



**ARTICLES OF ASSOCIATION**

**OF**

**JDE PEET'S N.V.**

**AS OF 2 JUNE 2020**

**ALLEN & OVERY**

**Allen & Overy LLP**

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## ARTICLES OF ASSOCIATION:

### CHAPTER 1. DEFINITIONS

#### Article 1. Definitions and Construction.

- 1.1 In these Articles of Association, the following terms have the following meanings:
- Board** means the board (*het bestuur*) of the Company.
- Class Meetings** means meetings of the holders of Shares of a particular class.
- Company** means the company the internal organization of which is governed by these Articles of Association.
- Director** means a member of the Board and refers to both an Executive Director and a Non-Executive Director.
- Euroclear Netherlands** means *Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V.*, trading under the name Euroclear Nederland, being the central depository as referred to in the Dutch Securities Giro Act.
- Executive Director** means a Director appointed as Executive Director in accordance with Article 14.1.
- External Auditor** has the meaning ascribed to that term in Article 25.1.
- General Meeting** or **General Meeting of Shareholders** means the corporate body of the Company consisting of those in whom as Shareholder or otherwise the voting rights on Shares are vested or a meeting of such persons (or their representatives) and other persons entitled to attend the General Meeting of Shareholders.
- Non-Executive Director** means a Director appointed as Non-Executive Director in accordance with Article 14.1.
- Ordinary Share** means an ordinary share in the capital of the Company.
- Preference Share** means a preference share in the capital of the Company.
- Share** means a share in the capital of the Company. Unless the contrary is apparent, this includes each Ordinary Share and each Preference Share.
- Shareholder** means a holder of one or more Shares. This includes a person holding co-ownership rights with regard to Shares included in the Statutory Giro System.
- Statutory Giro System** means the giro system as referred to in the Dutch Securities Giro Act (*Wet giraal effectenverkeer*).
- 1.2 In addition, certain terms not used outside the scope of a particular Article are defined in the Article concerned.
- 1.3 A message **in writing** means a message transmitted by letter, by telecopier, by e-mail or by any other means of electronic communication provided the relevant message or document is legible and reproducible, and the term **written** is to be construed accordingly.
- 1.4 References in these Articles of Association to the meeting of holders of Shares of a particular class will be understood to mean the corporate body of the Company consisting of the holders of Shares of the relevant class or (as the case may be) a meeting of holders of Shares of the relevant class (or their representatives) and other persons entitled to attend such meetings.
- 1.5 References to **Articles** refer to articles which are part of these Articles of Association, except where expressly indicated otherwise.

- 1.6 Unless the context requires otherwise, words and expressions contained and not otherwise defined in these Articles of Association bear the same meaning as in the Dutch Civil Code. Also, unless otherwise indicated, references in these Articles of Association to the law are references to provisions of Dutch law as it reads from time to time.

## **CHAPTER 2. NAME, OFFICIAL SEAT AND OBJECTS.**

### **Article 2. Name and Official Seat.**

- 2.1 The Company's name is:  
JDE Peet's N.V.
- 2.2 The official seat of the Company is in Amsterdam, the Netherlands.

### **Article 3. Objects.**

The objects of the Company are:

- (a) the development, manufacturing, marketing, distribution and sales of coffee and tea products; including machines related thereto;
- (b) to incorporate, to participate in any manner whatsoever, to manage, to supervise, to cooperate with, to acquire, to maintain, to dispose of, to transfer or to administer in any other manner whatsoever all sorts of participations and interests in businesses, legal entities and companies as well as to enter into joint ventures;
- (c) to finance businesses, legal entities and companies;
- (d) to borrow, to lend and to raise funds, to participate in all sorts of financial transactions, including the issue of bonds, promissory notes or other securities, to invest in securities in the widest sense of the word, and to enter into agreements in connection with the foregoing;
- (e) to grant guarantees, to bind the Company and to grant security over the assets of the Company for the benefit of legal entities and companies with which the Company forms a group and for the benefit of third parties;
- (f) to advise and to render services to legal entities and companies with which the Company forms a group and to third parties;
- (g) to acquire, to administer, to operate, to encumber, to dispose of and to transfer moveable assets and real property and any right to or interest therein;
- (h) to trade in currencies, securities and financial assets in general;
- (i) to obtain, to exploit, to dispose of and to transfer patents and other industrial and intellectual property rights, to obtain and to grant licenses, sub-licenses and similar rights of whatever name and description and, if necessary, to protect the rights derived from patents and other industrial and intellectual property rights, licenses, sub-licenses and similar rights against infringements by third parties;
- (j) to carry out all sorts of industrial, financial and commercial activities, including the import, export, purchase, sale, distribution and marketing of products and raw materials;

and all matters related or conducive to the above, with the objects to be given their most expansive possible interpretation. In pursuing its objects, the Company shall also take into account the interests of the legal entities and companies with which it forms a group.

## **CHAPTER 3. SHARE CAPITAL AND SHARES**

### **Article 4. Authorised Capital and Shares.**

- 4.1 The authorised capital of the Company amounts to twenty million euro (EUR 20,000,000).
- 4.2 The authorised capital consists of two billion (2,000,000,000) Shares, having a nominal value of one eurocent (EUR 0.01) each, and is divided as follows:
  - one billion (1,000,000,000) Ordinary Shares; and
  - one billion (1,000,000,000) Preference Shares.
- 4.3 All Shares will be registered Shares. No share certificates will be issued.

#### **Article 5. Register of Shareholders.**

- 5.1 The Company must keep a register of shareholders. The register may consist of various parts which may be kept in different places and each may be kept in more than one copy and in more than one place as determined by the Board.
- 5.2 Shares included in the Statutory Giro System will be registered in the name of Euroclear Netherlands or an intermediary (as referred to in the Dutch Securities Giro Act). Holders of Shares that are not included in the Statutory Giro System, as well as each usufructuary and each pledgee of such Shares, are obliged to furnish their names and addresses and further such information as the law prescribes or the Board considers necessary to the Company in writing; these will be recorded in the register of shareholders. The Board will supply anyone recorded in the register on request and free of charge with an extract from the register relating to his or her right to Shares.
- 5.3 The register will be kept up to date. The Board will set rules with respect to the signing of registrations and entries in the register of shareholders.
- 5.4 Section 2:85 of the Dutch Civil Code applies to the register of shareholders.

#### **Article 6. Resolution to Issue Shares; Conditions of Issuance.**

- 6.1 Shares may be issued pursuant to a resolution of the General Meeting. This competence concerns all non-issued Shares of the Company's authorised capital, except insofar as the competence to issue Shares is vested in the Board in accordance with Article 6.2 hereof.
- 6.2 Shares may be issued pursuant to a resolution of the Board, if and insofar as the Board is designated to do so by the General Meeting. Such designation can be made each time for a maximum period of five (5) years and can be extended each time for a maximum period of five (5) years. A designation must determine the number of Shares of each class concerned which may be issued pursuant to a resolution of the Board. If so included in the resolution, a resolution of the General Meeting to designate the Board as a corporate body of the Company authorised to issue Shares can only be withdrawn at the proposal of the Board.
- 6.3 A resolution of the General Meeting to issue Shares or to designate the Board as the corporate body of the Company authorised to do so can only be adopted at the proposal of the Board.
- 6.4 The corporate body of the Company authorised to issue Shares may decide to issue Preference Shares to an outside foundation as anti-takeover measure.
- 6.5 If so decided by the corporate body authorised to issue Shares, Shares can be issued at the expense of any reserve.
- 6.6 The foregoing provisions of this Article 6 apply by analogy to the granting of rights to subscribe for Shares,
- 6.7 The corporate body of the Company resolving to issue Shares must determine the issue price and the other conditions of issuance.
- 6.8 In the event of an issue of Preference Shares, a General Meeting must be convened, to be held not later than twenty-two (22) months after the date on which the Preference Shares were issued

for the first time. The agenda for that meeting must include a resolution relating to the repurchase of the Preference Shares in accordance with the provisions of Article 9 or the cancellation of the Preference Shares in accordance with the provisions of Article 10. If the resolution to be adopted in respect of this item on the agenda does not result in the repurchase or cancellation of the Preference Shares, a General Meeting must be convened and held, in each case within six months of the previous meeting, the agenda of which meeting must include a resolution relating to the repurchase or cancellation of the Preference Shares, until such time as no more Preference Shares remain outstanding.

#### **Article 7. Pre-emptive Rights.**

- 7.1 Upon the issuance of Ordinary Shares, each holder of Ordinary Shares will have pre-emptive rights in proportion to the aggregate nominal value of the Ordinary Shares held. A Shareholder will not have pre-emptive rights in respect of Shares issued against a non-cash contribution. Nor will the Shareholder have pre-emptive rights in respect of Ordinary Shares issued to employees of the Company or of a group company (*groepsmaatschappij*). Holders of Preference Shares shall not have pre-emptive rights in respect of the issuance of Ordinary Shares and vice versa.
- 7.2 Prior to each individual issuance of Ordinary Shares, pre-emptive rights may be restricted or excluded by a resolution of the General Meeting. However, with respect to an issue of Ordinary Shares pursuant to a resolution of the Board, the pre-emptive rights can be restricted or excluded pursuant to a resolution of the Board if and insofar as the Board is designated to do so by the General Meeting. The provisions of Articles 6.1 and 6.2 apply by analogy.
- 7.3 A resolution of the General Meeting to restrict or exclude the pre-emptive rights or to designate the Board as a corporate body of the Company authorised to do so can only be adopted at the proposal of the Board.
- 7.4 If a proposal is made to the General Meeting to restrict or exclude pre-emptive rights, the reason for such proposal and the choice of the intended issue price must be set forth in the proposal in writing.
- 7.5 A resolution of the General Meeting to restrict or exclude pre-emptive rights or to designate the Board as the corporate body of the Company authorised to do so requires a majority of not less than two-thirds of the votes validly cast, if less than one-half of the Company's issued capital is represented at the meeting.
- 7.6 When rights are granted to subscribe for Ordinary Shares, the holders of Ordinary Shares will have pre-emptive rights in respect thereof; the foregoing provisions of this Article 7 apply by analogy. Holders of Ordinary Shares will have no pre-emptive rights in respect of Ordinary Shares issued to a person exercising a right to subscribe for Ordinary Shares previously granted.

#### **Article 8. Payment on Shares.**

- 8.1 Upon issuance of an Ordinary Share, the full nominal value thereof must be paid-up, as well as the amount of the share premium if the Share is subscribed for at a higher price, without prejudice to the provisions of section 2:80 subsection 2 of the Dutch Civil Code.
- 8.2 Upon issuance of a Preference Share, at least one fourth of the nominal value thereof must be paid-up. Additional payments on Preference Shares must be made after such additional payments have been claimed by the Company pursuant to a resolution of the Board.
- 8.3 Payment for a Share must be made in cash insofar as no contribution in any other form has been agreed on.



- 8.4 The Board is authorised to enter into legal acts relating to non-cash contributions and the other legal acts referred to in section 2:94 of the Dutch Civil Code without the prior approval of the General Meeting.
- 8.5 Payments for Shares and non-cash contributions are furthermore subject to the provisions of sections 2:80, 2:80a, 2:80b and 2:94b of the Dutch Civil Code.

**Article 9. Treasury Shares.**

- 9.1 When issuing Shares, neither the Company nor its subsidiaries may subscribe for its own Shares.
- 9.2 The Company is entitled to acquire its own fully paid-up Shares, or depositary receipts for Shares, with due observance of the relevant statutory provisions.
- 9.3 Acquisition for valuable consideration is permitted only if the General Meeting has authorised the Board to do so. Such authorization will be valid for a period not exceeding eighteen (18) months. The General Meeting must determine in the authorization the number of Shares or depositary receipts for Shares which may be acquired, the manner in which they may be acquired and the limits within which the price must be set.
- 9.4 The Company may, without authorization by the General Meeting, acquire its own Shares for the purpose of transferring such Shares to employees of the Company or of a group company (*groepsmaatschappij*) under a scheme applicable to such employees, provided such Shares are quoted on the price list of a stock exchange.
- 9.5 Article 9.3 does not apply to Shares or depositary receipts for Shares which the Company acquires by universal succession in title.
- 9.6 No voting rights may be exercised with respect to any Share held by the Company or by a subsidiary (*dochtermaatschappij*), or any Share for which the Company or a subsidiary (*dochtermaatschappij*) holds the depositary receipts. No distributions or other payments will be made on Shares which the Company holds in its own share capital.
- 9.7 The Company is authorised to alienate Shares held by the Company, or depositary receipts for Shares, pursuant to a resolution of the Board.
- 9.8 Treasury Shares and depositary receipts for Shares are furthermore subject to the provisions of sections 2:89a, 2:95, 2:98, 2:98a, 2:98b, 2:98c, 2:98d and 2:118 of the Dutch Civil Code.

**Article 10. Reduction of the Issued Capital.**

- 10.1 The General Meeting may, but only at the proposal of the Board, resolve to reduce the Company's issued capital:
- (a) by cancellation of Shares; or
  - (b) by reducing the nominal value of Shares by amendment of these Articles of Association.
- Such resolution will indicate the Shares to which the resolution relates, as well as the provisions for the implementation of such resolution.
- 10.2 A resolution to cancel Shares can only relate to:
- (a) Shares held by the Company itself or of which it holds the depositary receipts; or
  - (b) all Preference Shares.
- 10.3 Reduction of the nominal value of the Shares without repayment and without release from the obligation to pay up the Shares shall take place proportionately on all Shares of the same class. The requirement of proportion may be deviated from with the consent of all Shareholders concerned.

- 10.4 Partial repayment on Shares or release from the obligation to make payments will only be possible for the purpose of execution of a resolution to reduce the nominal value of the Shares. Such repayment or release shall take place:
- (a) with regard to all Shares; or
  - (b) with regard to all Preference Shares or all Ordinary Shares.
- 10.5 If Preference Shares are cancelled, the amounts paid up on these Preference Shares are to be repaid and any distribution still lacking, if any, to be calculated time-proportionately up to and including the day of payment with due observance of the provisions of Article 27 is to be made. The previous sentence does not apply to Preference Shares issued and paid-up at the expense of the Company's reserves, nor to Preference Shares which at the time of their cancellation are held by the Company itself.
- 10.6 A resolution to cancel the outstanding Preference Shares shall require the prior approval of the meeting of holders of Preference Shares.
- 10.7 A reduction of the issued capital of the Company is furthermore subject to the provisions of sections 2:99 and 2:100 of the Dutch Civil Code.

**Article 11. Transfer of Shares.**

- 11.1 The transfer of rights a Shareholder holds with regard to Shares included in the Statutory Giro System must take place in accordance with the provisions of the Dutch Securities Giro Act.
- 11.2 The transfer of Shares not included in the Statutory Giro System requires an instrument intended for such purpose and, save when the Company itself is a party to such legal act, the written acknowledgement by the Company of the transfer. The acknowledgement must be made in the instrument or by a dated statement of acknowledgement on the instrument or on a copy or extract thereof and signed as a true copy by a civil law notary or the transferor. Official service of such instrument or such copy or extract on the Company is considered to have the same effect as an acknowledgement.
- 11.3 A transfer of Shares from the Statutory Giro System is subject to the restrictions of the Dutch Securities Giro Act and is further subject to approval of the Board.
- 11.4 Preference Shares can only be transferred with the prior approval of the Board. A request for approval must be made in writing and addressed to the Company, for the attention of the Board. It must state the number of Preference Shares the applicant wishes to transfer and the person to whom the applicant wishes to transfer the Preference Shares concerned. The Board must respond to the request within three months from its receipt. If the Board refuses to grant the approval requested, it must inform the applicant of another person who is prepared to purchase the Preference Shares concerned against payment in cash. If that other person and the applicant do not reach agreement on the purchase price, it will be determined by one or more experts designated by the Board. When determining this purchase price, no value will be attributed to the voting rights attached to the Preference Shares.

**Article 12. Usufruct, Pledge and Depositary Receipts with respect to Shares.**

- 12.1 The provisions of Articles 11.1 and 11.2 apply by analogy to the creation or transfer of a right of usufruct in Shares. Whether the voting rights attached to the Shares on which a right of usufruct is created, are vested in the Shareholder or the usufructuary, is determined in accordance with section 2:88 of the Dutch Civil Code. Shareholders, with or without voting rights, and the usufructuary with voting rights are entitled to attend the General Meeting of Shareholders. A usufructuary without voting rights is not entitled to attend the General Meeting of Shareholders.

- 12.2 The provisions of Articles 11.1 and 11.2 also apply by analogy to the pledging of Shares. Shares may also be pledged as an undisclosed pledge: in such case, section 3:239 of the Dutch Civil Code applies by analogy. No voting rights and/or the right to attend the General Meeting of Shareholders accrue to the pledgee of Shares.
- 12.3 Holders of depositary receipts for Shares are not entitled to attend the General Meeting of Shareholders and do not have the other rights which the Dutch Civil Code confers upon depositary receipts issued with the cooperation of the Company, unless the Company explicitly grants one or more of these rights by a resolution to that effect by the Board.

## **CHAPTER 4. THE BOARD.**

### **Article 13. Composition of the Board.**

- 13.1 The Board comprises of one or more Executive Directors and one or more Non-Executive Directors. The total number of Directors, as well as the number of Executive Directors and Non-Executive Directors, is determined by the Non-Executive Directors.
- 13.2 Only individuals can be Non-Executive Directors.

### **Article 14. Appointment, Suspension and Removal of Directors.**

- 14.1 Directors will be appointed by the General Meeting of Shareholders at the proposal of the Board. A resolution of the General Meeting of Shareholders to appoint a Director other than pursuant to a proposal by the Board requires a simple majority of the votes validly cast representing at least one-third of the issued share capital. Directors will be appointed either as an Executive Director or as a Non-Executive Director.
- 14.2 At a General Meeting of Shareholders, votes in respect of the appointment of a Director can only be cast for candidates named in the agenda of the meeting or explanatory notes thereto.
- 14.3 A proposal to appoint a Director will state the candidate's age and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Director. The proposal must state the reasons on which it is based.
- 14.4 A proposal to appoint a Director will also state the candidate's term of office. A Director who ceases this term of office is immediately eligible for reappointment.
- 14.5 Each Director may be suspended or removed by the General Meeting of Shareholders at any time. A resolution of the General Meeting of Shareholders to suspend or remove a Director other than pursuant to a proposal by the Board requires a simple majority of the votes validly cast representing at least one-third of the issued share capital. An Executive Director may also be suspended by the Board. A suspension by the Board may at any time be discontinued by the General Meeting of Shareholders.
- 14.6 Any suspension may be extended one or more times, but may not last longer than three months in the aggregate. If, at the end of that period, no decision has been taken on termination of the suspension or on removal, the suspension will end.

### **Article 15. Remuneration of Directors.**

- 15.1 The Company must have a policy with respect to the remuneration of Directors. This policy is determined by the General Meeting with a simple majority of the votes validly cast without any quorum being required; the Board will make a proposal to that end. The Executive Directors may not participate in the discussion and decision-making process of the Board with respect to the remuneration policy.

- 15.2 The authority to establish remuneration and other terms of service for Directors is vested in the Board, with due observance of the remuneration policy referred to in Article 15.1 and applicable provisions of law. The Executive Directors may not participate in the discussion and decision-making process of the Board with respect to the remuneration of Executive Directors.
- 15.3 The Board shall submit to the General Meeting of Shareholders for approval plans to issue Ordinary Shares or to grant rights to subscribe for Ordinary Shares to Directors. The plans shall at least indicate the number of Ordinary Shares and the rights to subscribe for Ordinary Shares that may be allotted to Directors and the criteria that shall apply to the allotment or any change thereto.
- 15.4 The absence of approvals required pursuant to Article 15.3 will not affect the authority of the Board or its members to represent the Company.
- 15.5 Directors are entitled to an indemnity from the Company and D&O insurance (as defined in Article 23.3), in accordance with Article 23.

**Article 16. General Duties of the Board.**

- 16.1 The Board is entrusted with the management of the Company. In the exercise of their duties, the Directors must be guided by the interests of the Company and the business connected with it.
- 16.2 Each Director is responsible for the general course of affairs.

**Article 17. Allocation of Duties within the Board; Company Secretary.**

- 17.1 The duty of the Non-Executive Directors is to supervise the performance of duties by the Executive Directors as well as the general course of affairs of the Company and the business connected with it. The Non-Executive Directors are also charged with the duties assigned to them pursuant to the law and these Articles of Association.
- 17.2 An Executive Director, designated by the Board, will be the Chief Executive Officer. The Board may grant other titles, including the title of Chairman and Lead Independent Director, to Directors. The titles of Chairman and Lead Independent Director will only be granted to Non- Executive Directors.
- 17.3 The specific duties of the Chief Executive Officer and other Directors, if any, will be laid down by the Board in writing.
- 17.4 To the extent permitted by law, the Board may assign and delegate such duties and powers to individual Directors and/or committees. This may also include a delegation of resolution-making power, provided this is laid down in writing. A Director to whom and a committee to which powers of the Board are delegated, must comply with the rules set in relation thereto by the Board.
- 17.5 The Board appoints a company secretary and is authorised to replace such person at any time. The company secretary does not have to be a member of the Board. The company secretary holds the duties and powers vested in such role pursuant to these Articles of Association or a resolution of the Board. In absence of the company secretary, his or her duties and powers are exercised by a deputy.

**Article 18. Representation.**

- 18.1 The Board is authorised to represent the Company. The Chief Executive Officer is individually authorised to represent the Company.
- 18.2 The Board may appoint persons with general or limited power of representation. Each of these officers may represent the Company subject to the limitations relating to his power. Their titles

shall be determined by the Board.

#### **Article 19. Meetings; Decision-making Process.**

- 19.1 The Board meets as often as deemed desirable by the Chairman or when requested by at least three (3) Directors. The notice will be given by the company secretary. The meeting is chaired by the Chairman or in his absence by the Director having the title of Lead Independent Director, or in the absence of the Chairman and the Lead Independent Director by any Director elected by the Directors present. Minutes of the proceedings at the meeting must be kept.
- 19.2 Board resolutions are adopted by an absolute majority of more than half of the votes validly cast. Each Director has one vote. If there is a tie in voting, the Director having the title of Chairman has a decisive vote. The Board may designate types of resolutions which are subject to more stringent requirements deviating from the foregoing. These types of resolutions and the nature of the deviation must be clearly specified and laid down in writing.
- 19.3 Decisions taken at a meeting of the Board will only be valid if the majority of the Directors – who are then in office, who are not suspended and who do not have a conflict of interest as defined in Article 20.1 – is present or represented at the meeting. The Board may designate types of resolutions which are subject to more stringent requirements deviating from the foregoing. These types of resolutions and the nature of the deviation must be clearly specified and laid down in writing.
- 19.4 Meetings of the Board may be held by means of an assembly of the Directors in person in a formal meeting or by conference call, video conference or by any other means of communication, provided that all Directors participating in such meeting are able to communicate with each other simultaneously. Participation in a meeting held in any of the above ways shall constitute presence at such meeting.
- 19.5 For adoption of a resolution other than at a meeting, it is required that the proposal is submitted to all Directors then in office without a conflict of interest as defined in Article 20.1, they have been given the opportunity to express their opinion on the proposed resolution, none of them has objected to the relevant manner of adopting resolutions and such majority of the Directors as required pursuant to Article 19.2 has expressly declared to be in favour of the resolutions thus adopted in writing.
- 19.6 Third parties may rely on a written declaration by the Chairman, the Lead Independent Director or the company secretary concerning resolutions adopted by the Board or a committee thereof. Where it concerns a resolution adopted by a committee, third parties may also rely on a written declaration by the chairman of such committee.
- 19.7 In Board meetings and with respect to the adoption of Board resolutions, a Director may be represented only by another Director, authorized in writing. At each meeting a Director may not act as representative for more than one other Director.
- 19.8 The Board may establish additional rules regarding its working methods and decision-making process.

#### **Article 20. Conflicts of Interests.**

- 20.1 A Director having a conflict of interests as referred to in Article 20.2 or an interest which may have the appearance of such a conflict of interests (both a **(potential) conflict of interests**) must declare the nature and extent of that interest to the other Directors.
- 20.2 A Director may not participate in deliberating or decision-making within the Board, if with respect to the matter concerned such Director has a direct or indirect personal interest that

conflicts with the interests of the Company and the business connected with it. This prohibition does not apply if the conflict of interests exists for all Directors.

- 20.3 A conflict of interests as referred to in Article 20.2 only exists if in the situation at hand the Director must be deemed to be unable to serve the interests of the Company and the business connected with it with the required level of integrity and objectivity. If a transaction is proposed in which apart from the Company also an affiliate of the Company has an interest, then the mere fact that a Director holds any office or other function with the affiliate concerned or another affiliate, whether or not it is remunerated, does not mean that a conflict of interests as referred to in Article 20.2 exists.
- 20.4 The Director who in connection with a (potential) conflict of interests does not exercise certain duties and powers will insofar be regarded as a Director who is unable to perform his duties (*belet*).
- 20.5 A (potential) conflict of interests does not affect the authority concerning representation of the Company set forth in Article 18.1.

#### **Article 21. Vacancies and Inability to Act.**

- 21.1 For each vacant seat on the Board, the Board can determine that it will be temporarily occupied by a person (a stand-in) designated by the Board. Persons that can be designated as such include former Directors (irrespective of the reason why they are no longer Directors).
- 21.2 If and as long as one or more seats on the Board are vacant, the management of the Company will be temporarily entrusted to the person or persons who (whether as a stand-in or not) do occupy a seat in the Board.
- 21.3 If the seats of one or more Executive Directors are vacant, the Board may temporarily entrust duties and powers of an Executive Director to a Non-Executive Director.
- 21.4 When determining to which extent Board members are present or represented, consent to a manner of adopting resolutions, or vote, stand-ins will be counted-in and no account will be taken of vacant seats for which no stand-in has been designated.
- 21.5 For the purpose of this Article 21, the seat of a Director who is unable to perform his duties (*belet*) will be treated as a vacant seat.

#### **Article 22. Approval of Board Resolutions.**

- 22.1 The Board requires the approval of the General Meeting for resolutions entailing a significant change in the identity or character of the Company or its business, in any case concerning:
- (a) the transfer of (nearly) the entire business of the Company to a third party;
  - (b) entering into or terminating a long term cooperation between the Company or a subsidiary (*dochtermaatschappij*) and another legal entity or company or as a fully liable partner in a limited partnership or general partnership, if such cooperation or termination is of fundamental importance for the Company; and
  - (c) acquiring or disposing of a participation in the capital of a company if the value of such participation is at least one third of the sum of the assets of the Company according to its balance sheet and explanatory notes or, if the Company prepares a consolidated balance sheet, its consolidated balance sheet and explanatory notes according to the last adopted annual accounts of the Company, by the Company or a subsidiary (*dochtermaatschappij*).
- 22.2 The absence of approvals required pursuant to Article 22.1 will not affect the authority of the Board or its members to represent the Company.

### **Article 23. Indemnity and Insurance.**

- 23.1 To the extent permissible by law, the Company will indemnify and hold harmless each Director, both former members and members currently in office (each of them, for the purpose of this Article 23 only, an **Indemnified Person**), against any and all liabilities, claims, judgments, fines and penalties (**Claims**) incurred by the Indemnified Person as a result of any expected, pending or completed action, investigation or other proceeding, whether civil, criminal or administrative (each, a **Legal Action**), of or initiated by any party other than the Company itself or a group company (*groepsmaatschappij*) thereof, in relation to any acts or omissions in or related to his capacity as an Indemnified Person. Claims will include derivative actions of or initiated by the Company or a group company (*groepsmaatschappij*) thereof against the Indemnified Person and (recourse) claims by the Company itself or a group company (*groepsmaatschappij*) thereof for payments of claims by third parties if the Indemnified Person will be held personally liable therefore.
- 23.2 The Indemnified Person will not be indemnified with respect to Claims in so far as they relate to the gaining in fact of personal profits, advantages or remuneration to which he was not legally entitled, or if the Indemnified Person has been adjudged to be liable for wilful misconduct (*opzet*) or intentional recklessness (*bewuste roekeloosheid*).
- 23.3 The Company will provide for and bear the cost of adequate insurance covering Claims against current and former Directors (**D&O insurance**).
- 23.4 Any expenses (including reasonable attorneys' fees and litigation costs) (collectively, **Expenses**) incurred by the Indemnified Person in connection with any Legal Action will be settled or reimbursed by the Company, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such Expenses if a competent court in an irrevocable judgment has determined that he is not entitled to be indemnified. Expenses will be deemed to include any tax liability which the Indemnified Person may be subject to as a result of his indemnification.
- 23.5 Also in case of a Legal Action against the Indemnified Person by the Company itself or its group companies (*groepsmaatschappijen*), the Company will settle or reimburse to the Indemnified Person his reasonable attorneys' fees and litigation costs, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such fees and costs if a competent court in an irrevocable judgment has resolved the Legal Action in favour of the Company or the relevant group company (*groepsmaatschappij*) rather than the Indemnified Person.
- 23.6 The Indemnified Person may not admit any personal financial liability vis-à-vis third parties, nor enter into any settlement agreement, without the Company's prior written authorisation. The Company and the Indemnified Person will use all reasonable endeavours to cooperate with a view to agreeing on the defence of any Claims, but in the event that the Company and the Indemnified Person fail to reach such agreement, the Indemnified Person will comply with all directions given by the Company in its sole discretion, in order to be entitled to the indemnity contemplated by this Article 23.
- 23.7 The indemnity contemplated by this Article 23 does not apply to the extent Claims and Expenses are reimbursed by insurers.
- 23.8 This Article 23 can be amended without the consent of the Indemnified Persons as such. However, the provisions set forth herein nevertheless continues to apply to Claims and/or Expenses incurred in relation to the acts or omissions by the Indemnified Person during the periods in which this clause was in effect.

## **CHAPTER 5. ANNUAL ACCOUNTS; PROFITS AND DISTRIBUTIONS.**

### **Article 24. Financial Year and Annual Accounts.**

- 24.1 The Company's financial year is the calendar year.
- 24.2 Annually, not later than four (4) months after the end of the financial year, the Board must prepare annual accounts and deposit the same for inspection by the Shareholders and other persons entitled to attend the General Meeting of Shareholders at the Company's office. Within the same period, the Board must also deposit the board report for inspection by the Shareholders and other persons entitled to attend the General Meeting of Shareholders.
- 24.3 The annual accounts must be signed by the Directors. If the signature of one or more of them is missing, this will be stated and reasons for this omission will be given.
- 24.4 The Company must ensure that the annual accounts, the board report, and the information to be added by virtue of the law are kept at its office as of the day on which notice of the annual General Meeting of Shareholders is given. Shareholders and other persons entitled to attend the General Meeting of Shareholders may inspect the documents at that place and obtain a copy free of charge.
- 24.5 The annual accounts, the board report and the information to be added by virtue of the law are furthermore subject to the provisions of Book 2, Title 9, of the Dutch Civil Code.
- 24.6 The language of the annual accounts and the board report will be English.

### **Article 25. External Auditor.**

- 25.1 The General Meeting of Shareholders will commission an organization in which certified public accountants cooperate, as referred to in section 2:393 subsection 1 of the Dutch Civil Code (an **External Auditor**) to examine the annual accounts drawn up by the Board in accordance with the provisions of section 2:393 subsection 3 of the Dutch Civil Code. If the General Meeting of Shareholders fails to commission the External Auditor, the commission will be made by the Board.
- 25.2 The External Auditor is entitled to inspect all of the Company's books and documents and is prohibited from divulging anything shown or communicated to it regarding the Company's affairs except insofar as required to fulfil its mandate. Its fee is chargeable to the Company.
- 25.3 The External Auditor will present a report on its examination to the Board. In this it will address at a minimum its findings concerning the reliability and continuity of the automated data processing system.
- 25.4 The External Auditor will report on the results of its examination, in an auditor's statement, regarding the accuracy of the annual accounts.
- 25.5 The annual accounts cannot be adopted if the General Meeting has not been able to review the auditor's statement from the External Auditor, which statement must have been added to the annual accounts, unless the information to be added to the annual accounts states a legal reason why the statement has not been provided.

### **Article 26. Adoption of the Annual Accounts and Release from Liability.**

- 26.1 The annual accounts will be submitted to the General Meeting for adoption.
- 26.2 At the General Meeting of Shareholders at which it is resolved to adopt the annual accounts, it will be separately proposed that the Directors be released from liability for their respective



duties, insofar as the exercise of such duties is reflected in the annual accounts or otherwise disclosed to the General Meeting prior to the adoption of the annual accounts.

**Article 27. Reserves, Profits and Distributions.**

27.1 After adoption of the annual accounts, but no later than within six months from the end of the financial year concerned, a cash distribution will be made on the Preference Shares in respect of the previous financial year, which distribution will be calculated as follows:

- (a) if the Preference Shares are paid up at the expense of the Company's reserves, the annual distribution will be one thousand euro (EUR 1,000) for all outstanding Preference Shares together;
- (b) in other cases, the distribution will be a percentage equal to three (3) months' Euribor (Euro Interbank Offered Rate) – weighted to reflect the number of days for which the payment is made – plus a premium, to be determined by the Board of at least one percentage point and at most five percentage points, depending on the prevailing market conditions.

The distributions referred to under (a) and (b) will be calculated over the proportionate period of time if the relevant Preference Shares were issued and outstanding for a part of the financial year. Distributions in respect of the Preference Shares are calculated over the paid up part of their nominal value. The making of such distributions is subject to the provision of Article 27.8.

The amounts of such distributions will be charged to the profits realised during the financial year in respect of which it is made or, if and to the extent such profits are insufficient, any other part of the Company's distributable equity.

No further distributions will be made on the Preference Shares.

27.2 The Board may decide that the profits realised during a financial year and remaining after application of Article 27.1 are used to increase and/or form reserves.

27.3 The profits remaining after application of Articles 27.1 and 27.2 shall be put at the disposal of the General Meeting. The Board shall make a proposal for that purpose. A proposal to pay a dividend shall be dealt with as a separate agenda item at the General Meeting of Shareholders.

27.4 Distributions from the Company's distributable reserves are made pursuant to a resolution of the General Meeting on the proposal of the Board.

27.5 Provided it appears from an interim statement of assets signed by the Board that the requirement mentioned in Article 27.8 concerning the Company's equity has been fulfilled, the Board may make one or more interim distributions to the holders of Ordinary Shares and/or to the holders of Preference Shares, with regard to Preference Shares, however, subject to the maximum distribution amount set forth in Article 27.1.

27.6 The Board may decide that a distribution on Ordinary Shares shall not take place as a cash payment but in kind, or as a payment in Ordinary Shares, or decide that holders of Ordinary Shares shall have the option to receive a distribution as a payment in cash or in kind and/or as a payment in Ordinary Shares, out of the profit and/or at the expense of reserves, provided that the Board is designated by the General Meeting pursuant to Article 6.2. The Board shall determine the conditions applicable to the aforementioned choices.

27.7 The Company's policy on reserves and dividends shall be determined and may be amended by the Board. The adoption and thereafter each amendment of the policy on reserves and dividends shall be discussed and accounted for at the General Meeting of Shareholders under a separate agenda item.

- 27.8 Distributions may be made only insofar as the Company's equity exceeds the amount of the paid in and called up part of the issued capital, increased by the reserves which must be kept by virtue of the law or these Articles of Association.
- 27.9 All distributions may be made in another currency than Euro.

**Article 28. Payment of and Entitlement to Distributions.**

- 28.1 Dividends and other distributions will be made payable pursuant to a resolution of the Board within four weeks after adoption, unless the Board sets another date for payment. Different payment release dates may be set for the Ordinary Shares and the Preference Shares.
- 28.2 A claim of a Shareholder for payment of a distribution shall be barred after five years have elapsed after the day of payment.
- 28.3 For all dividends and other distributions in respect of Shares included in the Statutory Giro System the Company will be discharged from all obligations towards the relevant Shareholders by placing those dividends or other distributions at the disposal of, or in accordance with the regulations of, Euroclear Netherlands.

**CHAPTER 6. THE GENERAL MEETING.**

**Article 29. Annual and Extraordinary General Meetings of Shareholders.**

- 29.1 Each year, though not later than the end of June, a General Meeting of Shareholders will be held.
- 29.2 Other General Meetings of Shareholders will be held whenever the Board deems such to be necessary, without prejudice to the provisions of Sections 2:108a, 2:110, 2:111 and 2:112 of the Dutch Civil Code.

**Article 30. Notice and Agenda of Meetings.**

- 30.1 Notice of General Meetings of Shareholders will be given by the Board.
- 30.2 Notice of the meeting must be given with due observance of the statutory requirements.
- 30.3 The notice of the meeting will state:
- (a) the subjects to be dealt with;
  - (b) venue and time of the meeting;
  - (c) the requirements for admittance to the meeting as described in Articles 34.2 and 34.3, as well as the information referred to in Article 35.3 (if applicable); and
  - (d) the address of the Company's website,
- and such other information as may be required by the law.
- 30.4 Further communications which must be made to the General Meeting pursuant to the law or these Articles of Association can be made by including such communications either in the notice, or in a document which is deposited at the Company's office for inspection, provided a reference thereto is made in the notice itself.
- 30.5 Shareholders and/or other persons entitled to attend the General Meeting of Shareholders, who, alone or jointly, meet the requirements set forth in section 2:114a subsection 2 of the Dutch Civil Code will have the right to request the Board to place items on the agenda of the General Meeting of Shareholders, provided the reasons for the request must be stated in such request and the request must be received by the Chairman or the Lead Independent Director in writing at least sixty (60) calendar days before the date of the General Meeting of Shareholders.
- 30.6 The notice will be given in the manner stated in Article 37.

**Article 31. Venue of Meetings.**

General Meetings of Shareholders can be held in Amsterdam, Utrecht, Haarlemmermeer (including Schiphol Airport) or Joure (municipality De Friese Meren), at the choice of those who call the meeting.

**Article 32. Chairman of the Meeting.**

- 32.1 The General Meetings of Shareholders will be chaired by the Chairman or in his absence by the Director having the title of Lead Independent Director or in the absence of the Chairman and the Lead Independent Director by any Director elected by the Directors present. In case of absence of the aforesaid Directors the Board will appoint another Director to chair the meeting. The chairman of the meeting will have all the powers he may deem required to ensure the proper and orderly functioning of the General Meeting of Shareholders.
- 32.2 If the chairmanship of the meeting is not provided for in accordance with Article 32.1, the meeting will itself elect a chairman, provided that so long as such election has not taken place, the chairmanship will be held by a Board member designated for that purpose by the Directors present at the meeting.

**Article 33. Minutes.**

- 33.1 Minutes will be kept of the proceedings at the General Meeting of Shareholders by, or under supervision of, the company secretary, which will be adopted by the chairman of the meeting and the company secretary and will be signed by them as evidence thereof.
- 33.2 However, the chairman of the meeting may determine that notarial minutes will be prepared of the proceedings of the meeting. In that case the co-signature of the chairman will be sufficient.

**Article 34. Rights at Meetings and Admittance.**

- 34.1 Each Shareholder and each other person entitled to attend the General Meeting of Shareholders is authorised to attend, to speak at, and to the extent applicable, to exercise his voting rights in the General Meeting of Shareholders. They may be represented by a proxy holder authorised in writing.
- 34.2 For each General Meeting of Shareholders a statutory record date will be applied, in order to determine in which persons voting rights are vested and which persons are entitled to attend the General Meeting of Shareholders. The record date is the twenty-eighth day before the relevant General Meeting. The manner in which persons entitled to attend the General Meeting of Shareholders can register and exercise their rights will be set out in the notice convening the meeting.
- 34.3 A person entitled to attend the General Meeting of Shareholders or his proxy will only be admitted to the meeting if he has notified the Company of his intention to attend the meeting in writing at the address and by the date specified in the notice of meeting. The proxy is also required to produce written evidence of his mandate.
- 34.4 The Board is authorised to determine that the voting rights and the right to attend the General Meeting of Shareholders can be exercised by using an electronic means of communication. If so decided, it will be required that each person entitled to attend the General Meeting of Shareholders, or his proxy holder, can be identified through the electronic means of communication, follow the discussions in the meeting and, to the extent applicable, exercise the voting right. The Board may also determine that the electronic means of communication used

must allow each person entitled to attend the General Meeting of Shareholders or his proxy holder to participate in the discussions.

- 34.5 The Board may determine further conditions to the use of electronic means of communication as referred to in Article 34.4, provided such conditions are reasonable and necessary for the identification of persons entitled to attend the General Meeting of Shareholders and the reliability and safety of the communication. Such further conditions will be set out in the notice of the meeting. The foregoing does, however, not restrict the authority of the chairman of the meeting to take such action as he deems fit in the interest of the meeting being conducted in an orderly fashion. Any non or malfunctioning of the means of electronic communication used is at the risk of the persons entitled to attend the General Meeting of Shareholders using the same.
- 34.6 The company secretary will arrange for the keeping of an attendance list in respect of each General Meeting of Shareholders. The attendance list will contain in respect of each person with voting rights present or represented: his name, the number of votes that can be exercised by such person and, if applicable, the name of his representative. The attendance list will furthermore contain the aforementioned information in respect of persons with voting rights who participate in the meeting in accordance with Article 34.4 or which have cast their votes in the manner referred to in Article 35.3. The chairman of the meeting can decide that also the name and other information about other people present will be recorded in the attendance list. The Company is authorised to apply such verification procedures as it reasonably deems necessary to establish the identity of the persons entitled to attend the General Meeting of Shareholders and, where applicable, the identity and authority of representatives.
- 34.7 The Directors will have the right to attend the General Meeting of Shareholders in person and to address the meeting. They will have the right to give advice in the meeting. Also, the external auditor of the Company is authorised to attend and address the General Meetings of Shareholders.
- 34.8 The chairman of the meeting will decide upon the admittance to the meeting of persons other than those aforementioned in this Article 34.
- 34.9 The official language of the General Meetings of Shareholders will be English.

### **Article 35. Voting Rights and Adoption of Resolutions.**

- 35.1 Each Share confers the right to cast one vote.
- 35.2 At the General Meeting of Shareholders, all resolutions must be adopted by a simple majority of the votes validly cast without a quorum being required, except in those cases in which the law or these Articles of Association require a greater majority or the requirement of a quorum. If there is a tie in voting, the proposal will thus be rejected.
- 35.3 The Board may determine that votes cast prior to the General Meeting of Shareholders by electronic means of communication or by mail, are equated with votes cast at the time of the General Meeting. Such votes may not be cast before the record date referred to in Article 34.2. Without prejudice to the provisions of Article 34 the notice convening the General Meeting of Shareholders must state how Shareholders may exercise their rights prior to the meeting.
- 35.4 Blank and invalid votes will be regarded as not having been cast.
- 35.5 The chairman of the meeting will decide whether and to what extent votes are taken orally, in writing, electronically or by acclamation.
- 35.6 When determining how many votes are cast by Shareholders, how many Shareholders are present or represented, or what portion of the Company's issued capital is represented, no

account will be taken of Shares for which no votes can be cast pursuant to these Articles of Association or the law.

**Article 36. Meetings of Holders of Shares of a particular class.**

- 36.1 Class Meetings will be held whenever the Board calls such meetings. The provisions of Article 30 through Article 35 apply by analogy, except as provided otherwise in this Article 36.
- 36.2 All resolutions of a Class Meeting will be adopted by a simple majority of the votes validly cast on Shares of the relevant class, without a quorum being required. If there is a tie in voting, the proposal will thus be rejected.
- 36.3 With respect to a meeting of holders of Preference Shares, the term for convening such meeting is at least fifteen calendar days and no record date applies. Also, if at such Class Meeting all outstanding Shares of the relevant class are represented, valid resolutions can be passed if the provisions of Article 36.1 have not been observed, provided they are passed unanimously.
- 36.4 If the General Meeting adopts a resolution for the validity or implementation of which the consent of a Class Meeting is required, and if, when that resolution is made in the General Meeting, the majority referred to in Article 36.2 votes for the proposal concerned, the consent of the relevant Class Meeting is thus given.

**Article 37. Notices and Announcements.**

- 37.1 Notice of General Meetings of Shareholders will be given in accordance with the requirements of law and the requirements of regulation applicable to the Company pursuant to the listing of its Shares on the relevant stock exchange.
- 37.2 The Board may determine that Shareholders and other persons entitled to attend the General Meeting of Shareholders will be given notice of meetings exclusively by announcement on the website of the Company and/or through other means of electronic public announcement, to the extent in accordance with Article 37.1.
- 37.3 The foregoing provisions of this Article 37 apply by analogy to other announcements, notices and notifications to Shareholders and other persons entitled to attend the General Meeting of Shareholders.

**CHAPTER 7. MISCELLANEOUS.**

**Article 38. Dispute Resolution.**

- 38.1 To the extent permitted by law, the courts of the Netherlands have jurisdiction in all matters relating to the internal organisation of the Company, including disputes between the Company and its Shareholders and Directors as such.
- 38.2 The provisions of this Article 38 with respect to Shareholders and Directors also apply with respect to persons which hold or have held rights towards the Company to acquire Shares, former Shareholders, persons which hold or have held the right to attend the General Meeting of Shareholders other than as a Shareholder, former Directors and other persons holding or having held any position pursuant to an appointment or designation made in accordance with these Articles of Association.

**Article 39. Amendment of Articles of Association.**

- 39.1 The General Meeting may pass a resolution to amend the Articles of Association but only on a proposal of the Board. Any such proposal must be stated in the notice of the General Meeting of

Shareholders. A resolution of the General Meeting to amend the Articles of Association requires a majority of not less than two-thirds of the votes validly cast, if less than one-half of the Company's issued capital is represented at the meeting.

- 39.2 In the event of a proposal to the General Meeting of Shareholders to amend the Articles of Association, a copy of such proposal containing the verbatim text of the proposed amendment will be deposited at the Company's office, for inspection by Shareholders and other persons entitled to attend the General Meeting of Shareholders, until the end of the meeting. Furthermore, a copy of the proposal will be made available free of charge to Shareholders and other persons entitled to attend the General Meeting of Shareholders from the day it was deposited until the day of the meeting.

**Article 40. Dissolution and Liquidation.**

- 40.1 The Company may be dissolved pursuant to a resolution to that effect by the General Meeting, but only on a proposal of the Board. When a proposal to dissolve the Company is to be made to the General Meeting, this must be stated in the notice convening the General Meeting.
- 40.2 In the event of the dissolution of the Company by resolution of the General Meeting, the Directors will be charged with effecting the liquidation of the Company's affairs without prejudice to the provisions of section 2:23 subsection 2 of the Dutch Civil Code.
- 40.3 During liquidation, the provisions of these Articles of Association will remain in force to the extent possible.
- 40.4 From the balance of the Company's assets after payment of all debts and the costs of the liquidation shall be paid first, to the extent possible, to the holders of Preference Shares, the amount paid-up on their Preference Shares, increased with a percentage equal to the percentage referred to in Article 27.1, calculated over each year or part of a year of the period commencing on the first day following the period over which the last distribution on the Preference Shares was paid and ending on the day of the payment on Preference Shares referred to in this Article
- 40.4. The previous sentence does not apply if the Preference Shares outstanding were issued and paid at the expense of the Company's reserves.
- 40.5 After liquidation, the Company's books and documents shall remain in the possession of the person designated for this purpose by the liquidators of the Company for the period prescribed by law.
- 40.6 The liquidation is otherwise subject to the provisions of Title 1, Book 2 of the Dutch Civil Code.