

Explanatory notes to the agenda of the General Meeting of Shareholders of Fortis N.V. on 6 March 2009

AGENDA

1. Opening

2. Amendment of the Articles of Association

2.1. Proposal to amend Article 17: Remuneration and indemnification

Introduction

Like other listed companies, Fortis has always provided effective liability insurance cover for members of its Board of Directors. This is in the interest of the company and its shareholders. Insurance of this kind is intended to cover Board members against claims arising from the normal exercise of their duties as directors of the company. The directors' liability insurance held by Fortis was renewed most recently on 11 July 2008 for the period up to and including 10 July 2009. The total agreed cover was to a maximum of EUR 225 million per year. That is a market-standard level. Companies that – at that moment – had a comparable market capitalisation hold a corresponding level of cover.

Impact of events of September/October 2008

The changes in the composition of the group at the beginning of October 2008 prompted our insurer to invoke the 'change of control' clause and to unilaterally revoke the insurance cover. This took effect from 10 October 2008 (and not from 3 October, as assumed at the time the agenda was drawn up). The primary consequence of this is that persons who are or have been members of the Board of Directors since that date are no longer covered against liability in respect of claims relating to *new* events (i.e. events occurring since 10 October 2008, insofar as these are not related to events prior to that date).¹ The lapsing of this cover affects the directors who have since resigned (only those who were in their position on or after 10 October) and the current directors who were appointed on 2 December 2008 (Karel De Boeck) and 13 February 2009 (Jozef De Mey and Jan Zegering Hadders). It will also affect any directors appointed in the future. Because of the situation that has arisen, they are subject to a disproportionate personal risk in respect of their actions for or on behalf of Fortis.

In practice, incidentally, that risk is expected to remain limited, since the previously concluded liability insurance will remain in force until the end of the agreed period (until 10 July 2009). Claims relating to events prior to 10 October 2008 will continue to be covered, with the proviso that the insurer must have been notified of these events prior to 10 October 2008. Fortis has reported all events that occurred between May 2007 (when the consortium launched its bid for ABN AMRO) and October 2008, and which might

¹ With the proviso that extremely limited cover to the amount of EUR 25 million was maintained until 15 February 2009.

potentially give rise to lawsuits. Claims relating to events after 10 October 2008 are also covered, but only if they are related to events (reported to the insurer) before that date.

Fortis SA/NV has agreed an indemnification scheme with the current new members of the Board of Directors, for a maximum amount totalling EUR 100 million per calendar year covered, which has already reduced some of the risks for the newly appointed directors in terms of certain third-party claims.

However, the Board of Directors believes there should be a fair arrangement for all the directors involved. The following reasons and principles have been considered:

- Without adequate cover, it will be difficult to recruit new directors. Among the candidates who were approached in January/February 2009 for possible appointment as members of the Board of Directors, there were several for whom the lack of fair cover for liability risks was the decisive factor in persuading them not to stand.
- Members of the Board of Directors have accepted their mandate with the commitment to pursue the interests of shareholders, and the Board of Directors therefore believes that it is only fair for their liability exposure to be adequately covered.
- Board members who have resigned are exposed to the risk of claims in respect of *new* events of the kind described above. The Board of Directors points out that the individuals in question continued to devote their best efforts to Fortis after 10 October 2008, even when it became clear that their liability exposure was no longer covered as effectively as it had previously been. The Board of Directors considers it self-evident that their exposure to liability risks should be adequately covered.
- It is extremely important to note here that the current arrangement does not offer unlimited indemnification. There is no indemnification, for instance, if a court rules that a director is at serious fault. In that case, the relevant director is liable him or herself.
- It is equally important, moreover, that the proposed new arrangement does not place directors in a more favourable position than was previously the case. The cover will be no higher, therefore, than that provided by the earlier liability insurance.

Proposal to shareholders

Fortis first sought, of course, to conclude new insurance cover, but was unable to do so. The principal reason for this was the current uncertainty regarding the structure of the company and the strategy to be followed. The Board of Directors has therefore decided to propose to the shareholders of Fortis N.V. that a provision be incorporated in the Articles of Association, stating that the company will indemnify its directors against claims arising from the performance of their duties as members of the Board. The proposed indemnification will apply to current and future directors, and to those who have resigned in the interim. The latter group consists solely of directors who held their post on or after 10 October 2008. The provision proposed for Fortis N.V. also applies to Fortis SA/NV, since Belgian legislation does not permit indemnification of this kind.

Indemnification under the Articles of Association is certainly not uncommon among Dutch companies. It is incorporated in the Articles of Association of roughly 70% of AEX-listed companies, and those of many other prominent Dutch enterprises, such as Aegon, AkzoNobel, DSM, Heineken, KPN, Philips, Randstad, TNT and Unilever.

As stated above, this does not amount to the generalised indemnification of any conduct whatsoever: the arrangement is subject to specific conditions and strict limitations. The

key element is that if a court rules that a member of the Board of Directors is at serious fault, all costs and damages will be borne by the director him or herself, and will not, therefore, be payable by the company. This clause is emphatically not intended for situations of that nature. Nor, of course, may a member of the Board of Directors invoke this indemnification clause if the capital loss is insured and the insurer has paid out on the claim.

As also stated above, the proposed cover will be no higher than that provided by the earlier liability insurance. Under the contract that would implement the proposed clause in the Articles of Association, cover for the liability risks would be limited to EUR 100 million. This is considerably less than the EUR 225 million cover provided by the previous insurance. The lower figure reflects the changed scale and composition of the group. What's more, the cover of criminal fines will also be contractually excluded, once again in accordance with the conditions of the previous insurance cover.

The specific proposal to be put to shareholders relates to the amendment of Article 17 of the Articles of Association in the following manner (amendments underlined).

Remuneration and indemnification

Article 17.

- a. The board of directors determines the remuneration to be paid to its members, subject to legal requirements.
- b. The following shall be reimbursed to incumbent and former members of the Board of Directors, who were members of the Board of Directors on or after 3 October 2008:
 1. The costs of defending themselves against claims for compensation or defending themselves in other lawsuits; and
 2. Any compensation they are ordered to pay in respect of an action or non-action in performing the duties of a member of the Board of Directors or other duties they perform or have performed at the Company's request, including, but not limited, to acting as a director of a company belonging to the Fortis group.
- c. The Company indemnifies them against any capital loss flowing directly from this. Individuals shall not be entitled to the remuneration intended above or to indemnification, if and in so far as a Dutch court has ruled that the action or non-action may be deemed to have been deliberate and knowingly reckless, including where the individual is at serious fault, unless, in view of the circumstances of the case, this may be considered unreasonable or unfair. Nor is there any entitlement to remuneration, moreover, if the capital loss is covered by an insurance policy and the insurer has paid out on that capital loss. The Company may take out insurance to cover the risk of liability on behalf of the individuals in question. The Board of Directors may, on agreement, further pursue the above.

Vote

An attendance quorum of 50% of the capital is required in order to pass a valid resolution regarding an amendment to the Articles of Association. Since this item was already placed on the agenda of the General Meeting of Shareholders of Fortis N.V. on 13 February and since a quorum was not attained on that occasion, the item has once again been placed on the agenda. An attendance quorum is not required in order to pass a valid resolution on 6 March.

2.2 General provision

The Meeting will be invited to authorise all members of the Board of Directors, together with any civil-law notaries, associates and paralegals practising with De Brauw Blackstone Westbroek to execute the draft of the notarial deed of amendment to the Articles of Association, to seek the required ministerial declaration of no-objection, and to execute the deed of amendment to the Articles of Association

3. Close
