CORPORATE GOVERNANCE IN THE NETHERLANDS: FROM RUSSIA WITH LOVE

Address to the Seminar on Corporate Governance

Lissabon - Portugal

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Mister Chairman, Ladies and Gentlemen!

1. Introductory remarks

1.1 Honoured as I am by having been invited to address your distinguished audience on corporate governance I nevertheless feel a bit embarrassed. Seen from the Dutch legal perspective as well as from the Dutch linguistic perspective the thing does not seem to exist. And it is hard for me to reflect on ghosts. As far as the linguistic perspective is concerned, my computer adduces evidence for my statement since it indicates an error once I have the words corporate governance typed. And it offers no suggestions in order to remedy that error. Fortunately enough, this seminar is conducted in English so at least I am not confronted with a lot of red lines on my screen everywhere the phenomena is mentioned in my text. As to the Dutch legal perspective I just know that it does not exist, having some knowledge of the Dutch law, as you probably are willing to believe without further proof.

1.2 But things can change, even in the law. Nowadays corporate governance is a highly vivid subject, that is debated in legal textbooks, journals, especially the ones with a keen interest in financial topics, board rooms, annual accounts of the stock listed companies and even in the case law. From a lawyer's perspective and more particular also from the judge's perspective the question will be whether rules and principles of corporate governance are or in the near future will be part of the law of the land that can be enforced, if necessary in court, or whether those rules and principles will not reach beyond the stage of recommendations which companies and especially board directors are free to follow or neglect completely.

1.3 It is fairly likely that in the Netherlands that question will be answered in the near future. You might be aware of the fact that in the Netherlands a new corporate governance code has been formulated and has been adopted on the ninth of December 2003 in its final version by the corporate governance committee at the request of all the parties involved, that is to say the Stock Exchange Euronext Amsterdam, the Netherlands Centre of Executive and Supervisory Directors, the Foundation for Corporate Governance Research for Pension Funds, the Association of Stockholders, the Association of Securities-Issuing Companies and the Confederation of Netherlands Industry and Employers. The committee further did operate on the invitation of the Minister of Finance and the Minister for Economic Affairs. The code replaces the 1977 '"Corporate Governance in the Netherlands Report; the Forty Recommendations" of the so-called Peters Committee. Those recommendations were not that much of a success I think. It is the general idea that especially board members expressed their willingness to subscribe to the recommendations in general terms but that in specific cases in which the recommendations infringed upon their

authority to do as they think fit they do not act accordingly. In the Netherlands we call that Italian Catholicism: you adhere tot the rules but there is always forgiveness for not in fact complying with them.

1.4 Will that be different now the new corporate governance code has been accepted? A positive answer to that question could be based on the fact that the code was accepted by the committee unanimously and on the fact that all parties and institutions that can come across corporate governance problems have taken part in the discussions. So there seems to be a complete consensus within the relevant part of society as how to behave in the corporate world according to modern ideas how a company should be managed. But the practice might again be different. That has again become clear in the Netherlands just a few days ago. In the Netherlands in a stock listed company, Wessanen PLC, there is a dispute going on between the board of directors and the holders of depository receipts on the one hand and the formal stockholder, a foundation that acts as a trustee of the shares, not necessarily in the interest but in any event on behalf of the holders of the depository receipts who in fact are the investors of the capital of the company on the other hand. The division between the legal title to the shares in the hands of a foundation and the economic interest in the hands of the holders of depository receipts by way of a legal structure that can be compared with but not equalised to the English trust, has long been seen as a protective measure by the company against the influence of the providers of its capital. The members of the board of the foundation are very often linked to and sometimes even appointed by the board of directors and are supposed to vote in the general meeting of shareholders as the board of directors desires them to do. As a result of a changing opinion as to what good governance requires nowadays the prevailing idea is that the members of the board of the foundation should in the first place act in the interests of the holders of the depository receipts. One of the methods by which that can be achieved is to empower the holder of a depository receipt who so wishes, with a right of proxy which enables him to vote in the general meeting of shareholders on behalf of the formal shareholder, the said foundation, but in fact on behalf of his own interest as he sees it.

1.5 In the case of Wessanen PLC the board of directors of the company has - in line with the expressed wishes of the holders of the depository receipts - put on the agenda of the next general meeting of shareholders a draft resolution that holders of depository receipts if they wish to do so can make an end to the trust an so become the shareholder instead of the foundation. It considers this to be in accordance with modern opinions on the right of providers of the share capital. The president of the board of the foundation has however announced publicly that the foundation as the formal shareholder and having the majority of the voting rights, will probably not vote in the general meeting in favour of the proposed resolution. He also did announce that the foundation reserves its right to withdraw the proxy rights of the holders of the depository receipts if it thinks fit

to do so in order to prevent the proposed resolution to be passed by a majority on the basis of proxy votes. In The Financial Daily, the leading newspaper for the financial and business world in the Netherlands, one can read: “A withdrawal of the proxy rights of the holders of the depository receipts is in conformity with the law, the Dutch civil code that is, but contrary to the rules in the Dutch corporate governance code as accepted on the ninth of December 2003.” The question now of course is: can the holders of the depository receipts or even the company itself or its board of directors successfully go to court and ask the judge for an injunction, prohibiting the board of the foundation to act according to its published statement on the basis that the behaviour of the said board is contrary to modern good governance principles?

2. The meaning of corporate governance

2.1 Before discussing this question in more detail it seems appropriate to elaborate a bit more on the concept of corporate governance. As I said before the thing does not exist. That might be exaggerating. But in any event the concept is not in every respect very clear. It is just a rough indication of the subject we are talking about. It includes amongst other things company structures, the way in which the powers of the bodies of the company are distributed and exercised, the way in which board members account for their management of the affairs of the company, how rights of for instance shareholders can be exercised, what the duties of a supervisory board are, how companies are governed and the like. In general, corporate governance is a general term for anything that falls within the ambit of making the company functioning.

2.2 For my presentation I would like to make a distinction between two categories of rules of corporate governance. In the first place one can point at the legal rules, in the Netherlands mainly to be found in Book 2 of our Civil Code on corporations, concerning the structure and the functioning of companies. So for instance the rule that the board of the company is in principle exclusively empowered with managing responsibilities for the daily affairs of the company, the rule that in some cases the board of directors need the previous consent of the supervisory board for entering into defined categories of transactions and the rule that in principle all shareholders have to be treated equally and have equally to be informed, are clearly rules of corporate governance. They also clearly are binding in law and any interested party normally can these rules have enforced in court.

2.3 In the second place there are the rules of corporate governance in the more strict sense of the world which are to be found in codes, one of the peculiarities thereof being that they are not

enacted by the legislator but by private parties without legislative authority, whatever their moral authority may be. It follows directly from this that rules contained in a corporate governance code will in itself not have force of law. On the other hand, it is quite unimaginable that in the whole modern world codes of corporate governance are being discussed and enacted just for the fun of the draftsmen but without any impact on the way companies are being governed and deprived of any legal status. Indeed, that is not the case and the Netherlands are a good example of far reaching consequences of the corporate governance code for the corporate world.

3. The Dutch Corporate Governance Code of 2003

3.1 Let me first elaborate a bit more on the code that came into existence in 2003. In formulating the code, the Committee has based itself on the existing legislation governing the external and internal relations of listed companies, including the legislation governing the mandatory application of the two-tier board system *(structuurregime)*, and on the case law on corporate governance.

3.2 The code is further based on the principle accepted in the Netherlands - which is I think different from for instance the English view that a company mainly has to keep in mind the interests of the shareholders - that a company is a long-term form of collaboration between the various parties involved. The stakeholders are the groups and individuals who directly or indirectly influence (or are influenced by) the achievement of the aims of the company. in other words employees, shareholders and other providers of capital, suppliers and customers, but also government and civil society. The management board and the supervisory board have overall responsibility for weighing up the interests, generally with a view to ensuring the continuity of the enterprise. In doing so, the company endeavours to create long-term shareholder value. The management board and supervisory board should take account of the interests of the different stakeholders. The confidence of the stakeholders that their interests are represented is essential if they are to cooperate effectively within and with the company. Good entrepreneurship, including integrity and transparency of decision-making by the management board, and proper supervision thereof, including accountability for such supervision, are essential if the stakeholders are to have confidence in the management board and the supervision. These are the two pillars on which good corporate governance rests and on which the code is based.

3.3 The code contains the principles and concrete provisions which the persons involved in a company (including management board members and supervisory board members) and stakeholders (including institutional investors) should observe in relation to one another. The principles may be regarded as reflecting the latest general views on good corporate governance, which now enjoy wide support. An example of a principle is that the composition of the supervisory

board shall be such that the members are be able to act critically and independently of one another and of the management board and any particular interest. The company has according to the committee to state each year in its annual report how it has applied the principles of the code in the past financial year.

3.4 The principles have been elaborated in the form of specific best practice provisions, as for instance the provision that a supervisory board member shall retire early in the event of inadequate performance, structural incompatibility of interest, and in other instances in which this is deemed necessary by the supervisory board. These provisions create a set of standards governing the conduct of management board and supervisory board members (also in relation to the external auditor) and shareholders. They reflect the national and international 'best practices' and may be regarded as an elaboration of the general principles of good corporate governance. Listed companies may depart from the best practice provisions. Non-application is not in itself objectionable and indeed may even be justified in certain circumstances. Whether all the provisions can be applied is in fact dependent on the specific circumstances of the company and its shareholders. Not all companies are the same: they operate in different markets, the (geographic) diversification of share ownership differs, their growth perspectives are different, and so forth. In addition, the circumstances in which a company finds itself change with some regularity. Shareholders, the media and businesses that specialise in rating the corporate governance structure of listed companies should not therefore automatically treat instances of non-application as negative, but should instead carefully assess the reason for each instance of non-application. Both shareholders and the management and supervisory boards should be prepared to enter into a dialogue on the reasons for the non-application. It is conducive to this dialogue if shareholders make known their objections prior to the general meeting of shareholders and both the company and the shareholders are willing to engage in dialogue even outside the framework of the general meeting.

3.5 Unconditional freedom to decide whether or not to apply the code is in the eyes of the committee not desirable. In international legislation and codes, the flexibility is limited by the obligation of listed companies to explain in their annual report whether, and if so why and to what extent, they do not apply the best practice provisions of the corporate governance code (known as the 'comply or explain' principle). The Dutch legislator in the meantime has given the corporate governance code a statutory basis by including a provision in Book 2 of the Civil Code that a code of conduct can be designated by order in council to which the comply or explain rule will apply (paragraph 4 of article 2:391 Civil Code). Before the order in council can be adopted, both Houses of Parliament must be given at least four weeks in which to comment on the draft order in council (paragraph 5 of article 2:391 Civil Code).

3.6 But apart from that, it is up to the shareholders of the company to call the management board and the supervisory board to account in respect of the application of the principles of the code and the statement on observance of the best practice provisions. The contents of this chapter of the annual report on the corporate governance structure and the corporate governance policy of the company and the statement on observance of the best practice provisions can be raised each year in the general meeting of shareholders at the initiative of the management board or of the shareholders or a group of shareholders. If desired, the chapter on the corporate governance structure, the corporate governance policy and the reason given for non-application of one or more best practice provisions may be put to the vote. If the general meeting approves the corporate governance structure and authorises the non-application of code provisions, the relevant company is deemed to comply with the code ('explanation constitutes compliance after approval by the general meeting of shareholders').

3.7 If the general meeting of shareholders (or part of the general meeting) objects to the corporate governance structure and/or the reason given for non-application of one or more best practice provisions, it may exert pressure, both in the general meeting of shareholders and otherwise, on the management board and the supervisory board to alter the corporate governance structure and/or observe the provisions of the code better. The management board and the supervisory board should render account in the general meeting of shareholders for the choices they have made, and should in any event be willing to consider adjustment of the corporate governance structure of the company if the general meeting of shareholders or a group of shareholders puts forward reasoned objections. If the discussion between the general meeting of shareholders or a group of shareholders on the one hand and the management board and supervisory board on the other with regard to an important question should nonetheless become deadlocked, the shareholders may exercise the rights available to them (both in the general meeting of shareholders and otherwise). In the general meeting, shareholders may exercise the right not to discharge the management board from liability for its conduct of business and the supervisory board from liability for its supervisory tasks, to alter the policy on remuneration, and to dismiss the supervisory board and/or the management board. Shareholders may also take various types of legal action, such as starting an inquiry or annual account procedure. I will come to that later.

3.8 The Dutch code contains a preamble and the principles, the best practice provisions, as well as an explanation of and notes to certain terms used in the code. The code is divided into five chapters: (I) compliance with and enforcement of the code; (II) management board; (III) supervisory board; (IV) the shareholders and the general meeting of shareholders; (V) audit of the financial reporting and the position of the internal auditor function and of the external auditor. All these chapters contain principles and provisions for listed companies. Chapter IV contains a number of provisions for the trust foundation that administers shares of the companies for which

depositary receipts have been issued and provisions for institutional investors. Chapter V contains some provisions for the external auditor.

4. Development of rules of corporate governance: remedies precede rights

4.1 I now might turn to the question how the Dutch corporate governance code will have any authority in law. That question has to be answered affirmatively, which raises the question how that is possible.. The rather peculiar answer is: by the more or less accidental fact that there exist in the Netherlands a peculiar court and a peculiar procedure. The court I am referring to is the Enterprise Court that was established by the legislature in 1971 by adding just a few articles to the Judicature Act without conferring any form of general jurisdiction upon the court. Jurisdiction was and is to be derived from the references to the EC in different places, spotted throughout the Dutch legislation.

4.2 Bearing in mind that the law is too serious a thing to be left to the lawyers, the legislature did chose the Court not to be composed only out of professional judges. Fifteen lay judges like former members of the boards of big companies like DSM PLC or Akzo Nobel PLC and outstanding chartered accountants are members of the EC as well. So the Court sits on any case with five judges, three professional ones and two out of the group of the lay judges.

4.3 The few existing exceptions left out for the moment, the EC, though having domicile in the Court of Appeal of Amsterdam, is a first instance court and not an appellate court. On the other hand, from the decisions of the EC lies no appeal. The only possibility of scrutinising its decisions consists in appealing to the Supreme Court, but that court is a court of cassation.

4.4 The jurisdiction of the EC, again: though part of a regional appellate court, is not confined to a specific region or part of the Netherlands. Its jurisdiction covers the whole nation so the court has an insight in all corporate activities in the land.

4.5 Finally, and most importantly, there is a variety of legal topics the EC has to deal with. The EC was not meant to and does not deal with company law or commercial law as such. If I try to define what jurisdiction it exercises, I would say that the EC decides on all sort of questions concerning the activities of legal institutions that, though having a private law status, operate in the social-economic field in the Netherlands on a more or less large scale by having an enterprise or doing business. It can best be and is often compared with the Court of Chancery in the State Delaware in the United States of America.

4.6 I would like to mention briefly the most important categories of cases that are dealt with by the EC. First, at the introduction of the EC in 1971 jurisdiction was created in matters of Companies Accounts and Audit. As a consequence of EEC law, the law on the subject is more or less the same as for instance in England. In England you have to look to Part VII in the Companies Act 1985, in the Netherlands the rules are to be found as a chapter in book 2 of the Civil Code. And in the Netherlands, anyone who has a sufficient legal interest that the accounts of a company should be in compliance with the statutory rules may start proceedings in the EC and ask for a Court order to force the company to change the accounts if they not have been drawn up according to the said chapter. The question who has a sufficient legal interest is a matter of case law and case law only. Shareholders and employees can be mentioned in this respect as having locus standi.

4.7 Then you have the by now famous inquiry procedure. I may point at sections 431 and 432 of the English Companies Act 1985 where you will find the English equivalent. In the Netherlands, article 345 of book 2 of the Civil Code empowers certain categories of interested parties, for instance shareholders, to request for the affairs of companies and other corporate institutions to be investigated on the ground that there are fair reasons to believe that the affairs of the company or institution are not managed properly. The difference with the English Companies Act 1985 is, amongst others, that the investigation always takes place by Court order and not by an order of the Secretary of State, and that the investigator is appointed by the EC and acts under the Court's authority.

4.8 If, after the investigation report has been finalised, bad management of the company appears, the Court has a wide variety of orders to its disposal to intervene in the company and its affairs. It can not only declare that the company was badly managed, it can establish who of, for instance, the directors is to blame and it can, if it thinks fit to do so, for instance dismiss executive and non executive board members, appoint executive and non executive board members, it can annul decisions of the board or of the general meeting of shareholders, it can alter the articles of association and suspend voting rights. It is not far from the truth to say that the EC can do almost everything it considers appropriate.

4.9 I would now suggest that not only a new type of Court was established but that also, as a result of that, a new set of legal rules or even a whole new branch of the law is emerging. A comparison can perhaps be made with the development of medieval English law. In those days, like in the days of ancient Roman Law, remedies did precede rights. The judges developed the rules of procedure and it was from the cases they decided that on the end one could deduce the substantive law. Especially when one considers the inquiry procedure, one could come to the conclusion that once again remedies precede rights or that form precedes substance, as opposed to the modern paramount idea that substance should be over form.

5. Judging acts of - bodies of - companies from the point of view of corporate governance

5.1 It is from this last observation that I will return to the principles of corporate governance. I try to show how on basis of cases in court the principles of corporate governance are debated and applied. I did already mention how the Dutch legislator in accordance with the proposals of the committee, gave some legal basis to the code. By order in council rules can be enacted concerning the annual accounts of a company and these rules can specifically relate to a named corporate governance code. By now such an order in council has been promulgated and the corporate governance code of 2003 has been named as a code in the sense of the order in council. The consequence of this is that listed companies from the first of January of 2004 have in their annual accounts to address their position towards the 2003-code. More specifically they have to inform the market if the do not apply the code. If there is no explanation of the sort in the annual account, any interested party can start proceedings in court, that is the Enterprise Court, in order to force the company to comply with the rules and to explain its position toward their corporate governance vis a vis the 2003-code.

5.2 But though not without importance this legal rule does not compel a company to act in substance in accordance with to the principles of good corporate governance as laid down in the code. The question then of course is whether companies can in law be forced to do so. Again the answer is in the affirmative. It is within the framework of the enquiry procedure I did mention earlier that this is possible and it is from this procedure that the principles of corporate governance enter into the legal field as well. It is not possible for me to elaborate on this in detail and I only can draw a few lines. In the Netherlands, a comply is, as I have pointed out, seen as an institution in which all sort of rights and interest come together, not only of the stakeholders but also from the employers, the creditors and even the public at large. In 1971 the inquiry procedure was introduced in the Dutch legislation. To put is as briefly as possible: if there are doubts whether the comply is managed properly its affairs can, by order of the Enterprise Court, be investigated on the application of for instance shareholders, trade unions and even the public prosecutor. The Court can, if it thinks fit to do so, appoint an investigator to investigate into the affairs of the company. It is a rather inquisitorial procedure. The Court can at any stage of the procedure and after the investigation has been concluded on the basis of the report of the investigator, take all sort of measures and pronounce all sorts of orders to protect the interest of the company as an institution. It can - even by way of summary proceedings - for instance dismiss and appoint board members, it can annul decisions of company bodies, also of the general meeting of shareholders in cases it does those decisions consider contrary tot the interest of the company and it can even liquidate the company. The jurisdiction of the court is based upon fairly vague, broad and hardly in legal terminology framed norms One of those broad norms being for instance the phrase that the court

can order an investigation of there are reasons for doubt whether the company is properly managed.

5.3 It is from this, one could from a classic private law lawyer's point of view even say poorly drafted piece of legislation that a broad corporate litigation jurisdiction in the Netherlands has derived, comparable with the jurisdiction of the American Delaware Court of Chancery. And it is from that jurisdiction and that litigation that principles of corporate governance enter into the legal field. To demonstrate what I mean I might give you three examples of, even abroad, well known cases that have been fought in Court and have caused a further development of the principles of corporate governance. One case deals with a hostile take over and the possibility for the board of directors to take protective measures, the other concerns the relationship between the board of directors and the supervisory board and the third deals with a conflict of opinion as well as of interest between the shareholders and the board of directors.

5.4 The first case I would like to show you is the Gucci. In this case two principles of corporate governance have been formulated, the one being that the board of directors in principle has the right to protect the company towards its shareholder who has a conflict of interest with the company and the other being that a shareholder even has to take into consideration the interest of the company as such and therefore of other shareholders and the employees.

5.5 The second case is the Corus case. The from this case emerging rules of corporate governance are that the board of a holding company has to take into consideration the interest of the subsidiary company, even if there is a conflict of interest, and that the supervisory board of the subsidiary company has to right to balance the interests of the subsidiary company towards the interests of the group of companies it belongs to and that it may give priority to the interest of the subsidiary company if there are in its opinion good reasons to do so.

5.6 The last case I show you is the HBG case. In that case it was decided that the board of directors may protect the company against a take over that is considered to be hostile from the board's point of view, but is favoured by the shareholders as being in their interest. In the end, so did the Enterprise Court decide, it is for the board and not for the shareholders to finally decide, but not without previous consultation of the shareholders meeting in order to give the shareholders the opportunity to confront the board before deciding with their arguments and to have the possibility to convince the board to subscribe to the point of view of the shareholders. Especially the last part of the decision was based, not upon the law but upon modern views concerning corporate governance. Though the Supreme Court quashed this decision on the ground that a rule of corporate governance as the Enterprise Court had formulated could not yet be found, it is import to no trice that also the Supreme Court took the position that rules of corporate governance caulked be binding in law. It is worth mentioning that the Dutch legislator agreed with the Enterprise Court

and introduced in the civil code the even further going provision that in a cased like HBG the board needs the previous consent of the shareholders meeting.

6. Character of the rules of corporate governance

6.1 That the code principles, though not being legal norms, can to a certain extent have effect en be binding in law is not welcomed by everyone and especially not by chief executor officers. They fear personal liability in cases in which in legal proceedings mismanagement has been established as well as that the rules of the code have not been met with. As one of them once said: "There can come a moment a judge will consider this. Take for instance a judicial inquiry into the affairs of a company. In that case a supervisory director will run more risks in case he according to the corporate governance code exercises too many functions." An other one was even more negative. His observation was: "If it continues like this business will be finished. Then we will see a dramatic decrease of the number of foreign investors. I cannot and will not comply with the code. But I let my lawyer write an extensive - and I would add also expensive - document to explain that. Because I will not be hanged by the judge." It is as were the chief executive officer Viktor Vekselberg of the Russian-British Oil Company TNK-British Petroleum speaking after he was confronted with an unexpected claim on behalf of the Russian tax authorities and fears a second Yukos case.

6.2 That is too dark a picture I think and a misconception of the character, purposes and intention of rules of corporate governance. I am insufficiently familiar with the American rules and practice on corporate governance, but I guess that the fears of Dutch entrepreneurs are based upon from the United States to the European continent crossing ideas of huge volumes of very detailed, partly incomprehensible rules, enforced by a severe state organ, the Securities and Exchange Commission, which imposes huge penalties if the rules are not obeyed. In the United States the emphasis seems to be in detailed rules, box ticketing and rules abeyance.

6.3 I would prefer a more European approach according to European custom. Legislation alone cannot be expected and is inherently unable, to regulate all issues related to the management of companies. First, the law establishes and should establish only general mandatory rules. It cannot regulate, and should not have as its purpose to regulate in detail all matters of corporate operations. Abundance of detail in legal norms makes it difficult for companies to function since each company's business is unique, making it impossible adequately to reflect such uniqueness in the law. That is why the law often completely omits provisions regulating certain relationships (and the absence of such regulation is often not at all a legislative weakness), or establishes general rules leaving it to the parties involved in appropriate business relationships to choose a line of behaviour.

Second, legislation is unable to react rapidly to changes in corporate governance practice, as amending laws is very time consuming.

6.4 Many legislative regulations covering corporate governance are based on ethical norms. For example, civil law regulations, in particular, stipulate the possibility of applying requirements of good faith, prudence and equity in the absence of applicable legislation, as well as exercising civil rights in a reasonable and fair manner. Thus, moral and ethical standards of reasonableness, equity and good faith are part and parcel of the existing legislation. At the same time, such legislative regulations are not always sufficient to ensure proper corporate governance. Therefore, companies should act in accordance not only with statutory standards, but also with ethical standards which are often more demanding than the law's requirements. Ethical standards present a set system of behavioural norms and customs of the trade traditionally applied by the business community, which are not based on the law, and which form positive expectations with respect to the anticipated behaviour of participants in corporate relations. Ethical standards of corporate governance form sustainable behavioural patterns common to all participants in corporate relations. Compliance with these standards is not only a moral imperative; it also helps the company avoid risks, supports long-term economic growth and facilitates successful business activity. Ethical standards and best practice, together with the law, form a company's policy of corporate governance based on respect for the interests of both the shareholders and management of the company and help to strengthen the company and increase its profit.

6.5 The Code shall play a key role in the process of development and improvement of corporate governance practices. It shall become an important educational tool that be extensively used to define company governance standards and to promote the further development of the stock market. The Code has been developed in accordance with the current provisions of legislation, with due respect to established and foreign corporate governance practices, ethical standards, and the specific needs and business environment of companies and capital markets at the present stage of their development. The provisions of the Code are based on the internationally recognized corporate governance principles developed by the Organization for Economic Co-operation and Development (OECD), in accordance with which a number of other countries have adopted their own corporate governance codes and similar documents. The Code is a list of recommendations. The application of the Code should be voluntary for companies, and should be motivated by their desire to increase their attractiveness to present and potential investors. The Code sets forth the underlying principles of the best corporate governance practices that may be used by companies to build their own systems of corporate governance, and contains recommendations on the practical implementation of these principles and the related disclosure of information. When shaping their own corporate governance policies, companies may themselves determine which rules and procedures recommended by the Code they should follow and/or whether they should develop new rules and procedures in accordance with the corporate governance principles set forth by the Code.

6.6 That is what corporate governance is all about. It confronts all of those who have responsibilities within the company with the paramount principle of acting in good faith in the interest of all who are involved in the company, one way or another.

6.7 The last lines I have spoken to you have not been invented by me. The have been derived from the Russian code on corporate governance. I do not know whether in the Russian Federation the elegantly framed principles on corporate governance are complied with. But in theory they are formulated as corporate governance principles should be. Corporate governance is not about rules which are horrifying four chief executor officers, but about principles which show the way and which there is no need to be afraid of by entrepreneurs. See it the Russian way, I would say. You can therefore imagine why I did for myself change the title of my address to you. I did label it: Corporate governance in the Netherlands: from Russia with love.

Having said this I thank you for your kind attention!