



Draft NVP code of conduct and membership code

The draft NVP code of conduct and membership code are drawn up in the Dutch language and this translation serves only to assist. References to legal terms and concepts are to be understood as references to Dutch legal terms and concepts. Where the text of this translation may deviate from the related Dutch wording, the Dutch wording prevails.

Draft NVP code of conduct and membership code

Private equity firms play an increasingly important role in the Dutch economy. Dutch private equity firms had around 20 billion euros of capital under management at year-end 2006. Research¹ has shown that during their average 5-year investment period, private equity firms make an important contribution to employment, economic growth and innovation, and the restructuring of companies and market segments.

What are private equity firms?

Private equity firms provide risk-bearing capital for non listed companies, with the objective of creating shareholder value.

Private equity firms are committed shareholders who, on the basis of a strategic plan drawn up in cooperation with the (participating) management of the company, work on growth and the creation of shareholder value. Private equity firms in principle invest for a medium-term period - five years on average. In addition to capital, they provide important added value, where possible, in the form of strategic, financial, fiscal and legal expertise. Private equity firms often insist on the right to appoint a member to the supervisory board.

The capital under management of private equity firms is primarily invested by institutional investors and to a more limited extent by corporate investors, well-off private individuals and public bodies. Firstly, there are the so-called captive private equity firms that are part of a bank or insurance company and work with the capital of the parent company. Secondly, there are independent private equity firms that attract funds from investors for a limited period (usually ten years). The latter type of private equity firms often have a number of funds under management: the past yields on funds and the reputations of the fund managers determine their chances to attract new capital from investors. Investors generally demand that the fund management itself also invests in the funds.

Why a revised NVP code of conduct and membership?

The growth of private equity in the Netherlands has not gone unnoticed by the financial sector's supervisory bodies (Dutch central bank DNB and financial markets watchdog AFM), policy makers (Finance and Economic Affairs ministries), company directors and the financial media. Public and private debates have shown that there is a lack of know-how, in our opinion, about the way in which private equity firms take into consideration the interests of other interested parties and that there is discontent about the limited transparency private equity firms provide the public and media.

¹ Study into the economic and social effects of buy-outs in the Netherlands, NVP 2004

The NVP², the Dutch umbrella association of private equity firms, has initiated this revised code of conduct and membership code in order to provide more insight into the operating methods of its members.

Scope of codes of conduct and membership

The basic premise of both codes is obviously that NVP members adhere to the applicable laws and directives. In addition, the NVP recommends that its members follow the EVCA guidelines³ on corporate governance, valuation and reporting. Finally, this code of conduct indicates that it is common practice and recommends that directly involved parties, i.e. (co-)shareholders, investors and management, reach agreements in certain areas that are both reciprocal and adapted specifically to the (private) situation, and lay down these agreements in contracts, insofar as they are not provided for by law and insofar as these parties, by reason of sound company management, deem such contracts necessary.

The content of such specific agreements cannot be standardised in a code of conduct. The code of conduct therefore does not contain detailed rules pertaining to, for instance, the maximum permitted amount of loan capital in a financing structure, the specifics of supervisory bodies and the content of any public reports.

The code of conduct does describe the topics for which agreements should be reasonably reached and in which way NVP members should, in their actions, take into consideration the interests and responsibilities of other interested parties, in the event of a (planned) investment in a portfolio company registered in the Netherlands⁴.

The code of conduct also includes guidelines in the field of transparency towards the public and media. The sector is aware that as private equity firms and the portfolio companies involved play a greater role in the Dutch economy, their social responsibility increases, especially if the portfolio companies concerned serve a public interest. Private equity firms are, however, consciously private and not public companies, which means the amount of scope of the transparency requirements to be placed on them cannot (effectively) be compared to what is common on the stock exchange.

² Nederlandse Vereniging van Participatiemaatschappijen (NVP), see addendum 1

³ EVCA Governing Principles, ed. March 2003; EVCA Corporate Governance Guidelines, ed. June 2005; International Private Equity and Venture Capital Valuation Guidelines, ed. June 2005 and EVCA reporting Guidelines, ed. June 2006.

⁴ The code of conduct is based on Dutch law and legislation. Where investments in portfolio companies outside the Netherlands but in Europe are involved, the EVCA guidelines as mentioned in footnote 3, offer a sound basis.

Objective, structure and adoption of the code of conduct and the membership code

The *code of conduct* aims to provide insight into the practices of the NVP members and into the kind of agreements they close with investors and with the parties involved in the investment process.

The code of conduct explains how they provide transparency about their objectives and plans towards investors, directors, supervisory board members and other directly involved parties.

The code of conduct is based on five general principles supported by all members. The principles have been developed into guidelines which the NVP considers to be best practices, but which individual members may deviate from if, in their specific situation, they have found a better way to adhere to the principles or have other sound reasons to deviate from the best practices. The best practices primarily apply to the situation in which the private equity firm is the majority shareholder. If a private equity firm is a minority shareholder, they will make every reasonable effort within their power to adhere to the best practices described in this code.

The best practices are aimed at the cooperation and/or relationship between a private equity firm with each of the parties involved::

1. Investors in (funds of) the private equity firm.
2. The management of the portfolio company.
3. Co-shareholders in the portfolio company.
4. The supervisors of the portfolio company.
5. The workers' council of the portfolio company⁵.
6. The credit providers of the portfolio company.
7. Public and media

The purpose of the *membership code* is to record the main obligations of the NVP members.

The Executive of the NVP has adopted the code of conduct and the membership code for a trial period of one year. During this period, the members are free to adhere to these codes or not. During the trial period, the NVP Executive will gather information about the extent to which the codes are being adhered to. The NVP Executive is open to improvements of the codes. Once experience has been gained with these codes for a year, the NVP Executive will submit the codes,

⁵ Insofar as the portfolio company lacks a works council and insofar as the employees are organised in a trade union, a private equity firm will, in line with legal requirements, inform same after the transaction.

amended if necessary, to the General Meeting of Members. If the majority of the General Meeting of Members agrees to these codes, they will become compulsory for all members.

Neither during the trial period nor thereafter, will the NVP actively supervise adherence to these codes nor supervise in any other way. However, if the NVP Executive, after the trial period, has sufficient indications to assume that a member has systematically failed to adhere to the codes, it reserves the right to expel the member in question.

Code of conduct

General principles

- 1.1 **Laws and regulations.** A private equity firm will comply with the applicable law and regulations and respect the rights and authority of the various bodies of the portfolio company in which it participates.
- 1.2 **Long-term relationship.** A private equity firm enters into a business relationship with the directly involved parties⁶, which in principle lasts for several years and is aimed at value creation. They presume that the parties directly involved enter into the cooperation on the basis of a reciprocal commitment and strive to document information and agreements important to the cooperation within information memoranda, regulations and contracts.
- 1.3 **Open communication in closed circle.** Prior to the cooperation, a private equity firm will make its intentions clear to the parties directly involved and will, insofar as this can be reasonably expected, provide clarity on any changes in its plans in a timely fashion. A private equity firm considers this form of communication with the parties directly involved to be of essential importance to a successful cooperation. The basic premise here is that the parties directly involved will treat any information to be disclosed confidentially.
- 1.4 **Communications with parties not directly involved.** A private equity firm is a private and therefore not public company. A private equity firm is not automatically transparent towards parties not directly involved. However, a private equity firm is aware of its public responsibility and of the role its portfolio companies play in society.
- 1.5 **Respect for privacy and confidentiality.** In the context of its activities, a private equity firm receives a considerable amount of information which is competition sensitive or relates to the private circumstances of, for instance, investors, selling parties and the management of (potential) portfolio companies. It will handle information which it obtains in the context of its activities confidentially until it has received explicit permission to share said information with third parties.

⁶ Directly involved parties are 1) the investors in (funds of) the private equity firm and 2) the management, 3) co-shareholders, 4) the supervisory body 5) the works council 6) the credit providers of the portfolio companies.

Best practices

Investors in a private equity firm

- 2.1 The parties which invest in (a fund of) a private equity firm will be informed, before participating in the fund, of the characteristics of the fund (sector, type of financing, size and duration of the investments, company management, valuation guidelines and reporting structure). The documentation will be recorded in an information memorandum or, if applicable, a prospectus, in line with the applicable laws and regulations. A private equity firm will, during the life of the fund, act in accordance with the characteristics described in the information memorandum or prospectus.
- 2.2 A private equity firm will inform its investors sufficiently, taking into consideration their specific information needs and in line with the information memorandum or prospectus, while taking into account the interests of the portfolio company or companies. If institutional investors which are subject to supervision invest in a private equity firm, the latter will make every effort to ensure that same can comply with the guiding principles of De Nederlandsche Bank (Dutch central bank)⁷. A private equity firm preferably follows the applicable international and EVCA guidelines⁸ on company management, valuation and reporting. The guidelines outline the basic premises with respect to the content, timing and quality measures in the preparation of the reports.
- 2.3 A private equity firm has an obligation to make every effort to ensure that no funds from non-specified sources are included in its fund(s), to prevent money laundering and financing of terrorism.

Management of the portfolio company

- 3.1 Prior to the investment, a private equity firm, together with any other intended shareholders and the members of the management (whether participating or not) of the portfolio company, will draw up a plan outlining as much as possible the strategic course, the

⁷ Richtinggevende principes voor de beoordeling van goed risicobeheer met betrekking tot alternatieve beleggingen (guiding principles for the assessment of sound risk management relating to alternative investments) (De Nederlandsche Bank, February 2007).

⁸ EVCA Governing Principles, ed. March 2003; EVCA Corporate Governance Guidelines, ed. June 2005; International Private Equity and Venture Capital Valuation Guidelines, ed. June 2005 and EVCA reporting Guidelines, ed. June 2006.

financial structure, the expected duration of the participation and the tasks and responsibilities of the supervising party⁹.

- 3.2 The agreements between a private equity firm and the management of the portfolio company are recorded in a management agreement (in the case of participating management: a shareholders agreement), outlining, among other things, the frequency and content of information distribution, company management of a portfolio company and non-disclosure stipulations, as well as the loan agreement(s), the articles of association and the extent of the decision-making powers. Said decision-making powers cover the following: the strategy of the company and the operational and financial objectives and secondary terms and conditions used in the strategy, which are laid down in agreement with the shareholders. The management of the company is subsequently made responsible for the management of the company, which includes its responsibility for the realisation of the objectives of the company. The management reports on this issue to the supervisory body and to the general meeting of shareholders. In fulfilling its task, the management shall focus on the interests of the company and its associated operations and, to this end, will take into consideration the appropriate interests of all parties involved in the company. The supervision of the execution of the operational tasks is the responsibility of the supervisory body. The management will provide the supervisory body with all information it requires to execute its tasks in a timely fashion. The management is responsible for compliance with all relevant laws and regulations, controlling the risks associated with the company activities and for the financing of the company. The management shall report on this and discuss internal risk management and control systems with the supervisory body.

Co-shareholders of the portfolio company

- 4.1 A private equity firm will close a shareholders agreement with its co-shareholders that includes the basic presumptions of the plan as meant in article 3.1. The shareholders agreement may also include articles on subjects including the frequency and content of information distribution, company management of the portfolio company and confidentiality stipulations, as well as loan agreement(s), articles of association and the extent of decision-making powers.
- 4.2 A private equity firm will cooperate with possible co-shareholders on the basis of reciprocal transparency and will provide all information, with regard to which it ought to be reasonably aware, that is of importance to the other party for the cooperation, while taking into consideration the interests of the portfolio company or companies.

⁹If the transaction in question is a so-called public to private, the plan cannot be made before the transaction, but same will be done within at the most six months after the transaction.

The supervisors of the portfolio company

- 5.1 A private equity firm promotes adequate and professional supervision of the management of the company¹⁰.
- 5.2 The supervisory body of the portfolio company has the task of supervising the strategy of the management and the general business in the company and its associated operations and will assist the management with advice. In executing its task, the supervisory body will be focussed on the interests of the company and its associated operations, and to this end, will take into consideration the appropriate interests of all parties involved in the company. The supervisory body is responsible for the quality of its own functioning. The authorities and operating methods of the supervisory body are recorded in a code and/or in the articles of association of the company and in the shareholders agreement.
- 5.3 In the event that a Supervisory Board is instituted as supervisory body, a private equity firm will encourage a sound composition of said board.
- 5.4 In the event that a Supervisory Board is instituted as supervisory body, a private equity firm will ensure that the participating member of the supervisory board¹¹, appointed by said firm, is able to fulfil his role adequately as a supervisor of the management of the company. The participating member of the supervisory board will be knowledgeable and given the opportunity to operate independently of a private equity firm.
- 5.5 In the event that a Supervisory Board is instituted as supervisory body, the Supervisory Board will be aware of the plan as meant in article 3.1 and of the stipulations and agreements recorded in the shareholders agreement.

¹⁰Examples of professional supervision are: 1. installation of a supervisory board, 2. supervision via the general meeting of shareholders, 3. specific introduction of a shareholder commission. In addition, there are contractual bodies, without legal basis, such as an investment commission or an advisory commission.

¹¹ In the context of the specifics of the role of the participating supervisory board member, the Handboek voor de Participatiecommissaris (manual for the participating supervisory board member) (NVP/ DLA 2006) is recommended.

Credit providers and, if applicable, the works council of the portfolio company

- 6 The main outlines of the plan as meant in article 3.1 will be communicated, insofar as required, to the other relevant parties involved, such as credit providers and, if applicable, the workers' council.

Public and media

- 7.1 A private equity company announces which companies it has in its portfolio unless it is subject to any non-disclosure obligation in this matter.
- 7.2 The responsibility for transparency about the portfolio company vis-à-vis the public is primarily that of the portfolio company's management. Said responsibility carries more weight in accordance with the greater the public role of the company, and according to current public opinion is not decided solely by the law and ensuing duty to submit the annual accounts to the Chamber of Commerce. A private equity firm which is a shareholder in large companies should make an effort to use its influence as a shareholder to insist, whenever relevant, on a certain level of transparency towards the public.

Membership code

General guidelines for members of the NVP:

1. Membership of the NVP implies support for the objectives of the NVP, advocating the interests of the Dutch private equity sector, improving the awareness and the image of private equity and creating a positive climate for companies which require private equity.
2. The members devote attention to the further professionalisation of the private equity sector.
3. The members participate in NVP surveys.
4. The members encourage responsible behaviour towards each other and towards the companies that require private equity and will not engage in practices which may harm the image and the interests of the private equity sector.
5. The NVP asks its members to subscribe to its code of conduct and its membership code.

ADDENDUM 1

What does the Nederlandse Vereniging van Participatiemaatschappijen (NVP) do?

The NVP is the sector umbrella organisation of private equity firms in the Netherlands.

The objectives of the NVP are:

- To improve the climate for private equity investments in the Netherlands.
- To inform entrepreneurs of the possibilities of private equity for the financing of their company.
- To inform professional investors about the characteristics of private equity as an investment category.
- To contribute to the further professionalisation of the private equity sector.

The NVP is the point of contact for anyone who wishes to know more about private equity. The NVP presents the viewpoints of the sector, carries out market research, publishes brochures, provides speakers and disseminates information about its members and associates. It also organises training courses and networking activities for members and associates.

The NVP was founded in 1984. It is a member of the Dutch employers' association VNO-NCW and of the European Private Equity & Venture Capital Association (EVCA).

The code of conduct commission comprises:

Chairman: Jaap van Manen (PricewaterhouseCoopers, RUG)

Members: Jan Niessen (Egeria Capital Management)
Robert Thole (Gilde Investment Management)
Roelof Prins (NPM Capital)
Joost Verbeek (Rabo Private Equity)
Leo Zijerveld (Ecart Invest)
André Olijslager (voorzitter NVP)

Advisor: Martijn van den Berg (PricewaterhouseCoopers)

External advisor: Leo Verhoeff (Simmons & Simmons)