference towards that note is included in the balance sheet or profit and loss account. The notes need to follow the order of the balance sheet and the profit and loss account.

It is allowed to add subtotals or more details to the formats. However, it is not allowed to change the order of the presentation.
The format uses a pre-fixed coding to identify the importance of the category. These are:

- Capital letters
- Roman numbers
- Arabic numbers

Categories do not have to be disclosed if their balances amounted to nil in both the current and the previous year. Arabic number categories may be combined if the amounts are not material for the user of the financial statements.

[3] The Decree can be found at https://wetten.overheid.nl/BWBR0003648/2015-11-01 Please note this website is in Dutch.

The use of non-GAAP terms e.g. EBIDTA is not permitted in the Financial statements. It may however be used in the Management board report.

General principles

The entity's equity, assets and liabilities as well as income, expenses and result must be presented fairly, clearly and consistently. Income and expenses relating to a particular financial year must be included in the financial statements for that year, regardless of whether they have led to receipts or payments in that year.

Changes in accounting principles

Accounting principles, once adopted, must be applied consistently (articles 362-2 and 362-3 DCC). 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 and 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 (articles 363-4 and 363-5 DCC).

Financial year

The financial year of an entity is the calendar year if the articles of association do not specify another financial year (article 10a Part 9 DCC). A change in financial years requires a formal decision by the general meeting and a change in the articles of association.

A financial year shorter or longer than twelve months is permitted in specific cases. The first financial year commences at the date that the entity is incorporated. In case of a financial period shorter and longer than twelve months, the entity needs to disclose the reporting period and the reason for the shorter or longer financial period as well as the fact that the comparative figures are not comparable.

Events subsequent to the adoption of the financial statements

The financial statements must be finalized and submitted to the general meeting for adoption, with due regard to any matters affecting the entity'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 entity's financial position as at the balance sheet date must be included in the financial statements. Should it be discovered subsequently to the adoption of the financial statements by the general meeting that the financial statements seriously fail to provide the insight required, management must inform the shareholders without delay and file a notice of such event with the Dutch Chamber of Commerce.

The notice must be accompanied by an auditor's report in case the financial statements have been audited (article 362-6 DCC). 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 shall be disclosed including the financial effects of such events (article 380a DCC).

Currency

There is no specific requirement to maintain accounting records in euros. The financial statements may be presented in a currency other than euros, when the entity's activities or the group's international structure justifies its use. However, please take into consideration that tax returns will need to be filed in euros.

Language

The documents of the annual accounts may be published in other languages than Dutch. To do so, the shareholders have to first resolve this. However, filing with the Dutch Chamber of Commerce can only be done in Dutch, English, German or French.

Breakdown of figures

Setting off assets against liabilities or income against expenses in the Financial statements is not permitted when these items are required to be shown as separate items (article 363-2 Part 9 DCC).

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 Part 9 DCC).

6. Preparation, adoption and publication of the annual accounts

General

Not all components of the annual accounts need to be filed. Management can choose to exclude the management board report, the auditor's report and the details of branch establishments from the filing documents, provided the management board report, the auditor's report and the details of branch establishments are kept at the registered office of the entity for public inspection and a copy can be obtained upon request at no more than cost price (article 394-4 DCC). When the entity applies this procedure, they must register notice of this with the Dutch Chamber of Commerce. However, this option is not often used.

Timetable

The timetable for preparing, adopting and filing the financial statements is laid down in article 394 DCC. The general meeting of shareholders may extend the period for the preparation and hence filing of the financial statements. Listed companies are subjected to a different timetable.

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.. The general meeting may extend the period for preparing the annual accounts for a maximum period of five months.

Adoption

The financial statements of an N.V. and a B.V. must be presented to and adopted by the general meeting within 2 months from preparation. Simplified adoption requirements apply for B.V.'s of which all shareholders are also directors of the entity. 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, provided that all other parties with a right to attend the general meeting (e.g. share certificate holders, pledge holders or parties entities to a usufruct have been given the opportunity to read the prepared financial statements and such parties have given their consent to such simplified adoption of the financial statements.

Filing

An entity must file its annual accounts with the Dutch Chamber of Commerce ('KvK') within eight days of adoption, but not later than twelve months after the financial year-end.

When shareholders do not adopt financial statements, the non-adopted financial statements have to be filed within the prescribed timelines. The fact that the financial statements have not been adopted needs to be clearly disclosed in the filed documents.
If the financial statements are not adopted by shareholders this has the following impact:

- no discharge of directors; o no distribution of profit; o no purchase of own shares after the financial year has passed for more than six months;
- the term within which a legal procedure with regard to the financial statements can be initialized, does not start.

Penalties for non-compliance

If (Supervisory) Directors do not comply with the legal requirements regarding preparing and filing of the annual accounts, there are basically two consequences:

- it will constitute an economic offence which may lead to a fine or an imprisonment of six months at maximum;
- in case of bankruptcy, (Supervisory) Directors can be held personally liable for a deficit.

Figure 1: Timeline of preparation, adoption and filing of the annual accounts.

Required action	Time frame	Possible extension	Extension requires
Preparation of annual accounts	5 months after year-end.	Up to 5 months. The maximum preparation time is 10 months after year-end.	Approval of the general meeting of shareholders required, supported by well-founded reasons.
Filing of the annual accounts with the Dutch Chamber of Commerce	8 days after adoption by the general meeting of shareholders but no later than 2 months after the date of preparation (irrespective of whether the financial statements have been adopted).	If above extension is applied, filing should take place ultimately 12 months after year-end.	

7. Exemptions

Exemptions for smaller entities

As mentioned under general principles, the Dutch law foresees exemptions based on the size of an entity. There are 4 categories: micro, small, medium-sized and large. The classification of an entity is based on 3 criteria: Total assets, Net turnover and Average number of employees. For classification an entity has to satisfy at least 2 out of the 3 criteria for 2 consecutive years.

When the entity has subsidiaries, the classification test has to be performed on a consolidated basis. For newly incorporated entities, the classification test is performed on the first financial statements. In the case the first financial statements do not cover 12 months, the criteria are proportionally adjusted.

Figure 2: Classification chart

Entities that are not classified as large can apply the use of simplifications for both the annual accounts that has to be legally prepared and the annual accounts that has to be legally filed. Shareholders do not have to approve these simplifications. If shareholders do not want to apply these simplifications, they have to pass a resolution within six months of the start of the applicable financial year.

It is important to understand that a difference exists between - the annual accounts that has to be legally prepared, this report will be used in case directors are held liable and - the annual accounts that has to be legally filed with the Dutch Chamber of Commerce.

Furthermore, micro and small entities are exempted from audit requirements.

Figure 2: Classification Chart

	Micro	Small	Medium-sized	Large
Net turnover (in €)	≤ 700,000	≤ 12,000,000	≤ 40,000,000	> 40,000,000
Total assets (in €)	≤ 350,000	≤ 6,000,000	≤ 20,000,000	> 20,000,000
Employees	< 10	< 50	< 250	≥ 250

Figure 3: Applicable simplification regarding preparation and filing of annual accounts

Annual report to be legally prepared:

	Micro	Small	Medium-sized	Large
Man. Board Report	Not required	Not required	Fully required	Fully required
Balance Sheet	Partly required	Partly required	Fully required	Fully required
P&L	Partly required	Partly required	Partly required	Fully required
Cash-Flow Statement	Not required	Not required	Fully required	Fully required
Notes	Not required	Partly required	Partly required	Fully required
Other Information	Not required	Not required	Fully required	Fully required
Consolidation	Not required	Not required	Fully required	Fully required

Annual report to be legally filed:

	Micro	Small	Medium-sized	Large
Man. Board Report	Not required	Not required	Fully required	Fully required
Balance Sheet	Fully required	Fully required	Fully required	Fully required
P&L	Not required	Not required	Partly required	Fully required
Cash-Flow Statement	Not required	Not required	Fully required	Fully required
Notes	Not required	Partly required	Partly required	Fully required
Other Information	Not required	Not required	Partly required	Fully required
Consolidation	Not required	Not required	Fully required	Fully required

Group exemption

A group company is exempted from the usual disclosure, publication and audit requirements relating to its financial statements if it meets all the conditions specified in Article 403 Part 9 DCC.

The to-be-exempted group company must prepare only an abridged balance sheet and profit and loss account. The abridged balance sheet should show: fixed assets, current assets, equity, provisions and debts. The bridged profit and loss account should show: the result from ordinary activities after tax, and the balance of other income and expenses after tax.

Further explanations are not required. It is also permitted to include more items than the above. 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 entities

An intermediate holding entity is not obliged to prepare consolidated financial statements if it meets all the condition specified in article 408 Part 9 DCC.

This exemption implies that an intermediate holding entity is not required to prepare consolidated financial statements if the financial data that the intermediate holding entity should consolidate has been integrally included in the consolidated financial statements of a larger group. Conditional to applying this exemption is that the consolidated financial statements (which include the data of the intermediate holding entity) and the management board report are either prepared in accordance with the stipulations of Directive 2013/34/EU or according to equivalent stipulations.

Please note that US-GAAP is regarded equivalent.

8. Application of IFRS in Dutch statutory accounts

General

As mentioned before, companies are allowed to apply IFRS in their statutory financial statements. This may be interesting when a company is part of a larger group that also applies IFRS.

Article 362 sub 8 states: "A legal entity may prepare the financial statements in accordance with the standards adopted by the International Accounting Standards Board and approved by the European Commission, provided that the legal entity applies all the adopted and approved standards applicable to it."

However, sub 9 of the same article also describes that due to this choice companies are required to "apply only Sections 7 to 10 and article 362(6), the penultimate sentence, 362(7), the last sentence and 362(10), 365(2), 373, 379(1) and (2), 380b(d), 382, 382a, 383, 383b to 383e, 389(8) and (10), and 390 of this title".

IFRS approved by the EC

DCC clearly mentions that the IFRS Standards must be approved by the European Commission. There are currently two modifications made by the European Commission to IFRS Standards:

(i) Declaration by the Commission on the 'carve-out' concerning fair value hedge accounting for portfolio hedges of interest rate risk in IAS 39 *Financial Instrument: Recognition and Measurement;* and.

(ii) a temporary extension of the scope of *Applying IFRS 9* Financial Instruments *with IFRS 4* Insurance Contracts allowing a deferral of the application of IFRS 9 for some insurers.

Furthermore, the European Commission has not approved IFRS for Small and Medium Entities. Therefore, these may not be applied under Dutch statutory reporting.

Changes to Dutch GAAP

Sections 1 to 6 and 11 - 16 of DCC Title 9 may not be applied when reporting under IFRS. This means that regarding the following topics, IFRS guidance is leading for the financial statements:

- Scope;
- Definition of Financial Statements;
- Balance Sheet;
- Profit and Loss account;
- Principles of valuation and determination of the result;
- Exemptions based on the size of the business of the legal entity
- Legal entities of a different nature;
- Consolidated Financial Statements;
- Provisions for Banks;
- Provisions for Insurance Companies; and
- Administration of Justice.

Exceptions to this are:

- Dutch guidance on what to do when a mistake has been identified in the financial statements;
- The general meeting has to decide on the language of the financial statements if it is not Dutch;
- The legal entity shall state in the notes the standards according to which the financial statements have been prepared;
- When costs for creation and issue of shares or development costs for intangible fixed assets have been capitalised, they must be explained and a reserve has to be maintained;
- All requirements relating to equity under Dutch GAAP are applicable;
- The legal person shall indicate the name, domicile and the share provided in the issued capital of each company:

a. to which he alone or together with one or more subsidiaries for his own account provides or causes to be provided at least one fifth of the issued capital; or

b. in which, as a partner, he is fully liable for the debts towards the creditors.

- For each company referred to in point (a) of paragraph 1, the legal entity shall also state the amount of the equity and result according to its most recently adopted financial statements, except where this is the case:

  a the legal person consolidates the financial data of the company;

  b the legal person justifies the company in its balance sheet or consolidated balance sheet in accordance with article 389 paragraphs 1 to 7 inclusive;

  c the legal person does not consolidate the financial data of the company due to a negligible interest or pursuant to article 408; or

  d less than half of the capital of the Company is provided on behalf of the legal entity and the Company lawfully does not disclose its balance sheet.

- The number assigned by the Chamber of Commerce as referred to in article 9(a) of the Trade Register Act 2007, under which the legal entity is registered in the Trade Register has to be reported;
- The requirement to report on the average number of employees;
- Disclosure of audit fees;
- Disclosure of remuneration, loans, advances, guarantees and rights to subscribe for or acquire shares in the capital of the company for (former) (supervisory) board members and members of the management board;
- Conversion reserve for exchange rate differences on subsidiaries;
- Disclosure of difference between stand alone and consolidated shareholders' equity;
- Revaluation reserve in case fixed assets or inventory are valued at fair value.

Exemptions

Dutch GAAP does allow certain simplifications based on size or group structure. These exemptions, which are mentioned in Sections 11 and 12 of Title 9 of the DCC are not applicable at the moment IFRS is applied.

Therefore, IFRS financial statements will always:

- Need to include all required disclosures as mentioned by the IFRS Standards;
- Require a mandatory audit.

Even in the situation where the parent company declares itself jointly and severally liable for the debts of the company (under Dutch GAAP the 403 exemption).

However, the exemption for consolidation when the company is included in a larger IFRS group consolidation can still be applied as this is allowed by IFRS 10.4, if the company meets the following criteria:

- Shareholders have indicated that they do not object that the consolidation is forfeited;
- The companies liabilities and shares are not publicly traded
- The company is not in the process of obtaining a listing;
- The IFRS financial statements of the parent company comply with IFRS and are publicly available.