Baker McKenzie.

Corporate Structures

Newsletter | September 2017

Don’t forget diversity in your directors’ report

With summer almost over and the end of the calendar year in sight, some companies are also nearing the end of their financial year. This means that those companies will soon need to prepare their 2017 annual accounts. We would therefore like to take this opportunity to point out that, depending on the size of your company, whether the company is listed or considered to have a public interest, you may need to include additional information on diversity and some other non-financial topics in the directors’ report compared to last year.

Large companies

Large[1] companies must ensure a balanced participation by men and women in their management and supervisory boards. This means a board consisting of at least 30% men and 30% women. If this goal is not met, the management board needs to explain why in the directors’ report. The statutory provisions in which these obligations were laid down from 2013 to 2016 have recently been extended until 2020. For more information, please see our January 2016 Newsletter.

Listed companies

Listed companies must include a corporate governance statement in the directors’ report. In this statement, they must report on their compliance with the Corporate Governance Code. As set out in our January 2017 Newsletter, there is a new version of the code, which entails both substantive changes and a tightened “comply or explain” principle. In addition, listed companies must report on the diversity policy applicable to the management and supervisory board with regard to aspects such as age, gender and educational and professional background. This report must address (i) the policy’s objectives, (ii) how the policy has been implemented and (iii) its results in the past financial year. If no diversity policy is applied, the management board must explain why. If the policy objectives are not met, the management board must outline the current state of affairs and explain which measures are being taken to reach those objectives and by when they are likely to be met. The corporate governance statement must be audited.

Large public interest companies

Large companies with a public interest – in short, listed companies, banks and insurance companies – with more than 500 employees need to include a non-financial statement in the directors' report. Among other things, this statement should describe the company's policy towards the environment, social matters, employment, respecting human rights, as well as combating corruption and bribery. If no such policy is applied, the management board must explain why. The non-financial statement must be audited.

What to do

If your company falls into one or more of these categories, it is vital to take these new rules into account when preparing the directors' report for the financial year that started on or after 1 January 2017. We are, of course, happy to assist with this or to provide you with more detailed information.

---

[1] A company qualifies as large for this purpose if it meets at least two of the following criteria on two consecutive balance sheet dates:

- the value of the assets according to the balance sheet and explanatory notes thereto, based on the acquisition and manufacturing price, is more than EUR 20 million;
- the net turnover is more than EUR 40 million; and
- the average number of employees is more than 250.