



## Board rules

Adopted by the Board on 25 May 2020.

### Introduction

These By-Laws are complementary to the provisions regarding the Board and its members as contained in relevant laws and regulations and the Articles of Association, and subject to the investor rights agreement entered into by the Company and certain investors in the Company in relation to, among other things, the governance structure of the Company (the **IRA**). When exercising the rights under or complying with the provisions in these By-Laws, this shall be done in a manner consistent with the IRA, and if – and to the extent – there is any conflict and/or inconsistencies between the provisions of these By-Laws and the IRA, the relevant provisions of these By-Laws shall be interpreted in light of the intention and purpose of the IRA.

These By-Laws are posted on the Company's website.

The meaning of certain capitalised or uncapitalised terms used in these By-Laws is set forth in the List of Definitions attached as **Annex 1**.

## CHAPTER I COMPOSITION BOARD; PROFILE

### 1. Composition

- 1.1 The Board shall consist of one or more Executive Directors and one or more Non-Executive Directors.
- 1.2 The total number of Directors, as well as the number of Executive and Non-Executive Directors, shall, in accordance with Clause 5.3(b) and Clause 5.4(b), be determined by the Non- Executive Directors, taking into account that the majority of the Directors shall be Non-Executive Directors.<sup>1</sup>
- 1.3 Directors are appointed by the General Meeting of Shareholders, but only at the proposal of the Board and taking into account Clause 5.3(b) and Clause 5.4(b). 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 capital of the Company. A Director shall be appointed either as Executive Director or as Non- Executive Director.
- 1.4 The proposal of the Board is in accordance with the diversity policy drawn up by the Board with regard to its composition as well as the Board Profile. The diversity policy addresses the targets relating to diversity and the diversity aspects relevant to the Company, such as nationality, age, gender and background of education and professional experience.<sup>2</sup>
- 1.5 A proposal or recommendation to the General Meeting of Shareholders to appoint a Non-Executive Director shall state the candidate's age, his profession, the amount and number of shares he holds in the Company's capital and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Non-Executive Director. Furthermore, the legal entities of whose supervisory boards he or she is also a member must be listed; if those

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision 5.1.1.

<sup>2</sup> Dutch Corporate Governance Code, best practice provision 2.1.5.

include legal entities which belong to the same group, reference to that group is sufficient. The proposal for appointment or reappointment shall state the reasons on which it is based.<sup>3</sup>

- 1.6 Executive Directors are appointed for maximum terms of four years each.<sup>4</sup> Non-Executive Directors are appointed for a period of four years and may then be reappointed once for a period of four years. A Non-Executive Director may then subsequently be reappointed again for a period of two years, which appointment may be extended by at most two years. For a reappointment after an eight-year period, reasons must be provided in the report of the Non- Executive Directors.<sup>5</sup>
- 1.7 Directors who are nominated for appointment shall as much as possible attend the General Meeting of Shareholders at which votes will be cast on their nomination.<sup>6</sup>
- 1.8 Directors shall retire periodically in accordance with a rotation plan drawn up by the Non-Executive Directors in order to avoid, as far as possible, a situation in which many Directors retire at the same time (the **Board Rotation Plan**). The Non-Executive Directors may at any time amend the rotation plan. Amendments to the rotation plan, however, do not permit a sitting Director to remain in office for a longer period than appointed for, or allow that he or she be asked to retire before the appointment term has expired.

## 2. Profile

- 2.1 The Non-Executive Directors shall prepare a profile of the size and composition of the Board, taking account of the nature of the Company and the business connected with it (the **Board Profile**). The Board Profile shall address:<sup>7</sup>
  - (a) the desired expertise and background of the Executive Directors and Non-Executive Directors;
  - (b) the desired diverse composition of the Board as expressed in the diversity policy;
  - (c) the size of the Board; and
  - (d) the independence of the Non-Executive Directors.
- 2.2 The Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:
  - (a) each Director has the specific expertise required to perform his or her duties in accordance with the Board Profile;<sup>8</sup>
  - (b) each Director is capable of assessing the broad outline of the overall policy and strategy of the Company;<sup>9</sup>

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<sup>3</sup> Section 2:142 Dutch Civil Code.

<sup>4</sup> Dutch Corporate Governance Code, best practice provision 2.2.1.

<sup>5</sup> Dutch Corporate Governance Code, best practice provision 2.2.2.

<sup>6</sup> Dutch Corporate Governance Code, best practice provision 4.1.8.

<sup>7</sup> Dutch Corporate Governance Code, best practice provision 2.1.1.

<sup>8</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

<sup>9</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

- (c) the Board as a whole matches the Board Profile and that the composition of the Board is such that the requisite expertise, background, competencies and independence are present, enabling the Board to carry out its duties properly;<sup>10</sup>
- (d) at least one Non-Executive Director shall have competence in accounting and auditing;<sup>11</sup>
- (e) all Directors observe the restrictions regarding the nature and number of their other positions as set forth in Clause 28.

2.3 Pursuant to the Dutch Corporate Governance Code, a Non-Executive Director is not independent if the following criteria of dependence apply to him or her. These criteria are met if the Non-Executive Director concerned, his or her spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:<sup>12</sup>

- (a) has been an employee or Executive Director of the Company or an Affiliated Company in the five years prior to the appointment as Non-Executive Director;
- (b) receives personal financial compensation from the Company, or an Affiliated Company, other than the compensation received for the work performed as a Non-Executive Director and in so far as this is not in line with the ordinary business operations;
- (c) has had an important business relationship with the Company or an Affiliated Company in the year prior to the appointment;
- (d) is a member of the management board or is an executive director of a company in which a Director is a supervisory board member or non-executive director;
- (e) has temporarily held office as Executive Director of the Company during the previous twelve months due to vacant seats on the Board, or because Executive Directors were unable to perform their duties;
- (f) has a shareholding in the Company of at least ten percent, taking into account the shareholding of natural persons or legal entities co-operating with him or her on the basis of an express or tacit, verbal or written agreement; or
- (g) is a member of the management board or supervisory board, or is an executive director or non-executive director, or a representative in some other way, of a legal entity which holds at least ten per cent of the shares in the Company's capital, unless such entity is a member of the same group as the Company.

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<sup>10</sup> Dutch Corporate Governance Code, Principle 2.1.

<sup>11</sup> Audit Committee Decree 2016, section 2(3).

<sup>12</sup> Dutch Corporate Governance Code, best practice provision 5.1.1 in relation to 2.1.8.

## **CHAPTER II DUTIES AND POWERS; ALLOCATION OF DUTIES**

### **3. Board**

- 3.1 The Board is charged with the management of the Company, which means, among other things, that it is responsible for the continuity of the Company and the business connected with it. The Board focuses on long-term value creation for the Company and the business connected with it, and takes into account the stakeholders' interests that are relevant in this context.<sup>13</sup> The responsibility for the management of the Company is vested collectively in the Board.
- 3.2 The Board is responsible for compliance with all relevant laws and regulations. The Board is responsible for the corporate governance structure of the Company and compliance with the Dutch Corporate Governance Code.<sup>14</sup>
- 3.3 The Board is responsible for creating a culture that contributes to long-term value creation of the Company. The Board shall:<sup>15</sup>
- (a) adopt common values for the Company and the business connected with it that contribute to a culture focused on long-term value creation; the Executive Directors are, under the supervision of the Non-Executive Directors, responsible for the incorporation and maintenance of the values within the Company and the business connected with it; and
  - (b) encourage behaviour that is in line with the values, and propagate these values through leading by example.
- 3.4 The Executive Directors, under the supervision of the Non-Executive Directors, draw up a code of conduct and monitor its effectiveness and compliance with this Code, both on the part of itself and of the employees of the Company.
- 3.5 The Executive Directors shall ensure, under the supervision of the Non-Executive Directors, to promote a culture of openness and accountability within the Board.<sup>16</sup>
- 3.6 The Board shall ensure that employees have the possibility of reporting actual (or suspected) misconduct or irregularities in the Company to the CEO or an officer designated thereto, without jeopardising their legal position. When these concern the functioning of the Executive Directors, they shall be reported directly to the Chairman. The CEO informs the Chairman without delay on signs of actual (or suspected) material misconduct or irregularities within the Company and the business connected with it.<sup>17</sup>

### **4. Collective responsibility and division of tasks**

- 4.1 The Board remains collectively responsible for decisions, even if they are prepared and/or taken by individual Directors. An individual Director may only exercise such powers as are explicitly attributed to him or her and may never exercise powers beyond those exercisable by the Board as a whole.

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<sup>13</sup> Dutch Corporate Governance Code, best practice provision 1.1.

<sup>14</sup> Dutch Corporate Governance Code, part: 'Compliance with the Code'.

<sup>15</sup> Dutch Corporate Governance Code, best practice provisions 2.5.1 and 2.5.2.

<sup>16</sup> Dutch Corporate Governance Code, best practice provision 2.4.1.

<sup>17</sup> Dutch Corporate Governance Code, best practice provision 2.6.1 and 2.6.2.

- 4.2 The division of tasks within the Board is determined (and amended, if necessary) by the Board.
- 4.3 Each Director must inform the other Directors in a clear and timely manner about the way in which he or she has used his or her powers and about major developments in his or her responsibilities.
- 4.4 Each Director shall also be entitled to obtain information from other Directors and employees where he or she deems this is useful or necessary; also having regard to his or her collective responsibility for the management or supervision of the Company.

## 5. Non-Executive Directors

- 5.1 The Non-Executive Directors are charged with the supervision of the Executive Directors, the general course of affairs of the Company and the business connected with it. The Executive Directors shall timely provide the Non-Executive Directors with all information necessary for the proper performance of their duties.
- 5.2 The supervision of the Executive Directors by the Non-Executive Directors shall include:
- (a) the long-term value creation of the Company and the business connected with it and weighing of the interests of stakeholders involved;<sup>18</sup>
  - (b) activities of the Board regarding the creation of a culture aimed at long-term value creation of the Company and the business connected with it;<sup>19</sup>
  - (c) the internal audit function;<sup>20</sup>
  - (d) the effectiveness of the internal risk management and control systems;<sup>21</sup>
  - (e) the integrity and quality of financial reporting;<sup>22</sup>
  - (f) the information and communication technology (ICT) systems of the Company and the managing of the risks associated with cybersecurity;
  - (g) the safeguarding of the Board's expertise and responsibilities and process of providing information to the Non-Executive Directors;<sup>23</sup>
  - (h) the establishment and maintenance of internal procedures which ensure that all relevant information is known to the Board in a timely fashion;<sup>24</sup>
  - (i) the risks associated with the remuneration structure for employees of the Company and the business connected with it, including the members of the Senior Management Team (considered to be the Executive Committee under the Dutch Corporate Governance Code) who are not Executive Directors; and

18 Dutch Corporate Governance Code, Principle 1.1 and best practice provision 1.1.2.

19 Dutch Corporate Governance Code, Principle 2.5.

20 Dutch Corporate Governance Code, Principle 1.3.

21 Dutch Corporate Governance Code, Principle 1.5.

22 Dutch Corporate Governance Code, Principle 1.5.

23 See Dutch Corporate Governance Code, best practice provision 2.1.3.

24 Dutch Corporate Governance Code, best practice provision 2.4.6.

- (j) the relation with the shareholders of the Company,<sup>25</sup> and the compliance with laws and regulations.
- 5.3 The duties of the Non-Executive Directors regarding the Executive Directors specifically include:
- (a) the selection and proposal of Executive Directors, the submission of proposals for the remuneration policy for Executive Directors to the General Meeting of Shareholders, the determination of the remuneration (in accordance with the adopted remuneration policy) and the contractual employment conditions of Executive Directors;
  - (b) determination of the number of Executive Directors, the approval (or proposal, where useful) of changes to the division of tasks between the Executive Directors or of these By-Laws;<sup>26</sup>
  - (c) the approval of additional positions of the Executive Directors to the extent required under these By-Laws; and
  - (d) to address conflict of interest issues between the Company and Executive Directors.<sup>27</sup>
- 5.4 The duties of the Non-Executive Directors in relation to the Non-Executive Directors specifically include:
- (a) the selection and proposal of Non-Executive Directors and the submission of proposals to the General Meeting of Shareholders for the remuneration of Non-Executive Directors;
  - (b) the determination of the number of Non-Executive Directors, the appointment of a Chairman and Lead Independent Director, the establishment of Committees and defining their role and the approval of other positions of Non-Executive Directors to the extent required under Clause 28; and
  - (c) to address conflict of interest issues between the Company and Non-Executive Directors.<sup>28</sup>
- 5.5 At least once a year the Non-Executive Directors shall, without the Executive Directors being present, evaluate the functioning of the Executive Directors and the individual Executive Directors, and discuss the conclusions that must be drawn on the basis thereof, also in light of the succession of Executive Directors.
- 5.6 At least once a year the Non-Executive Directors shall, without the Executive Directors being present, evaluate their own functioning, the functioning of the Committees and that of the individual Non-Executive Directors (including an evaluation of the Board Profile and the introduction, education and training programme) and discuss the conclusions that must be drawn on the basis thereof. Attention shall be paid to:<sup>29</sup>

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<sup>25</sup> Dutch Corporate Governance Code, best practice provision 4.1.1.

<sup>26</sup> See also Clause 4.2.

<sup>27</sup> See also Clause 24.

<sup>28</sup> See also Clause 24.

<sup>29</sup> Dutch Corporate Governance Code, best practice provision 2.2.6.

- (d) substantive aspects, the process, the mutual interaction and the interaction with the Executive Directors;
  - (e) events that occurred in practice from which lessons may be learned; and
  - (f) the desired profile, the composition, competencies and expertise of the Non-Executive Directors.
- 5.7 At least once a year the Non-Executive Directors shall, without the Executive Directors being present, evaluate the functioning of the Board as a whole and discuss the conclusions that must be drawn on the basis thereof.<sup>30</sup>
- 5.8 Other duties of the Non-Executive Directors include:
- (a) duties regarding the External Auditor as described in Clause 16 and the terms of reference of the Audit Committee;
  - (b) the handling of complaints about actual (or suspected) misconduct regarding the functioning of Executive Directors;<sup>31</sup>
  - (c) monitoring the operation of the procedure for reporting actual or suspected misconduct or irregularities, appropriate and independent investigations into signs of misconduct or irregularities, and, if misconduct or irregularity has been discovered, an adequate follow-up of any recommendations for remedial actions; in cases where the Board itself is involved, the Non-Executive Directors may initiate their own investigation into any signs of misconduct and irregularities, and coordinate this investigation;<sup>32</sup>
  - (d) the taking of measures for the temporary management of the Company if an Executive Director is absent or prevented from performing his duties; and
  - (e) other duties the Non-Executive Directors are charged with under legislation, the Articles of Association, these By-Laws or the terms of reference of a Committee.

## 6. Chairman

- 6.1 The Board shall appoint one of the Non-Executive Directors as Chairman of the Board.
- 6.2 The Chairman is primarily responsible for:
- (a) a balanced composition and proper functioning of the Board and its Committees;<sup>33</sup>
  - (b) preparing an agenda and chairing meetings of the Board;<sup>34</sup>
  - (c) ensuring that the Board functions and, unless it concerns delegated powers, makes decisions in a collective manner;
  - (d) determining whether a proposed resolution should be brought to the Board for a vote;

<sup>30</sup> Dutch Corporate Governance Code, best practice provision 2.2.7.

<sup>31</sup> Dutch Corporate Governance Code, best practice provision 2.6.2.

<sup>32</sup> Dutch Corporate Governance Code, best practice provision 2.6.4.

<sup>33</sup> Dutch Corporate Governance Code, best practice provision 5.1.2.

<sup>34</sup> Dutch Corporate Governance Code, best practice provision 5.1.2.

- (e) ensuring that resolutions passed are in accordance with the strategy that should lead to the realisation of the objectives of the Company as referred to in Clause 3.1 of these By-Laws;
- (f) supervising the implementation of passed resolutions and determining if further deliberation with the Board on their implementation is required;
- (g) consulting on an ad hoc basis with Directors regarding their respective tasks;
- (h) addressing problems related to the functioning of Directors; and
- (i) addressing internal disputes and conflicts of interest concerning individual Directors and the possible resignation of such Directors as a result.

6.3 The Chairman is also responsible for:

- (a) ensuring that the Directors are provided with all information necessary for the proper performance of their duties, including but not limited to the information as mentioned in Clause 8.3;
- (b) overseeing and ensuring communications between the Executive Directors and the Non-Executive Directors; and
- (c) consulting regularly with the CEO and consulting other Directors if deemed necessary or advisable.

6.4 Without prejudice to the generality of Clauses 6.2 and 6.3, the Chairman sees to it that:

- (a) Non-Executive Directors, when needed, follow the introduction programme and, as needed, additional education or training programmes;
- (b) there is sufficient time for deliberation and decision-making by the Board; and
- (c) the functioning of the Directors is assessed at least annually.

6.5 The Chairman is assisted by the Company Secretary in the matters relating to Clauses 6.2, 6.3, and 6.4.

## **7. Lead Independent Director**

7.1 The Board will appoint one of the Non-Executive Directors as Lead Independent Director of the Board, if and for as long as the Chairman is not considered to be independent within the meaning of the Dutch Corporate Governance Code.

7.2 The main duties and responsibilities of the Lead Independent Director are furthermore as follows:

- (a) act as sounding board and provide support in all aspects to the Chairman;
- (b) act as mediator in the case of disputes among the members of the Board;



- (c) chair the meetings of the Board and the General Meeting of Shareholders when the Chairman is not present;
- (d) serve as a liaison between the independent Non-Executive Directors and the Chairman and the CEO;
- (e) provide feedback to the Board on the independent Non-Executive Directors' collective views on the management, leadership and effectiveness of the Board;
- (f) facilitate effective communication and interaction between the Board and management;
- (g) develop recommendations for the governance set-up, including committee structure, Board and committee composition and rotations;
- (h) ensure effective communications with shareholders and other stakeholders, attending meetings where necessary, in order to understand their issues and concerns; and
- (i) be available to shareholders should they wish to share views to the Board, other than through the Chairman or the CEO.

## 8. Chief Executive Officer

- 8.1 The Board appoints one of the Executive Directors as CEO.
- 8.2 The CEO is primarily responsible for:
  - (a) the performance of the powers delegated to him with respect to the daily management of the business related to the Company; and
  - (b) the drafting, in consultation with the Chairman, of the annual budget of the Company, as well as – after adoption by the Board – of the implementation thereof.
- 8.3 The CEO shall provide the Chairman in a timely manner each month or as earlier as deemed necessary by the Chairman with detailed information on, among other things, mergers and acquisitions, material investments, major organisational issues, regulatory developments and other relevant issues.

## 9. Senior Management Team

- 9.1 The Company has a senior management team which is considered to be the Executive Committee under the Dutch Corporate Governance Code (the **Senior Management Team**)
- 9.2 The Board shall take account of the checks and balances within the Board. This means, among other things, that the Executive Directors' expertise and responsibilities are safeguarded and the Non-Executive Directors are informed adequately.<sup>35</sup>
- 9.3 The Executive Directors shall inform the Non-Executive Directors about the remuneration of the members of the Senior Management Team who are not Executive Directors.<sup>36</sup>

<sup>35</sup> Dutch Corporate Governance Code, best practice provision 2.1.3.

<sup>36</sup> Dutch Corporate Governance Code, best practice provision 3.1.3.

- 9.4 Additional rules, concerning, but not limited to the working methods and the composition of the Senior Management Team, are included in the by-laws of the Senior Management Team. These by-laws are adopted and amended by the Board with the consent of the majority of the Non-Executive Directors.

## 10. Committees

- 10.1 The Board may appoint standing and/or ad hoc Committees from among its members, which are charged with tasks specified by the Board. The Board may and shall, in any event, establish an Audit Committee and a Remuneration, Selection and Appointment Committee.<sup>37</sup> The composition of the Audit Committee and Remuneration, Selection and Appointment Committee is determined by the Board, provided that only a Non-Executive Director can be member thereof.<sup>38</sup>
- 10.2 The Board remains collectively responsible for decisions prepared by its Committees.<sup>39</sup> A Committee may only exercise such powers as are explicitly attributed to it by the Board and may never exercise powers beyond those exercisable by the Board as a whole.
- 10.3 Each Committee must inform the Board in a clear and timely way of the manner in which it has used attributed authority and of any major development in the area of its responsibilities. All Non-Executive Directors have unrestricted access to all Committee meetings and records. The Board shall, within the term specified in the Terms of Reference of the Committee concerned, receive a report from each Committee of its deliberations and findings.<sup>40</sup>
- 10.4 The Board shall establish terms of reference for each Committee and may amend these at any time, with the consent of the majority of the Non-Executive Directors. The terms of reference shall indicate the role and responsibility of the Committee concerned, its composition and the manner in which it performs its duties.<sup>41</sup>

## 11. Company Secretary<sup>42</sup>

- 11.1 The Board is assisted by the Company Secretary, who is appointed by the Board with the consent of the majority of the Non-Executive Directors. The Company Secretary may be removed by the Board at any time, with the consent of the majority of the Non-Executive Directors.
- 11.2 All Directors have access to the advice and services of the Company Secretary.
- 11.3 The Company Secretary oversees that correct Board procedures are followed and that the obligations of the Board under the law, as well as the Articles of Association, the IRA and the Company's policy on related party transactions are complied with. The Company Secretary shall assist the Chairman in the organisation of the affairs of the Board (the preparing and reporting of meetings, information etc.).

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<sup>37</sup> Dutch Corporate Governance Code, best practice provision 2.3.2.

<sup>38</sup> Dutch Corporate Governance Code, best practice provision 5.1.4.

<sup>39</sup> Dutch Corporate Governance Code, best practice provision 2.3.2.

<sup>40</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

<sup>41</sup> Dutch Corporate Governance Code, best practice provision 2.3.3.

<sup>42</sup> Dutch Corporate Governance Code, best practice provision 2.3.10.

- 11.4 The Company Secretary may delegate his or her duties under these By-Laws, or parts thereof, to one (or more) deputy (or deputies) appointed by the Company Secretary in consultation with the CEO and the Chairman.
- 11.5 If the Company Secretary notes that the interests of the Executive Directors and the Non-Executive Directors diverge, as a result of which it is unclear which interests the Company Secretary should represent, he or she should report this to the Chairman.

### **CHAPTER III RESPONSIBILITIES ON SPECIFIC AREAS**

## **12. Strategy and risks**

- 12.1 The Board shall develop a view on long-term value creation by the Company and the business connected with it and shall formulate a strategy in line with this. When developing the strategy, attention shall in any event be paid to:<sup>43</sup>
- (a) the strategy's implementation and feasibility;
  - (b) the business model applied by the Company and the market in which the Company and the business connected with it operate;
  - (c) opportunities and risks for the Company;
  - (d) the Company's operational and financial goals and their impact on its future position in relevant markets;
  - (e) the interests of the stakeholders;
  - (f) any other aspects relevant to the Company and the business connected with it, such as the environment, social and employee-related matters, the chain within which the business operates, respect for human rights, and fighting corruption and bribery; and
  - (g) the information and communication technology (ICT) systems of the Company and the affiliated risks of cybersecurity (including disturbance, failure or abuse of ICT).<sup>44</sup>
- 12.2 The Non-Executive Directors shall constructively challenge and help develop proposals on strategy.
- 12.3 The Board shall identify and analyse the risks associated with the Company's strategy and activities and the business connected with it. It is responsible for establishing the risk appetite, and also the measures that are put in place in order to counter the risks being taken.<sup>45</sup> Based on the risk assessment, the Executive Directors shall, under the supervision of the Non-Executive Directors, design, implement and maintain adequate internal risk management and control systems.<sup>46</sup>
- 12.4 The Executive Directors, under the supervision of the Non-Executive Directors, monitor the operation of the internal risk management and control systems and conducts a systematic

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<sup>43</sup> Dutch Corporate Governance Code; best practice provision 1.1.1.

<sup>44</sup> Cyber Security Council; Cybersecurity guide for Management Board members.

<sup>45</sup> Dutch Corporate Governance Code, best practice provision 1.2.1.

<sup>46</sup> Dutch Corporate Governance Code, best practice provision 1.2.2.

assessment of the design and effectiveness of the systems at least once a year. The monitoring covers all material control measures, relating to strategic, operational, compliance and reporting risks. Attention shall be given to observed weaknesses, instances of misconduct and irregularities, indications from whistle-blowers, lessons learned and findings from the internal audit function and the external auditor. Where necessary, improvements shall be made to the internal risk management and control systems.<sup>47</sup>

- 12.5 The Non-Executive Directors discuss the effectiveness of the design and the operation of the internal risk management and control systems with the Audit Committee.<sup>48</sup>

### 13. Internal audit function

- 13.1 The duty of the internal audit function is to assess the design and the operation of the internal risk management and control systems. The internal audit function shall have direct access to the Audit Committee and the External Auditor.<sup>49</sup> The Executive Directors, under the supervision of the Non-Executive Directors, are responsible for the internal audit function.<sup>50</sup>
- 13.2 The Board both appoints and dismisses the senior internal auditor with the consent of the majority of the Non-Executive Directors and along with the recommendation issued by the Audit Committee.<sup>51</sup>
- 13.3 The Board annually assesses the way in which the internal audit function fulfils its responsibility, taking into account the Audit Committee's opinion.<sup>52</sup>
- 13.4 The Executive Directors adopt, subject to the approval of the Non-Executive Directors, terms relating to the internal audit function and may amend these at any time with the approval of the chairman of the Audit Committee. These terms mark the role and responsibility of the internal audit function, its composition and in which manner it should perform its tasks.
- 13.5 The Board will be asked to approve the audit plan of the internal audit function. The internal audit function will draw up its audit plan involving the Executive Directors, the Audit Committee and the External Auditor.<sup>53</sup>

### 14. Report of the Board

- 14.1 The Board shall ensure that the information listed in **Annex 2** is included in the Report of the Board.
- 14.2 The Non-Executive Directors shall draw up a report that forms a part of the Report of the Board describing their activities in the financial year concerned and containing the specific statements and information listed in **Annex 2**.<sup>54</sup>

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47 Dutch Corporate Governance Code, best practice provision 1.2.3.

48 Dutch Corporate Governance Code, best practice provision 1.4.1.

49 Dutch Corporate Governance Code, best practice provision 1.3.4.

50 Dutch Corporate Governance Code, Principle 1.3.

51 Dutch Corporate Governance Code, best practice provision 1.3.1.

52 Dutch Corporate Governance Code, best practice provision 1.3.2.

53 Dutch Corporate Governance Code, best practice provision 1.3.3.

54 Dutch Corporate Governance Code, best practice provision 5.1.5

## 15. Financial reporting

- 15.1 The Executive Directors, under the supervision of the Non-Executive Directors, are responsible for establishing and maintaining internal procedures that ensure that all major financial information is known to the Board, so that the timeliness, completeness and accuracy of the external financial reporting are assured. For this purpose, the Executive Directors shall ensure that financial information from business divisions and/or subsidiaries is reported directly to itself and that the integrity of that information is not compromised.<sup>55</sup>
- 15.2 The Executive Directors are responsible for the quality and completeness of publicly disclosed financial reports.<sup>56</sup>
- 15.3 The Non-Executive Directors supervise compliance with internal procedures established by the Executive Directors for the preparation and publication of the Report of the Board, the Annual Accounts, the interim figures and ad hoc financial information.<sup>57</sup>
- 15.4 The Audit Committee shall regularly, and in any event as soon as possible, provide the Board with reports on the Annual Accounts, and the interim figures, which will then be discussed at a meeting of the Board. The Annual Accounts and the Report of the Board for the preceding year shall be discussed in a meeting of the Board within four months of this year end. The interim figures of the Company for the respective period just ended shall be discussed in a meeting of the Board within two months of the end of this period. These meetings are prepared by the Audit Committee.
- 15.5 The Audit Committee shall report to the Board on its deliberations and findings regarding the issues referred to in clause 5.3 of the terms of reference of the Audit Committee, after which they will be discussed in a Board meeting.<sup>58</sup>
- 15.6 The External Auditor shall in any event attend the part of the meeting of the Board at which the report of the External Auditor with respect to the audit of the Annual Accounts is discussed.<sup>59</sup>
- 15.7 The Executive Directors shall ensure that the External Auditor can properly perform his audit work, and it shall encourage both the External Auditor and the Company to properly perform and pursue the role and the policy of the Company regarding the External Auditor, as provided for by agreement with the External Auditor, these By-Laws and the Terms of Reference of the Audit Committee.
- 15.8 The line of contact between the Board and the External Auditor is in principle through the chairman of the Audit Committee. The External Auditor shall inform the chairman of the Audit Committee without delay if, during the performance of his or her duties, he or she discovers or suspect misconduct or irregularities within the Company and the business connected with it. If the actual (or suspected) misconduct or irregularity pertains to the functioning of a Director, employees can report this directly to the Chairman or the Lead Independent Director if it concerns the Chairman.<sup>60</sup>

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<sup>55</sup> Dutch Corporate Governance Code 2009, best practice provision V.1.3.

<sup>56</sup> Dutch Corporate Governance Code 2009, Principle V.1.

<sup>57</sup> Dutch Corporate Governance Code 2009, best practice provision V.1.1.

<sup>58</sup> Dutch Corporate Governance Code, best practice provision 1.5.3 and 1.5.4.

<sup>59</sup> Dutch Corporate Governance Code, best practice provision 1.7.6.

<sup>60</sup> Dutch Corporate Governance Code, best practice provision 2.6.3.

- 15.9 In its contact with the External Auditor the chairman of the Audit Committee discusses at least the draft audit plan before the External Auditor presents it to the Audit Committee.<sup>61</sup> The chairman of the Audit Committee ensures that the External Auditor receives all information necessary for completing his task and will give the External Auditor the opportunity to respond to the information that has been provided.<sup>62</sup>
- 15.10 The Non-Executive Directors see to it that the recommendations made by the External Auditor are considered carefully by the Board and, to the extent accepted, that they are actually carried out by the Executive Directors. This supervision may be delegated to the Audit Committee.

## **16. Duties regarding nomination and assessment of the External Auditor**

- 16.1 The Audit Committee shall report annually to the Non-Executive Directors on the functioning of, and the developments in, the relationship with the External Auditor.<sup>63</sup> The Non-Executive Directors give the External Auditor a general idea of the content of the reports relating to the External Auditor's functioning.<sup>64</sup>
- 16.2 The Audit Committee shall advise the Board regarding the nomination with respect to the External Auditor's appointment or reappointment or dismissal and shall prepare the selection of the External Auditor. The Audit Committee gives due consideration to the Board observations. The Board shall take this into account when deciding its nomination to the General Meeting of Shareholders for the appointment of an External Auditor.<sup>65</sup>
- 16.3 The chairman of the Audit Committee annually reports his or her observations to the Audit Committee on the functioning of the External Auditor and the fulfilment of his or her duties, in respect of the (re)appointment or dismissal of the External Auditor and the issue of a new audit- engagement.<sup>66</sup> The Executive Directors facilitate the process of appointment of the External Auditor, paying attention to the scope of the audit, the materiality to be used and remuneration for the audit.<sup>67</sup>
- 16.4 The main conclusions of the Board regarding the External Auditor's nomination and the outcomes of the External Auditor selection process shall be communicated to the General Meeting of Shareholders.<sup>68</sup> If the Board does not accept the Audit Committee's advice concerning the External Auditor's appointment, the reasons for this decision must be stated in the proposal to the General Meeting of Shareholders.<sup>69</sup>
- 16.5 The Board resolves, on a proposal submitted by the Audit Committee, on the External Auditor's engagement to audit the financial statements. By way of implementation of the decision of the General Meeting of Shareholders, or as the case may be of the Board itself,<sup>70</sup> to appoint the External Auditor, the Board will on behalf of the Company enter into an agreement to that effect with the External Auditor.

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61 Dutch Corporate Governance Code, best practice provision 1.7.2.

62 Dutch Corporate Governance Code, best practice provision 1.7.1.

63 Dutch Corporate Governance Code, best practice provision 1.6.1.

64 Dutch Corporate Governance Code, best practice provision 1.6.2.

65 Dutch Corporate Governance Code, best practice provision 1.6.1.

66 Dutch Corporate Governance Code, best practice provision 1.6.1.

67 Dutch Corporate Governance Code, best practice provision 1.6.3.

68 Dutch Corporate Governance Code, best practice provision 1.6.4.

69 Section 16(5) EU-Regulation 537/2014.

70 See section 2:393(2) DCC.

- 16.6 The External Auditor shall be appointed by the General Meeting of Shareholders.<sup>71</sup> The Board nominates, with the consent of the majority of the Non-Executive Directors, a candidate for this appointment to the General Meeting of Shareholders and may recommend replacement of the External Auditor. The Board sees to it that the intended appointment will be notified to the AFM by the Company in accordance with the relevant provisions of law; see **Annex 5**.
- 16.7 When appointed, the External Auditor is requested to state explicitly to the Company:
- (a) to comply and continue to comply with the requirements regarding independency as included in the Act on the Supervision of Audit Organisations and other applicable laws and regulations; and
  - (b) that he has been informed of all matters provided for in these By-Laws and the terms of reference of the Audit Committee, that he agrees with and will co-operate fully with their implementation.

## 17. Relation with the shareholders

- 17.1 The Board ensures that the General Meeting of Shareholders is adequately provided with information.<sup>72</sup>
- 17.2 The Board provides the General Meeting of Shareholders timely with all requested information, unless this would be contrary to an overriding interest of the Company. If the Board invokes an overriding interest, it shall state the reasons.<sup>73</sup>
- 17.3 The agenda of the General Meeting of Shareholders shall list which items are for discussion and which items are to be voted on.<sup>74</sup>
- 17.4 Proposals for the following items shall be dealt with as separate agenda items:
- (a) material changes to the Articles of Association;
  - (b) the appointment of Directors;
  - (c) the policy of the Company on additions to reserves and on dividends (the level and purpose of the addition to reserves, the amount of the dividend and the type of dividend);
  - (d) the distribution of dividend;
  - (e) resolutions to approve the management conducted by the Executive Directors (discharge of Executive Directors from liability);
  - (f) resolutions to approve the supervision exercised by the Non-Executive Directors (discharge of Non-Executive Directors from liability);

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<sup>71</sup> An audit organisation may be appointed for a term of maximum 10 years, see section 17 EU-Regulation 537/2014 (change of responsible partner after 5 years, section 24 Act on the Supervision of Audit Organisations)

<sup>72</sup> Dutch Corporate Governance Code, Principle 4.2.

<sup>73</sup> Section 2:107 lid 2 of the Dutch Civil Code and Dutch Corporate Governance Code, best practice provision 4.2.1.

<sup>74</sup> Dutch Corporate Governance Code, best practice provision 4.1.3.

- (g) each substantial change in the corporate governance structure of the Company and in the compliance with the Dutch Corporate Governance Code; and
  - (h) the appointment of the External Auditor.<sup>75</sup>
- 17.5 A proposal for approval or authorisation by the General Meeting of Shareholders shall be explained in writing. The Board shall in this explanation state all the facts and circumstances that are relevant for the approval or authorisation to be granted. The explanation to the agenda shall be posted on the Company's website.<sup>76</sup>
- 17.6 The Directors shall be present at the General Meeting of Shareholders, unless they are unable to attend for important reasons. Under certain circumstances, a Director may attend the General Meeting of Shareholders through means of electronic communication.
- 17.7 The Board sees to it that the responsible partner (certifying auditor) of the firm of the External Auditor is present at the General Meeting of Shareholders and that he can address the meeting. The External Auditor may be questioned by the General Meeting of Shareholders in relation to his report on the fairness of the financial statements.<sup>77</sup>
- 17.8 The Company shall provide shareholders and others who have the right to vote at the General Meeting of Shareholders the possibility to issue, prior to the General Meeting of Shareholders, voting proxies or voting instructions to an independent third party.<sup>78</sup>
- 17.9 The Company shall formulate an outline policy on bilateral contacts with the shareholders.<sup>79</sup>
- 17.10 If one or more shareholders have the intention of requesting that an item be put on the agenda which may result in a change of strategy of the Company, for example as a result of the dismissal of one or several Directors, the Board shall respond to such request within a reasonable period of time (the **response time**). The opportunity to stipulate the response time also applies to an intention as referred above for judicial leave to call a General Meeting of Shareholders pursuant to section 2:110 of the Dutch Civil Code. The response time shall not exceed 180 days, calculated as from the date on which the Board was informed by one or more shareholders of the intention to put this item on the agenda until the date of the General Meeting of Shareholders at which the item is to be dealt with. The Board shall use this response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and to explore alternatives.
- 17.11 When a takeover bid for (depository receipts for) shares in the Company is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in section 2:107a(1)(c) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, the Executive Directors shall ensure that the Non-Executive Directors are involved in the takeover process and/or the change in structure closely and in a timely fashion.<sup>80</sup>
- 17.12 If a takeover bid has been announced or made for (depository receipts for) shares in the Company and the Board receives a request from a third competing bidder for information

<sup>75</sup> Dutch Corporate Governance Code, best practice provision 4.1.3.

<sup>76</sup> Dutch Corporate Governance Code, best practice provision 4.1.4; see also section 5:25ka(1)(c) Financial Supervision Act.

<sup>77</sup> Dutch Corporate Governance Code, best practice provision 4.1.9.

<sup>78</sup> Dutch Corporate Governance Code, best practice provision 4.3.2.

<sup>79</sup> Dutch Corporate Governance Code, best practice provision 4.2.2.

<sup>80</sup> Dutch Corporate Governance Code, best practice provision 2.8.1.



regarding the Company, the Directors shall discuss such request within the Board without delay.<sup>81</sup>

- 17.13 If a private bid for a business unit or a participating interest has been made public, where the value of the bid exceeds the threshold referred to in section 2:107a(1)(c) of the Dutch Civil Code, the Board shall, as soon as possible, publicly announce its position on the bid and the reasons for this position.<sup>82</sup>
- 17.14 The Board shall endeavour that minutes on the proceedings of the General Meeting of Shareholders are made available to the shareholders of the Company by publication on the Company's website no later than three months after the end of such meeting, following which the shareholders have another three months to respond to the report. The report is then adopted in the manner provided for in the Articles of Association,<sup>83</sup> by the chairman and the secretary of the meeting. The provisions of this Clause 17.14 may be disregarded if a notarial deed is drawn up of the minutes of the proceedings. After adoption the report (or the minutes as laid down in a notarial deed of proceedings) is posted as soon as possible on the Company's website. Also, results of the voting in resolutions adopted by the General Meeting of Shareholders are posted on the Company's website as soon as possible after the meeting, where they are accessible for at least one year.<sup>84</sup>
- 17.15 A resolution of the General Meeting of Shareholders may be disclosed externally through a statement from the Chairman or the Company Secretary.

## **18. Relation with the AFM, analysts, the financial press and institutional and other investors**

- 18.1 The Executive Directors shall provide and communicate the information disclosed in **Annex 5** to the AFM, with regard to the statutory and legal regulations applicable to the Company.
- 18.2 The contacts between the Board on the one hand and the press and financial analysts on the other shall be handled and structured carefully with due observance of the applicable laws and regulations, and the Company shall not engage in any acts that compromise the independence of analysts in relation to the Company and vice versa.<sup>85</sup>
- 18.3 Meetings with and presentations to analysts, presentations to (institutional) investors and press conferences shall be announced in advance on the Company's website and by means of press releases. Analysts' meetings and presentations to investors shall not take place shortly before the publication of the regular financial information. Provisions shall be made for all shareholders to follow these meetings and presentations in real time, by means of webcasting, telephone or by other means.<sup>86</sup>

## **19. Website of the Company**

The Executive Directors shall post and update all information relevant to the shareholders that the Company is required to publish or deposit pursuant to the applicable provisions of company law or securities law and regulation on a separate part of the Company's website and provide that the information on the website is accessible for at least one year.<sup>87</sup>

81 Dutch Corporate Governance Code, best practice provision 2.8.2.

82 Dutch Corporate Governance Code, best practice provision 2.8.3.

83 Dutch Corporate Governance Code, best practice provision 4.1.10.

84 See section 5:25m paragraph 3 and 4 Financial Supervision Act.

85 Dutch Corporate Governance Code, best practice provision 4.2.5.

86 Dutch Corporate Governance Code, best practice provision 4.2.3.

87 See also section 5:25m(3) Financial Supervision Act.

**CHAPTER IV**  
**BOARD MEETINGS; DECISION-MAKING**

**20. Frequency, notice, agenda and venue of meeting**

- 20.1 The Board shall meet as often as deemed desirable by the Chairman or when requested by at least three Directors. The Board meets at least four times each financial year.
- 20.2 Meetings of the Board are in principle called by the Company Secretary, in consultation with the Chairman, at a reasonable notice period. Save in urgent cases (to be determined by the Chairman) the agenda for a meeting shall be sent to all Directors one week before the meeting. For each item on the agenda an explanation in writing shall be provided, and/or, where possible, other related documentation will be attached.
- 20.3 Each Director has the right to request that an item be placed on the agenda for a Board meeting.
- 20.4 Board meetings are generally held at the offices of the Company, but may also take place elsewhere. In addition, meetings of the Board may be held by conference call, video conference or by any other means of communication, provided all participants can communicate with each other simultaneously.

**21. Attendance of and admittance to meetings**

- 21.1 A Director may be represented at Board meetings by another Director holding a proxy in writing. The existence of such authorisation must be proved satisfactorily to the chairman of the meeting.
- 21.2 If a Director is frequently absent from Board meetings he or she shall be called to account by the Chairman.
- 21.3 The Chairman may decide that a meeting shall be held without attendance of the Executive Directors.

**22. Chairman of the meeting; minutes**

- 22.1 Board meetings are presided over by the Chairman or in his or her absence by the Lead Independent Director, or in the absence of the Chairman and the Lead Independent Director by any Director elected by the Directors present.
- 22.2 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting. The minutes should provide insight into the decision-making process at the meeting. The minutes shall be adopted by the Board at the same meeting, or the next meeting.

**23. Decision-making**

- 23.1 The Directors shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously, and take into account that certain resolutions of the Board are adopted by the Board as a whole as referred to in **Annex 3** and that certain resolutions are subject to the consent of the majority of the Non-Executive Directors as referred to in **Annex 4**.
- 23.2 Each Director has the right to cast one vote.
- 23.3 Where unanimity cannot be reached and the law, the Articles of Association or these By-Laws do not prescribe a larger majority or consent of the Non-Executive Directors, all resolutions of the Board are adopted by an absolute majority of more than half of the votes validly cast. In the event of a tie, the Chairman has the deciding vote. At a meeting, the Board may only pass resolutions 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 mentioned in Clause 24.2 – are present or represented.

- 23.4 In general, resolutions of the Board are adopted at a Board meeting.
- 23.5 Board resolutions may also be adopted in writing, provided the proposal concerned is submitted to all Directors then in office without a conflict of interest as mentioned in Clause 24.2, they have been given the opportunity to express their opinion on the proposed resolution, none of them objects to this form of adoption and the required majority of the Directors has expressly declared to be in favour of the resolutions thus adopted in writing. Adoption of resolutions in writing shall be effected by statements in writing from all Directors. A statement from a Director who wishes to abstain from voting on a particular resolution which is to be adopted in writing, or who wishes to vote against, must reflect the fact that he or she does not object to this form of adoption.
- 23.6 A Director is authorised to, on behalf of the Board, resolve upon matters corresponding with tasks that are assigned to him or her. Such resolutions are deemed to constitute resolutions of the Board.
- 23.7 The Board may deviate from the provisions of Clauses 23.3 (last sentence), 23.3 and 23.5 if this is deemed necessary by the Chairman and the Lead Independent Director, considering the urgent nature and other circumstances of the case, provided that all Directors are allowed the opportunity to participate in the decision-making process. The Chairman and the Company Secretary shall then prepare minutes on a resolution so adopted, which shall be added to the documents for the next meeting of the Board.

## **CHAPTER V OTHER PROVISIONS**

### **24. Conflicts of interests**

- 24.1 A Director is alert to conflicts of interest and shall in any case not:<sup>88</sup>
- (a) demand or accept (substantial) gifts from the Company for himself or herself or for his or her spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
  - (b) provide unjustified advantages to third parties to the detriment of the Company; and
  - (c) take advantage of business opportunities to which the Company is entitled for himself or herself or for his or her spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.
- 24.2 A conflict of interest exists if with respect to the matter concerned a Director has a direct or indirect personal interest that conflicts with the interests of the Company and the business connected with it. In addition, a conflict of interest may exist if (i) the Company enters into a *Related Party Transaction* and a Director qualifies as a *Conflicted Director* under the Company's policy on related party transactions and (ii) the Company intends to enter into a transaction with a legal entity:
- (a) in which a Director personally has a material financial interest, or
  - (b) which has a management board member or a supervisory board member who has a relationship under family law<sup>89</sup> with a Director.<sup>90</sup>

<sup>88</sup> Dutch Corporate Governance Code, best practice provision 2.7.1.

<sup>89</sup> A relation under family law consists between a child, his parents and their blood relatives (section 1:197 Dutch Civil Code).

<sup>90</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, first paragraph.

- 24.3 A Director shall without delay report any conflict of interest or potential conflict of interest in a transaction that is of material significance to the Company and/or to the member concerned, to the Chairman and to the other Directors and shall provide all relevant information, including information concerning his or her spouse, registered partner or other life companion, foster child and relatives by blood or marriage upon the second degree. The Non-Executive Directors shall decide, without the Director concerned being present, whether there is a conflict of interest.<sup>91</sup>
- 24.4 A Director shall not take part in any discussion and decision-making that involves a subject or transaction in relation to which he or she has a conflict of interest with the Company.<sup>92</sup> If as a result no Board resolutions can be adopted the resolution will nevertheless be adopted by the Board.<sup>93</sup>
- 24.5 A Director who in connection with a (potential) conflict of interests does not exercise the duties and powers that he would otherwise have as a Director, will insofar be regarded as a Director who is unable to perform his duties (*belet*).
- 24.6 All transactions in which there are conflicts of interest with Directors shall be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with Directors that are of material significance to the Company and/or the relevant Directors require a Board resolution taken with the consent of the majority of the Non- Executive Directors.<sup>94</sup>

## 25. Vacancies and inability to act

When carrying out article 21 of the Articles of Association, this shall be done in a manner consistent with the IRA.

## 26. Internal investigation

A Director is at all times obliged to co-operate fully with an investigation set up by the Company into signs of material misconduct and irregularities in the Company and the business connected with it.<sup>95</sup>

## 27. Introduction programme, on-going training and education

All Non-Executive Directors shall be invited to follow an introduction programme geared to their role that covers general financial, social and legal affairs, financial reporting by the Company, any specific aspects unique to the Company and its business activities and the responsibilities of a Non-Executive Director.<sup>96</sup>

## 28. Other positions

- 28.1 Executive Directors may not be a member of the supervisory board or non-executive director of more than two large companies and/or large foundations governed by Dutch company law.<sup>97</sup> An Executive Director may not concurrently serve as chairman of the supervisory board or one tier board of a large company or large foundation. Membership of the

<sup>91</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, second paragraph and third paragraph at the end.

<sup>92</sup> Section 2:129(6) Dutch Civil Code.

<sup>93</sup> This mechanism, the Board is authorised instead of the General Meeting of Shareholders following section 2:129(6) Dutch Civil Code, is only possible if the Articles of Association provide for it.

<sup>94</sup> Dutch Corporate Governance Code, best practice provision 2.7.4.

<sup>95</sup> Dutch Corporate Governance Code, best practice provision 2.6.4.

<sup>96</sup> Dutch Corporate Governance Code, best practice provision 2.4.5.

<sup>97</sup> This means a Dutch company or Dutch foundation that at two consecutive balance sheet dates meets at least two of the following criteria:

- (i) the value of its assets, as given in its balance sheet (together with explanatory notes) on the basis of their acquisition price and production costs, is more than €20 million;
- (ii) its net turnover in the applicable year is more than €40 million; and
- (iii) the average number of employees in the applicable Financial Year is at least 250.

supervisory board or one tier board of affiliates of the Company does not count for this purpose.

- 28.2 Non-Executive Directors shall limit the number and nature of their other positions so as to ensure due performance of their duties. A Non-Executive Director will hold no more than five memberships of supervisory boards in large Dutch companies and/or large Dutch foundations, with a chairmanship counted twice. The previous sentence is mutatis mutandis applicable with regard to positions of non-executive director or chairman of a one tier-board in a legal entity governed by Dutch company law.
- 28.3 Directors must inform the Chairman and the Company Secretary of their other positions which may be of importance to the Company or the performance of their duties before accepting such positions. If the Chairman determines that there is a risk of a conflict of interest, the matter shall be discussed by the Non-Executive Directors in accordance with Clause 24. If such conflict concerns the Chairman, he will inform the Lead Independent Director who then carries out the task of the Chairman as referred to in the previous sentence.

## 29. Holding and trading securities

Directors are bound to the insider trading policy of the Company regarding securities of the Company and other securities referred to in those regulations. The insider trading policy is posted on the Company's website.

## 30. Confidentiality

No Director shall, during his membership of the Board or afterwards, disclose in any way whatsoever to anyone whomsoever any information of a confidential nature regarding the business of the Company and/or companies in which it holds a stake, that came to his or her knowledge in the capacity of his or her work for the Company and which he knows or should know to be of a confidential nature, unless required by law. A Director is allowed to disclose the above information to Directors as well as to staff members of the Company and of companies in which the Company holds a stake, who, in view of their activities for the Company and/or companies in which the Company holds a stake, should be informed of the information concerned. A Director shall not in any way whatsoever utilise the information referred to above for his personal benefit.

## 31. Miscellaneous

- 31.1 **Application to all Directors.** These By-laws are applicable to anyone who is appointed as a Director, and are also applicable to anyone who is designated as a substitute member for a Director in accordance with these By-laws.
- 31.2 **Occasional Non-Compliance.** The Board may occasionally decide not to comply with these By-Laws, but only to the extent that the non-compliance with these By-laws does not contradict the IRA, the Articles of Association and the Company's policy on related party transactions, with due observance of applicable laws and regulations and with the prior approval of the Chairman and the Lead Independent Director.
- 31.3 **Amendment.** The By-Laws may be amended by the Board at any time and without any notification being made, with the consent of the majority of the Non-Executive Directors and subject to the prior approval of the Chairman and the Lead Independent Director.
- 31.4 **Interpretation.** In the event of lack of clarity or difference of opinion on the interpretation of any provision of these By-Laws, the opinion of the Chairman shall be decisive.
- 31.5 **Governing Law and Jurisdiction.** These By-Laws are governed by the laws of the Netherlands. The courts of the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with these By-Laws (including any dispute regarding the existence, validity or termination of these By-Laws).

- 31.6 **Complementarity to Dutch Law and Articles of Association.** These By-Laws are complementary to the provisions governing the Board as contained in Dutch law, other applicable Dutch or EU regulations and the Articles of Association. Where these By-Laws are inconsistent with Dutch law, other applicable Dutch or EU regulations or the Articles of Association, the latter shall prevail. Where these By-Laws are consistent with the Articles of Association but inconsistent with Dutch law or other applicable Dutch or EU regulations, the latter shall prevail.
- 31.7 **Partial Invalidity.** If one or more provisions of these By-Laws are or become invalid, this shall not affect the validity of the remaining provisions. The Board may, subject to consent of the Chairman, replace the invalid provisions by provisions which are valid and the effect of which, given the contents and purpose of these By-Laws is, to the greatest extent possible, similar to that of the invalid provisions.

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## ANNEX 1

### LIST OF DEFINITIONS

1. In the By-Laws of the Board, the following terms have the following meanings:

**Affiliated Company** has the meaning attributed to it in section 5:48 of the Financial Supervision Act (*Wet op het financieel toezicht*).

**Annual Accounts** means the annual accounts of the Company as referred to in sections 2:101 and 2:361(1) of the Dutch Civil Code.

**Articles of Association** means the articles of association of the Company.

**Audit Committee** means the Committee designated as such in Clause 10.4 of the By-Laws.

**Board** means the board of the Company.

**By-Laws** means the By-Laws of the Board, including the annexes belonging thereto.

**Chairman** means the chairman of the Board of the Company.

**CEO** means the Chief Executive Officer of the Company.

**Committee** means each committee of the Board as referred to in Clause 10.4 of the By-Laws.

**Company** means **JDE Peet's N.V.**, and, where appropriate, the subsidiaries and possible other group companies of the Company, whose financial information is incorporated in the consolidated annual accounts of the Company.

**Company Secretary** means the company secretary of the Company.

**Director** means a member of the Board and refers to both an Executive Director and a Non-Executive Director.

**Executive Director** means an executive director of the Company.

**External Auditor** means the accounting and auditing firm that, in accordance with section 2:393 of the Dutch Civil Code, is charged with the audit of the annual accounts of the Company.

**General Meeting or General Meeting of Shareholders** means the general meeting of shareholders of the Company.

**Group Company** has the meaning attributed to it in section 2:24b of the Dutch Civil Code.

**IRA** means the investor rights agreement entered into by the Company and certain investors in the Company in relation to, among other things, the governance structure of the Company.

**Lead Independent Director** means a Director with the title lead independent director.

**Non-Executive Director** means a non-executive director of the Company.

**Remuneration, Selection and Appointment Committee** means the Committee designated as such in Clause 10.1 of the By-Laws.

**Report of the Board** means the report of the board of the Company drawn up by the Board, as referred to in sections 2:101 and 2:391 of the Dutch Civil Code.

Senior Management Team means the executive committee of the Company as referred to in

Clause 9.1. of the By-Laws.

2. **in writing:** a message that is conveyed by letter, telefax, e-mail or any other electronic means of communication, provided the message is legible and reproducible, unless Dutch law or the Articles of Association provide otherwise.
3. Save where the context dictates otherwise, in the By-Laws of the Board:
  - (a) words and expressions expressed in the singular form also include the plural form, and vice versa;
  - (b) words and expressions expressed in the masculine form also include the feminine form; and
  - (c) a reference to a statutory provision counts as a reference to this statutory provision including all amendments, additions and replacing legislation that may apply from time to time.
4. Headings of clauses and other headings in these By-Laws of the Board are inserted for ease of reference and do not form part of the By-Laws concerned for the purpose of interpretation.

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## ANNEX 2

### INFORMATION TO BE INCLUDED IN THE REPORT OF THE BOARD

In addition to the information which must be included pursuant to the provisions of Book 2 Dutch Civil Code, see also sections 2:391 and 2:392 DCC, the following information must be included in the Report of the Board:

- 1.1.4 CG Code            A detailed explanation of the view of the Board on the long-term value creation, the strategy for its realisation and which contributions were made to the long-term value creation in the past financial year.<sup>98</sup>
- 1.4.2 CG Code            Accountability about (a) the execution of the risk assessment, with a description of the principal risks facing the Company in relationship to the risk appetite; (b) the design and operation of the internal risk management and control systems during the past financial year; (c) any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the Audit Committee; and (d) the sensitivity of the results of the Company to material changes in external factors.<sup>99</sup>
- 1.4.3 CG Code            With clear substantiation that (a) the report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems; (b) the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies; (c) based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and (d) the report states those material risks and uncertainties that are relevant to the expectation of the Company's continuity for the period of twelve months after the preparation of the report.
- 2.1.3 CG Code            Accountability about (a) the choice to work with the Senior Management Team; (b) the role, duty and composition of the Senior Management Team; and  
(c) how the contacts between the Non-Executive Directors and the Senior Management Team have been given shape.<sup>100</sup>
- 2.5.4 CG Code            An explanation of the values and the way in which they are incorporated in the Company and the business connected with it, and the effectiveness of, and compliance with, the code of conduct.<sup>101</sup>
- 2.7.4 CG Code            Publication of all transactions in which there are conflicts of interest with Directors that are of material significance to the Company and/or to the relevant Directors, with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3. and 2.7.4. have been complied with.<sup>102</sup>

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98 Clause 12.1.

99 Clause 12.3 and 12.4.

100 Clause 9.

101 Clause 3.3.

102 Clause 24.

2.7.5 CG Code	Publication of all transactions between the Company and legal or natural persons who holds at least ten percent of the shares in the Company, which are of material significance for the Company and/or the legal or natural person, with a declaration that best practice provision 2.7.5. has been complied with.
4.2.6 CG Code	A survey of all existing or potential anti-takeover measures and an indication of the circumstances in which and by whom these measures can be used.
CG Code <sup>103</sup>	In a separate chapter: the broad outline of the corporate governance structure of the Company, partly on the basis of the principles stated in the Dutch Corporate Governance Code and explicitly stating the extent to which it complies with the principles and best practice provisions stipulated in the Dutch Corporate Governance Code and, where it does not comply with them, why and to what extent it deviates from them. If the composition of the Board diverges from the targets stipulated in the Company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law, the current state of affairs shall be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target, and by when this is likely to be achieved. <sup>104</sup>
2:391 paragraph 7 DCC	To the extent the seats on the Board are not divided in a balanced manner amongst men and women as referred to in Section 2:166 DCC, an explanation: (a) why the seats are not divided in a balanced manner, (b) what the Company has done to establish a balanced division, and (c) what the intentions of the Company are to establish a balanced division of seats in the future.
Management Report Decree	A corporate governance statement regarding: (a) compliance with the principles and best practice provisions of the Dutch Corporate Governance Code, (b) the most important characteristics of the management- and control system of the Company in respect of the process of financial reporting of the Company and the group of which the financials are consolidated, (c) the functioning of the General Meeting of Shareholders, its major powers and the shareholders' rights and the way they can be exercised, (d) the composition and functioning of the Board and its committees, (e) the diversity policy with respect to the composition of the Board (by which the Company describes the manner in which the diversity policy has been executed and the results thereof in the last financial year), and (f) the information referred to in Section 10(1)(c)(d)(f)(h) and (i) EU-Directive 2004/25 regarding public takeovers. <sup>105</sup>
Non-financial Information Decree	Notices regarding: (a) a brief description of the Company's business model, (b) a description of the policies pursued by the Company in relation to those matters, including due diligence processes implemented and the outcome of those policies regarding: (i) environmental, social and employee matters, (ii) respect for human rights and (iii) anti-corruption and anti-bribery matters, (c) the principal risks related to those matters referred to under (b) and linked to the Company's operations, (d) the non-financial key performance indicators

103 See part of the Code 'Compliance with the Code' and art. 2 Decree annual report (Besluit jaarverslag), Stb. 2004/747.

104 Dutch Corporate Governance Code, best practice provision 2.1.6.

105 See Section 2a(2) Management Report Decree. The corporate governance statement may form a part of the Report of the Board or an annex thereof, or a digitally accessible separate document to which the Report of the Board refers (Section 2(1) Management Report Decree).

relevant to the particular business of the Company. Where the Company does not pursue policies in relation to those matters referred to under (b), the non-financial notice shall provide a clear and reasoned explanation for not doing so.<sup>106</sup>

A reference to the Board resolutions pursuant to Clauses 31.2 and 31.2 of these By-Laws, to the extent of material significance.

In addition to the information above, the report of the Non-Executive Directors forms part of the Report of the Board.<sup>107</sup> The report of the Non-Executive Directors shall in any case contain the following information:<sup>108</sup>

- (a) an account of the involvement of the Non-Executive Directors in the establishment of the strategy, and the way in which the Non-Executive Directors monitor its implementation;<sup>109</sup>
- (b) if there is no internal audit function, the conclusions and any recommendations of the Audit Committee regarding the need for an internal audit function and assessment of alternative measures;<sup>110</sup>
- (c) the absenteeism rate at Board meetings and Committee meetings of each Non-Executive Director;<sup>111</sup>
- (d) a statement that in the opinion of the Non-Executive Directors Clauses 2.2(e) and 6.1 of these By-Laws have been complied with and which member or members of the Non-Executive Directors, if any, shall not be deemed independent;<sup>112</sup>
- (e) a reference as to how the evaluation of the Non-Executive Directors, its Committees and the individual Non-Executive Directors described in Clause 5.4 of these By-Laws has been carried out and what has been or will be done with the conclusions from the evaluations;<sup>113</sup>
- (f) a reference as to how the evaluation of the Board and the individual Executive Directors described in Clause 7.1 of these By-Laws has been carried out and what has been or will be done with the conclusions from the evaluations;<sup>114</sup>
- (g) the arguments for reappointment of a Non-Executive Directors after a period of eight years;<sup>115</sup>
- (h) for each Committee: a report on how it has performed its duties in the financial year; details of its existence, its composition, number of meetings and the main issues discussed;<sup>116</sup>
- (i) the following information on each Non-Executive Director:<sup>117</sup> (i) gender; (ii) age; (iii) nationality; (iv) chief position; (v) other positions to the extent relevant for the performance of

<sup>106</sup> Section 3 Non-financial Information Decree, Stb. 2017, 100.

<sup>107</sup> Dutch Corporate Governance Code, best practice provision 5.1.5.

<sup>108</sup> Dutch Corporate Governance Code, best practice provision 2.3.11.

<sup>109</sup> Dutch Corporate Governance Code, best practice provision 1.1.3.

<sup>110</sup> Dutch Corporate Governance Code, best practice provision 1.3.6.

<sup>111</sup> Dutch Corporate Governance Code, best practice provision 2.4.4. <sup>112</sup> Dutch Corporate Governance Code, best practice provision 2.1.10.

<sup>113</sup> Dutch Corporate Governance Code, best practice provision 2.2.8(i) and (iii).

<sup>114</sup> Dutch Corporate Governance Code, best practice provision 2.2.8(ii) and (iii).

<sup>115</sup> Dutch Corporate Governance Code, best practice provision 2.2.2.

<sup>116</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

<sup>117</sup> Dutch Corporate Governance Code, best practice provision 2.1.2.

his duties as Non-Executive Director; and (vi) date of initial appointment and term of appointment of relevant Non-Executive Director.

### **ANNEX 3**

#### **FULL BOARD RESOLUTIONS**

The following resolutions shall be taken by the Board as a whole; the decision-making with respect to these resolutions cannot be attributed to one or more Directors:

- (a) a resolution on the operational and financial aims of the Company, the strategy designed to achieve the aims, and the parameters to be applied in relation to the strategy;
- (b) the appointment of an Executive Director as CEO;
- (c) the allocation of duties of the Board to individual Directors;
- (d) the appointment and removal of the Company Secretary;
- (e) mergers, take-overs and joint ventures;
- (f) such resolutions as the Board may determine; and
- (g) all other acts that require the approval by legislation, the Articles of Association, the By-Laws, the Dutch Corporate Governance Code or any other applicable legislation.

## ANNEX 4

### BOARD RESOLUTIONS REQUIRING CONSENT OF NON-EXECUTIVE DIRECTORS

The following resolutions can only be taken with the consent of the majority of the Non-Executive Directors:

- (a) the allocation of duties of the Board to individual Directors;<sup>118</sup>
- (b) submitting the nomination for the appointment of the External Auditor to the General Meeting;<sup>119</sup>
- (c) the establishment of the Senior Management Team or other body that serves as an Executive Committee;<sup>120</sup>
- (d) the establishment and amendment of the terms of reference of each Committee of the Board;<sup>121</sup>
- (e) the amendment of the By-Laws;<sup>122</sup>
- (f) entering into transactions in which there are conflicts of interest with Directors that are of material significance to the Company and/or the relevant Director(s);<sup>123</sup>
- (g) entering into transactions with individuals or legal entities who hold at least ten percent of the shares in the Company;<sup>124</sup>
- (h) the appointment and removal of the Company Secretary;<sup>125</sup>
- (i) approving personal loans, guarantees or the like to Directors; and<sup>126</sup>
- (j) all other acts that require the consent of the majority of the Non-Executive Directors by legislation, the Articles of Association, the By-Laws, the Dutch Corporate Governance Code or any other applicable legislation.

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<sup>118</sup> Clause 4.2.

<sup>119</sup> Guidance document, par. 2 in combination with Dutch Corporate Governance Code, Principle 1.6.

<sup>120</sup> Clause 9.1.

<sup>121</sup> Clause 10.4.

<sup>122</sup> Clause 31.3.

<sup>123</sup> Clause 24.6; Guidance document, par. 2 in connection with Dutch Corporate Governance Code, best practice provision 2.6.3.

<sup>124</sup> Guidance document, par. 2 in connection with Dutch Corporate Governance Code, best practice provision 2.6.4.

<sup>125</sup> Clause 11.1; Guidance document, par. 2 in combination with Dutch Corporate Governance Code, best practice provision 2.3.10.

<sup>126</sup> Guidance document, par. 2 in connection with Dutch Corporate Governance Code, best practice provision 2.6.5.

## ANNEX 5

### INFORMATION THAT MUST BE PROVIDED TO THE AFM<sup>127</sup>

2:393 paragraph 1 DCC	Announcement of the proposed appointment of the accountant/accounting organization for the audit on the annual accounts
2:393 paragraph 2 DCC annual	Announcement of the withdrawal of the instructions to audit the accounts by the Company or an early termination by the accounting organization
5:25o paragraph 1 FSA after	Adopted annual accounts and the directors' report (within 5 days after the adoption)
5:25o paragraph 2 FSA	Announcement when the annual accounts have not been adopted within 6 months after the ending of the financial
year 5:25m paragraph 6 FSA	Regulated information that will be generally available
5:48 paragraph 8 FSA	Resignation of a Director <sup>128</sup>

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<sup>127</sup> This overview concerns information that must be provided on a regular base by the Company to the AFM; it does not relate to FSA obligations regarding information that must be provided in specific circumstances (such as price-sensitive information).

<sup>128</sup> Based upon the Dutch Corporate Governance Code, best practice provision 2.2.3, the Company should issue a press release when a Director retires early, in which statement the reasons for departure are stated

## **ANNEX 6**

### **PRESS RELEASES FOLLOWING THE DUTCH CORPORATE GOVERNANCE CODE**

- |                         |   |
|-------------------------|---|
| 1.6.5 CG Code<br>the    | Early termination of the relationship with the external audit firm;<br><br>press release should explain the reasons for this early termination  |
| 2.2.3 CG Code<br>should | In the event of the early retirement of a Director, the company<br><br>issue a press release mentioning the reasons for the departure.  |
| 2.8.3 CG Code<br>been   | If a private bid for a business unit or a participating interest has<br><br>made public, where the value of the bid exceeds the threshold<br>referred to in section 2:107a(1)(c) of the Dutch Civil Code, the<br>management board of the company should as soon as possible make<br>public its position on the bid and the reasons for this position. |