

## A practical summary on compliance obligations for Dutch companies listed in the Netherlands (including SPACs)

*Regulations and legislation with respect to compliance obligations for Dutch companies listed in the Netherlands have increased significantly. This publication provides a high-level overview of continuing compliance obligations that Dutch companies listed in the Netherlands have to comply with. Because of the rising popularity of SPACs in the Netherlands, also the continuing compliance obligations of SPACs will be discussed.*

### General

Dutch companies listed in the Netherlands are legal entities which are incorporated as well as having their statutory seat in the Netherlands and with shares (this also includes depository receipts) listed in a regulated market in the EUR/EER<sup>1</sup>. For example, Euronext Amsterdam is considered as regulated market. A SPAC (a special purpose acquisition vehicle) is a company - without its own business operation - that allows investors to pool resources in a public investment vehicle (listed) with the intention to acquire existing businesses (unlisted). Unique of a SPAC is the fact that it only identifies the potential target after investors have already committed capital. In this way a SPAC offers investors an alternative to the traditional initial public offering ('IPO') process. Despite the fact that a SPAC is not a new concept, nowadays jurisdictions like the Netherlands win in popularity for domiciliation of SPAC structures. In Europe, the specific characteristics and structures of a SPAC vary depending on (the possibilities of) the (corporate) law of the respective jurisdiction and regulated market rules.

### Compliance obligations

#### *Standard annual compliance obligations*

In the Netherlands, Book 2 of the Dutch Civil Code (the primary source of Dutch corporate law) regulates the 'standard annual compliance obligations' of a Dutch legal entity. These standard annual compliance obligations (for BVs and NVs) consist of 1) holding of at least one general meeting during each financial year of that respective legal entity (or – if the articles of association stipulate otherwise – at least one resolution has to be adopted by the general meeting without holding an official meeting) and 2) the preparation and filing (with the trade register of the Dutch Chamber of Commerce) of the annual accounts by the board of that respective legal entity, each year within five months after the end of the financial year. Further, the Trade Register Resolution 2008 (in Dutch: Handelsregisterbesluit 2008) stipulates that the number of employees should be updated with the trade register of the Dutch Chamber of Commerce each year in case of any changes.

#### *Compliance obligations upon listing*

Once a Dutch company is listed ('Issuer') on a Dutch regulated market, its compliance obligations increase. In this respect, the main sources regulating the compliance obligations the Issuer has to be compliant to are 1) the Financial Supervision Act ('FSA', in Dutch: Wet op het financieel toezicht, the primary source of Dutch securities law), 2) the Dutch Corporate Governance Code ('DCGC', which contains principles and best practice provisions regulating relations between board and shareholders) and 3) the Market Abuse Regulation ('MAR', intends to guarantee the integrity of European financial markets and increase investors' confidence)<sup>2</sup>.

---

<sup>1</sup> Article 4 paragraph 21 of Directive 2014/65/EU provides for the definition of a regulated market in the EUR/EER.

<sup>2</sup> From a corporate governance perspective, once a Dutch company is listed, another main resource that becomes applicable is the revised EU Shareholders Rights Directive as implemented in Dutch law (which sets out rules on inter alia transparency of institutional investors, asset managers and proxy advisors), but will not be further considered in this article.

From a filing/notification perspective the above results in that 1) within four months following the end of the financial year the annual report together with the audited annual accounts should be published, 2) the annual report and annual accounts must be filed with the Netherlands Authority for the Financial Markets ('AFM'), 3) the semi-annual financial results (within three months after the first half of each financial year) must be published and 4) the financial results must be filed with the AFM.

Furthermore, the Issuer must submit annually a remuneration report to the general meeting for its non-binding advisory vote and publish a corporate governance declaration (to be made publicly available as part of or as an appendix to the management report or through (other) electronic means).

#### *Incidental disclosure requirements*

A special and important category of compliance obligations for Dutch listed companies are the incidental disclosure requirements. This category consists of situations whereby the Issuer should be aware of its obligation to provide information regarding that specific situation to the public, AFM and/or others.

For example, the Issuer must disclose price sensitive information to the public without delay and file such information with the AFM. Such disclosure may only be delayed in certain circumstances. The Issuer must also disclose to both the public and the AFM if there are any changes in the rights attached to shares and/or the rights following a rights issue. If the Issuer intends to amend its articles of association, it must notify both Euronext Amsterdam and the AFM of that intention. Notification must be made before the notice of the general meeting is distributed (that is, the notice convening of the general meeting in which a resolution to amend the articles of association will be taken).

Transactions in shares of the Issuer by members of the executive board, members of the supervisory board, certain members of senior management and related persons (mainly relatives) must be disclosed. Such persons are required to notify the AFM of transactions in the company's shares or in those of an affiliated company under certain conditions. Substantial shareholders are also required to (promptly) disclose their holdings to the AFM. Increases and decreases in their shareholdings that exceed or fall below the by the AFM dictated ownership or voting thresholds must be disclosed with the AFM. The above shareholding notifications made to the AFM are published on the AFM's website ([www.afm.nl](http://www.afm.nl)). Notifications are to be made in AFM standardised form.

#### **Compliance obligations for a SPAC**

In the Netherlands, the compliance obligations for a SPAC are similar to the compliance obligations for a primary listing of a Dutch company on a Dutch regulated market. However, due to the profile of a SPAC – a public shell company, not being a normal business company - it is obvious that for example most incidental disclosure situations will not occur. This means in practice that the compliance obligations for a SPAC will be less burdensome than a 'normal' Dutch listed (business) company and only a minimum of compliance obligations should be satisfied.

After a given time frame, usually 12 to 24 months following the IPO, the SPAC should have identified and consummate a business combination (de-SPAC transaction). With this transaction the SPAC will be 'converted' into a normal business company (which results in an increase of the compliance burden and -risks).

#### **Breaching compliance obligations**

Not complying with the standard annual compliance obligations of a Dutch legal entity could lead to (personal) liability of a director of that respective legal entity.

Any violation of the provisions of the FSA constitutes an economic offence. In that respect, the AFM is authorised to use certain investigation and enforcement powers (under the FSA the most important task of the AFM is the supervision of the application of listed entities in the Netherlands of their financial reporting requirements). The AFM may, for example, impose fines (for no or non-timely notification to the AFM), request information, impose instructions under penalty, issue binding directions, suspend trading and reverse trades.

While the DCGC applies on a comply or explain basis, certain principles and best practices are considered part of the statutory requirements for board and shareholders (the principles of reasonableness and fairness) and may as such be binding. In case of breaching these principles, a shareholder could use his shareholder rights (including its right to initiate inquiry proceedings).

Any unlawful behaviour in the financial markets is prohibited. Under the MAR, market operators, investment firms and persons that professionally arrange or execute transactions in financial instruments are required to notify the AFM without delay of any reasonable suspicion of market abuse. Upon such (failure of) notification the AFM determines which measure is appropriate in each individual case.

### **Foreign companies listed in the Netherlands and Dutch companies listed outside the Netherlands**

The situation whereby a foreign company is listed in a Dutch regulated market and/or a Dutch company listed in a regulated market outside the Netherlands is outside the scope of this article. However, one should be aware that most of the Dutch compliance obligations apply to these companies as well as obligations of the country of origin and/or the country of the respective stock exchange.

### **Summary**

The same fundamental compliance obligations apply, both for a Dutch business company and for a SPAC listed in the Netherlands (even also both for a foreign listed company in the Netherlands and for a Dutch company listed outside the Netherlands).

Once a company faces listing, it should be aware of a future increase of its continuing compliance obligations. To seek a partner – in an early stage - who may assist you with all (local and abroad) compliance obligations will 1) help to prevent any violation of regulations aiming to be guided by the saying 'prevention is better than cure' and 2) be less time consuming and more efficient which will result in more time for core business.

\*\*\*