

**RANDSTAD N.V.**

**BY-LAWS SUPERVISORY BOARD**

**Adopted by the Supervisory Board on 24 July 2017**

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## INTRODUCTION

- 0.1 These By-Laws are established pursuant to article 17 of the Articles of Association and best practice provision 2.3.1 of the Dutch Corporate Governance Code.
- 0.2 These By-Laws are complementary to the provisions regarding the Supervisory Board and the Supervisory Board members as contained in relevant laws and regulations, the Articles of Association and the rules pertaining to the relationship between Executive Board and Supervisory Board as contained in the By-Laws of the Executive Board (which have been approved by the Supervisory Board).
- 0.3 These By-Laws are posted on the Company's website.<sup>1</sup>
- 0.4 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 OF THE SUPERVISORY BOARD; POSITIONS; COMMITTEES

#### 1. Supervisory Board Profile, Size, Expertise and Independence; Diversity Policy

- 1.1 The Supervisory Board shall prepare a profile of its size and composition, taking account of the nature of the Company and its affiliated enterprise (the **Supervisory Board Profile**). The Supervisory Board Profile shall address:
  - (a) the desired expertise and background of the Supervisory Board members;
  - (b) the desired diverse composition of the Supervisory Board as expressed in the diversity policy;
  - (c) the size of the Supervisory Board; and
  - (d) the independence of the Supervisory Board members.

The current Supervisory Board Profile is attached as **Annex 2**.

- 1.2 The Supervisory Board shall draw up a diversity policy with regard to the composition of the Supervisory Board that addresses the concrete 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>
- 1.3 The number of Supervisory Board members is determined by the Supervisory Board. In determining the number of members, the general criterion is that the Supervisory Board must be of a size that will enable it to function decisively and effectively as a sounding board for the Executive Board, and each member of the Supervisory Board must have the opportunity to contribute his or her particular expertise.
- 1.4 The Supervisory Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision 2.1.1.

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

- (a) each Supervisory Board member has the specific expertise required to perform his duties within the framework of his role within the Supervisory Board Profile;<sup>3</sup>
- (b) each Supervisory Board member is capable of assessing the broad outline of the overall policy;<sup>4</sup>
- (c) the Supervisory Board as a whole matches the Supervisory Board Profile and that the composition of the Supervisory Board is such that the requisite expertise, background, competencies and independence are present, enabling the Supervisory Board to carry out its duties properly;<sup>5</sup>
- (d) at least one Supervisory Board member shall have competence in accounting and auditing;<sup>6</sup>
- (e) its members are able to act critically and independently of one another, the Executive Board and any particular interests involved; in order to safeguard this the Supervisory Board is composed so that:<sup>7</sup>
  - (i) any one of the criteria referred to in clause 1.5(a) to (e) inclusive are applicable to at most one Supervisory Board member;
  - (ii) for each shareholder, or group of affiliated shareholders who directly or indirectly hold more than ten percent of the shares in the Company, there is at most one Supervisory Board member who can be considered to be affiliated with or representing them as stipulated in clause 1.5(f) and (g); and
  - (iii) the total number of Supervisory Board members to whom the criteria referred to in clause 1.5 are applicable shall account for less than half of the total number of Supervisory Board members; and
- (f) all Supervisory Board members observe the restrictions regarding the nature and number of their other positions as set forth in clause 21.

1.5 A Supervisory Board member is not independent if the following criteria of dependence apply to him. These criteria are that the Supervisory Board member concerned, his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:<sup>8</sup>

- (a) has been an employee or member of the Executive Board of the Company or an affiliated company in the five years prior to their appointment as Supervisory Board member;<sup>9</sup>
- (b) receives personal financial compensation from the Company, or an affiliated company, other than the compensation received for the work performed as a Supervisory Board member and in so far as this is not keeping 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 of a company in which a member of the Executive Board is a supervisory board member;

<sup>3</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

<sup>4</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

<sup>5</sup> Dutch Corporate Governance Code, Principle 2.1.

<sup>6</sup> Audit Committee Decree 2016, article 2(3).

<sup>7</sup> Dutch Corporate Governance Code, best practice provision 2.1.7.

<sup>8</sup> Dutch Corporate Governance Code, best practice provision 2.1.8.

<sup>9</sup> This provision is interpreted by the Company in the way that temporary employment work with (a client of) the Company does not fall within the scope of the term employee.

- (e) has temporarily managed the Company during the previous twelve months due to vacant seats on the Executive Board, or because Executive Board members 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 cooperating with him 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 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.

## **2. (Re)Appointment; Term of Office; Resignation**

- 2.1 The members of the Supervisory Board are appointed by the General Meeting of Shareholders.
- 2.2 The Supervisory Board nominates one or more candidates for appointment, taking into account the diversity policy adopted by the Supervisory Board with regard to its composition<sup>10</sup>. Any nomination or recommendation by the Supervisory Board for appointment or reappointment of a Supervisory Board member must be in accordance with clause 1, including the Supervisory Board Profile. On reappointment, account must be taken of the candidate's past performance as a Supervisory Board member.<sup>11</sup>
- 2.3 A nomination or recommendation to the General Meeting of Shareholders to appoint a Supervisory Board member 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 Supervisory Board member. Furthermore, the legal entities of whose supervisory boards he is also a member of must be listed; if those include legal entities which belong to the same group, reference to that group is sufficient. The recommendation or nomination for appointment or reappointment shall state the reasons on which it is based.<sup>12</sup>
- 2.4 A Supervisory Board member shall be appointed for a period of four years and may then be reappointed once for a period of four years. A Supervisory Board member 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 Supervisory Board.<sup>13</sup>
- 2.5 A Supervisory Board member nominated for appointment shall attend the General Meeting of Shareholders at which votes will be cast on his appointment.<sup>14</sup>
- 2.6 Supervisory Board members shall retire periodically in accordance with a rotation plan to be drawn up by the Supervisory Board in order to avoid, as far as possible, a situation in which many Supervisory Board members retire at the same time.<sup>15</sup> The current rotation plan is attached as **Annex 3**. The Supervisory Board may at any time amend the rotation plan. Amendments to the rotation plan, however, do not permit a sitting member of the Supervisory Board to remain in office for a longer period than appointed for, or allow that he be asked to retire before his term has expired.<sup>16</sup>

<sup>10</sup> Dutch Corporate Governance Code, best practice provision 2.1.5.

<sup>11</sup> Section 2:142 Dutch Civil Code.

<sup>12</sup> Section 2:142 Dutch Civil Code.

<sup>13</sup> Dutch Corporate Governance Code, best practice provision 2.2.2.

<sup>14</sup> Dutch Corporate Governance Code, best practice provision 4.1.8.

<sup>15</sup> Dutch Corporate Governance Code, best practice provision 2.2.4.

<sup>16</sup> Dutch Corporate Governance Code, best practice provision.2.2.4.

- 2.7 The Supervisory Board shall ensure that the Company has a sound plan in place for the succession of Supervisory Board members that is aimed at retaining the balance in the requisite expertise, experience, diversity and independence. Due regard must be given to the Supervisory Board Profile in drawing up that plan.<sup>17</sup>
- 2.8 A Supervisory Board member shall retire early in the event of unacceptable performance, structural incompatibility of interests, and in any other instances where deemed necessary by the Supervisory Board.<sup>18</sup>
- 2.9 A Supervisory Board member who is temporarily charged with the management of the Company when seats on the Executive Board are vacant or Executive Board members are unable to fulfil their duties, shall resign from the Supervisory Board.<sup>19</sup>

### **3. Chairman and Vice-Chairman**

- 3.1 The Supervisory Board shall elect a Chairman and a Vice-Chairman from among its members. The Chairman shall not be a former member of the Executive Board and shall be independent within the meaning of clause 1.5.<sup>20</sup>
- 3.2 The Vice-Chairman replaces, and assumes the powers and duties of, the Chairman in the latter's absence. The Vice-Chairman acts as a contact for individual Supervisory Board members and Executive Board members concerning the functioning of the Chairman.<sup>21</sup>
- 3.3 The Chairman shall act as the spokesman of the Supervisory Board and is the main contact on behalf of the Supervisory Board for the CEO, the Executive Board as a whole and for the shareholders.<sup>22</sup> The CEO and the Chairman shall meet on a regular basis.<sup>23</sup> As a general rule, the Chairman presides over General Meetings of Shareholders.
- 3.4 Without prejudice to the generality of clause 3.3, the Chairman in any case sees to it that:<sup>24</sup>
- (a) Supervisory Board members, when appointed, follow the introduction programme and, as needed, additional education or training programmes;<sup>25</sup>
  - (b) the Supervisory Board members receive all information necessary for the proper performance of their duties in a timely manner;
  - (c) there is sufficient time for deliberation and decision-making by the Supervisory Board;<sup>26</sup>
  - (d) the Supervisory Board and the Committees function properly;
  - (e) the functioning of Executive Board members and Supervisory Board members is assessed at least annually;
  - (f) the Supervisory Board elects a Vice-Chairman;
  - (g) the Supervisory Board has proper contact with the Executive Board ;

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<sup>17</sup> Dutch Corporate Governance Code, best practice provision 2.2.4 also in connection with best practice provision 2.1.1.

<sup>18</sup> Dutch Corporate Governance Code, best practice provision 2.2.3.

<sup>19</sup> Dutch Corporate Governance Code, best practice provision 2.3.9.

<sup>20</sup> Dutch Corporate Governance Code, best practice provision 2.1.9.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision 2.4.3.

<sup>22</sup> Dutch Corporate Governance Code, best practice provision 2.4.3.

<sup>23</sup> Dutch Corporate Governance Code, best practice provision 2.3.6.

<sup>24</sup> Dutch Corporate Governance Code, best practice provision 2.3.6.

<sup>25</sup> Dutch Corporate Governance Code, best practice provision 2.4.4.

<sup>26</sup> Dutch Corporate Governance Code, best practice provision 2.4.3.

- (h) the Executive Board performs activities in respect of culture;
- (i) the Supervisory Board recognises signs from the enterprise affiliated with the Company and ensures that any (suspicion of) material misconduct and irregularities are reported to the Supervisory Board without delay;
- (j) the General Meeting of Shareholders proceeds in an orderly and efficient manner;
- (k) effective communication with shareholders is assured; and
- (l) the Supervisory Board is involved closely, and at an early stage, in any merger or takeover processes.

3.5 In addition, the Chairman is primarily responsible for:

- (a) ensuring the proper discharge by the Supervisory Board of its duties;
- (b) determining the agenda of Supervisory Board meetings and chairing such meetings;
- (c) consulting with external advisors appointed by the Supervisory Board;
- (d) addressing problems related to the performance of individual Supervisory Board members; and
- (e) addressing internal disputes and conflicts of interest concerning individual members of the Supervisory Board and the Executive Board and the possible resignation of such members as a result.

#### **4. Company Secretary<sup>27</sup>**

- 4.1 The Supervisory Board is assisted by the Company Secretary, who is appointed by the Executive Board, after approval by the Supervisory Board. The Company Secretary may be removed by the Executive Board after approval by the Supervisory Board.
- 4.2 All Supervisory Board members have access to the advice and services of the Company Secretary.
- 4.3 The Company Secretary sees to it that correct Supervisory Board procedures are followed and that the obligations of the Supervisory Board under the law, the Articles of Association and the by-laws are complied with. The Company Secretary shall support the Chairman in the organisation of the affairs of the Supervisory Board (information, agenda, reporting of meetings, evaluation, training programme, etc.). The Company Secretary is as such also the secretary of the Supervisory Board.
- 4.4 The Company Secretary may delegate his duties under these By-Laws, or parts thereof, to one (or more) deputy (or deputies) appointed by him in consultation with the CEO and the Chairman.
- 4.5 If the Company Secretary also undertakes work for the Executive Board and notes that the interests of the Executive Board and the Supervisory Board diverge, as a result of which it is unclear which interests the Company Secretary should represent, he shall report this to the Chairman.
- 4.6 The Company Secretary also performs activities for the Executive Board, as provided for in the By-Laws of the Executive Board.

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<sup>27</sup> See also Clause 4 of the Executive Board By-Laws and Dutch Corporate Governance Code, best practice provision 2.3.10.

## 5. Committees

- 5.1 The Supervisory Board may appoint standing and/or ad hoc Committees from among its members, which are charged with tasks specified by the Supervisory Board. The composition of any Committee is determined by the Supervisory Board. The Supervisory Board shall, in any event, establish an Audit Committee, and a Remuneration and Nomination Committee.<sup>28</sup> The ad hoc Strategy Committee intermittently prepares the discussion of the strategy in the full Supervisory Board.
- 5.2 The Supervisory Board remains collectively responsible for decisions prepared by Committees from among its members.<sup>29</sup> The Supervisory Board may attribute powers to a Committee. A Committee may only exercise such powers as are explicitly attributed to it and may never exercise powers beyond those exercisable by the Supervisory Board as a whole. The Supervisory Board may, partial or in full, revoke any power attributed to a Committee.
- 5.3 Each Committee must inform the Supervisory Board in a clear and timely way of the manner in which it has used delegated authority and of any major development in the area of its responsibilities. All Supervisory Board members have unrestricted access to all Committee meetings and records. The Supervisory 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>30</sup>
- 5.4 The Supervisory Board shall establish terms of reference for the Audit Committee and the Remuneration and Nomination Committee and may amend these at any time. 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>31</sup> The current terms of reference for the Audit Committee are attached as **Annex 8** and the current terms of reference for the Remuneration and Nomination Committee are attached as **Annex 9**.
- 5.5 The Supervisory Board as a rule has no "delegated Supervisory Board member" (*gedelegeerd commissaris*). Under special circumstances, however, the Supervisory Board may resolve to appoint a "delegated Supervisory Board member", in which case best practice provision 2.3.8 of the Dutch Corporate Governance Code shall apply in full.

## CHAPTER II DUTIES AND POWERS

### 6. General Duties and Powers; Relation with the Executive Board

- 6.1 The Supervisory Board supervises the manner in which the Executive Board implements the long-term value creation strategy. The Supervisory Board regularly discusses the strategy, the implementation of the strategy and the principal risks associated with it.<sup>32</sup>
- 6.2 The Supervisory Board is charged with the supervision of the Executive Board, the general course of affairs of the Company and the affiliated enterprise. The Supervisory Board assists the Executive Board with advice.<sup>33</sup> The responsibility for the proper performance of its duties is vested collectively in the Supervisory Board.

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<sup>28</sup> Dutch Corporate Governance Code, Principle 2.3 and best practice provision 2.3.2.

<sup>29</sup> Dutch Corporate Governance Code, best practice provision 2.3.2.

<sup>30</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

<sup>31</sup> Dutch Corporate Governance Code, best practice provision 2.3.3.

<sup>32</sup> Dutch Corporate Governance Code, best practice provision 2.3.2

<sup>33</sup> Section 2:140 (2) DCC.



- 6.3 In performing its duties the Supervisory Board shall act in accordance with the interests of the Company and the affiliated enterprise, taking into consideration the Company's core values which includes the simultaneous promotion of the interests of all stakeholders.<sup>34</sup>
- 6.4 The Supervisory Board members shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, without jeopardising the responsibilities of individual Supervisory Board members.
- 6.5 The Supervisory Board stimulates a culture of openness and accountability between the Supervisory Board and the Executive Board.
- 6.6 Notwithstanding the provisions of clause 7.3 of these By-Laws and clause 10.4 of the By-Laws of the Executive Board, the Supervisory Board and its individual members each have responsibility for obtaining all information from the Executive Board, the internal audit function and the External Auditor needed to enable them to carry out their duties properly as a supervisory body. If deemed necessary by the Supervisory Board, it may obtain information from officers and external advisers of the Company. The Company shall provide the necessary means for this purpose. The Supervisory Board may require that certain officers and external advisers attend its meetings.<sup>35</sup>
- 6.7 Each member of the Supervisory Board has access to the books, records and offices of the Company in so far as required or as is useful for the proper performance of his duties. The Supervisory Board member shall exercise this right in consultation with the Chairman and the Company Secretary, save where the applicable terms of reference of a Committee dictate otherwise.

## **7. Duties regarding the Activities of the Executive Board**

- 7.1 The supervision of the Executive Board by the Supervisory Board shall include *inter alia*:
- (a) the long-term value creation of the Company and its affiliated enterprise and weighing of the interests of stakeholders involved;<sup>36</sup>
  - (b) activities of the Executive Board regarding the creation of a culture aimed at long-term value creation of the Company and its affiliated enterprise;<sup>37</sup>
  - (c) the internal audit function;<sup>38</sup>
  - (d) the effectiveness of the internal risk management and control systems;<sup>39</sup>
  - (e) the integrity and quality of the financial reporting;<sup>40</sup>
  - (f) the information- and communication technology (ICT) systems of the Company and the managing of the risks associated with cybersecurity;<sup>41</sup>
  - (g) the safeguarding of the Executive Board's expertise and responsibilities and process of providing information to the Supervisory Board;<sup>42</sup>

<sup>34</sup> Section 2:140 (2) DCC and Dutch Corporate Governance Code, Principle 1.1.

<sup>35</sup> Dutch Corporate Governance Code, best practice provision 2.4.8 and 2.4.9.

<sup>36</sup> Dutch Corporate Governance Code, Principle 1.1 and best practice provision 1.1.2.

<sup>37</sup> Dutch Corporate Governance Code, Principle 2.5.

<sup>38</sup> Dutch Corporate Governance Code, Principle 1.3.

<sup>39</sup> Dutch Corporate Governance Code, Principle 1.5.

<sup>40</sup> Dutch Corporate Governance Code, Principle 1.5.

<sup>41</sup> See Article 6.1(g) Executive Board By-laws.

<sup>42</sup> See Dutch Corporate Governance Code, best practice provision 2.1.3.

- (h) the establishment and maintenance of internal procedures which ensure that all relevant information is known to the Executive Board and the Supervisory Board in a timely fashion;<sup>43</sup>
- (i) the risks associated with the remuneration structure for employees of the Company and its affiliated enterprise; and
- (j) the relation with the shareholders of the Company<sup>44</sup>, and the compliance with laws and regulations.

7.2 The resolutions of the Executive Board listed in **Annex 4** are subject to the approval of the Supervisory Board.

7.3 The Executive Board shall provide the Supervisory Board each quarter, in a timely manner, with a report with detailed information on the financial situation and development of the Company and its Subsidiaries, and among other things, mergers and acquisitions, material investments, major organizational issues, regulatory developments and other relevant issues, which will be drafted in the format agreed upon from time to time between the Executive Board and the Supervisory Board.

## **8. Duties regarding the Members and the Performance of the Executive Board and the Supervisory Board**

8.1 The duties of the Supervisory Board regarding the members of the Executive Board specifically include:

- (a) the selection and nomination of members of the Executive Board,<sup>45</sup> the submission of proposals for the remuneration policy for members of the Executive Board 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 Board members;<sup>46</sup>
- (b) determination of the number of Executive Board members, the designation of the Chairman of the Executive Board<sup>47</sup>, the approval (or proposal, where useful) of changes to the division of tasks within the Executive Board or of the By-Laws of the Executive Board;<sup>48</sup>
- (c) the assessment of the functioning of the Executive Board and its individual members; the approval of additional positions of the Executive Board to the extent required under the By-Laws of the Executive Board;<sup>49</sup> and
- (d) to address conflict of interest issues between the Company and members of the Executive Board.<sup>50</sup>

8.2 The duties of the Supervisory Board in relation to the members of the Supervisory Board specifically include:

<sup>43</sup> Dutch Corporate Governance Code, best practice provision 2.4.6.

<sup>44</sup> Dutch Corporate Governance Code, best practice provision 4.1.1.

<sup>45</sup> See also clause 1.1 of the Executive Board By-Laws and the terms of reference of the Remuneration and Nomination Committee.

<sup>46</sup> See also clause 12 of these By-Laws, the terms of reference of the Remuneration and Nomination Committee and clause 18 of the Executive Board By-Laws.

<sup>47</sup> See the options in clause 2.1 of the Executive Board By-Laws.

<sup>48</sup> See also clause 1 of the Executive Board By-Laws.

<sup>49</sup> See also clause 19 of the Executive Board By-Laws.

<sup>50</sup> See also clause 16 of the Executive Board By-Laws; Dutch Corporate Governance Code, best practice provision 2.6.1.

- (a) the selection and nomination of members of the Supervisory Board and proposals to the General Meeting of Shareholders for the remuneration of members of the Supervisory Board;
- (b) the determination of the number of Supervisory Board members, the appointment of a Chairman and Vice-Chairman, the establishment of Committees and defining their role, the evaluation of the functioning of the Supervisory Board, its Committees and the individual members of the Supervisory Board (including an evaluation of the of the Supervisory Board Profile and the introduction, education and training programme); the approval of other positions of Supervisory Board members to the extent required under clause 21; and
- (c) to address conflict of interest issues between the Company and members of the Supervisory Board (see also clause 3.5(e)).<sup>51</sup>

8.3 At least once a year the Supervisory Board shall, without the Executive Board being present, evaluate its own functioning, the functioning of its Committees and that of the individual Supervisory Board members, and discuss the conclusions that must be drawn on the basis thereof. Attention shall be paid to:

- (a) substantive aspects, the process, the mutual interaction and the interaction with the Executive Board;
- (b) events that occurred in practice from which lessons may be learned; and
- (c) the desired profile, the composition, competencies and expertise of the Supervisory Board.<sup>52</sup>

8.4 At least once a year the Supervisory Board shall, without the Executive Board being present, evaluate the functioning of the Executive Board as a whole and the functioning of its individual members, and discuss the conclusions that must be drawn on the basis thereof, such also in light of the succession of Executive Board members.<sup>53</sup>

## **9. Certain other Duties of the Supervisory Board**

9.1 The other duties of the Supervisory Board include:

- (a) duties regarding the External Auditor as described in clause 11 and the terms of reference of the Audit Committee;
- (b) the handling of complaints about actual (or suspected) misconduct regarding the functioning of members of the Executive Board;<sup>54</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 Executive Board itself is involved, the Supervisory Board may initiate its own investigation into any signs of misconduct and irregularities, and coordinate this investigation.<sup>55</sup>
- (d) the taking of measures for the temporary management of the Company if a member of the Executive Board is absent or prevented from performing his duties;

<sup>51</sup> See also clause 18 of these By-Laws.

<sup>52</sup> Dutch Corporate Governance Code, best practice provision 2.2.6.

<sup>53</sup> Dutch Corporate Governance Code, best practice provision 2.2.7.

<sup>54</sup> See also clause 5.6 Executive Board By-Laws; Dutch Corporate Governance Code, best practice provision 2.5.3.

<sup>55</sup> Dutch Corporate Governance Code, best practice provision 2.6.4.

(e) other duties the Supervisory Board is charged with under legislation, the Articles of Association, these By-Laws, the terms of reference of a Committee or the By-Laws of the Executive Board.

9.2 The Supervisory Board shall draw up a report to be included in the annual statement of the Company describing its activities in the financial year concerned and containing the specific statements and information listed in **Annex 5**.<sup>56</sup>

9.3 The Supervisory Board and the Executive Board are jointly responsible for the corporate governance structure of the Company, compliance with the Dutch Corporate Governance Code and any other applicable legislation and regulations.<sup>57</sup>

## **10. Supervision of Financial Reporting**

10.1 The Supervisory Board supervises compliance with internal procedures established by the Executive Board for the preparation and publication of the Annual Report, the Annual Accounts, the interim figures and ad hoc financial information.<sup>58</sup>

10.2 The Audit Committee shall regularly, and in any event as soon as possible, provide the Supervisory Board with reports on the Annual Accounts, and the interim figures, which will then be discussed at a meeting of the Supervisory Board. The Annual Accounts, the Report of the Executive Board and the report of the Supervisory Board for the year just ended shall be discussed in a meeting with the Supervisory 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 Executive Board with the Supervisory Board within two months of the end of this period. These meetings are prepared by the Audit Committee.

10.3 The Audit Committee shall report to the Supervisory Board on its deliberations and findings regarding the issues referred to in Article 5.2 of the terms of reference of the Audit Committee, after which they will be discussed in a Supervisory Board meeting.<sup>59</sup>

10.4 The External Auditor shall in any event attend the part of the meeting of the Supervisory Board at which the report of the External Auditor with respect to the audit of the Annual Accounts is discussed.<sup>60</sup> The Supervisory Board shall be permitted to examine the most important points of discussion arising between the External Auditor and the Executive Board based on the draft management letter or the draft audit report.<sup>61</sup>

10.5 The line of contact between the Supervisory 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 duties, he discovers or suspect misconduct or irregularities within the Company and its affiliated enterprise. If the actual (or suspected) misconduct or irregularity pertains to the functioning of an Executive Board member, employees can report this directly to the Chairman.<sup>62</sup>

10.6 The Supervisory Board sees to it that the recommendations made by the External Auditor are considered carefully by the Executive Board and the Supervisory Board and, to the extent accepted, that they are actually carried out by the Executive Board. This supervision may be delegated to the Audit Committee.

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<sup>56</sup> Dutch Corporate Governance Code, best practice provision 2.3.11.

<sup>57</sup> See Dutch Corporate Governance Code, part 'Compliance with the Code'.

<sup>58</sup> Dutch Corporate Governance Code 2009, best practice provision V.1.1.

<sup>59</sup> Dutch Corporate Governance Code, best practice provision 1.5.3 and 1.5.4.

<sup>60</sup> Dutch Corporate Governance Code, best practice provision 1.7..6.

<sup>61</sup> Dutch Corporate Governance Code, best practice provision 1.7.5.

<sup>62</sup> Dutch Corporate Governance Code, best practice provision 2.6.3.

## 11. Duties regarding Nomination and Assessment of the External Auditor

- 11.1 The External Auditor shall be appointed by the General Meeting of Shareholders.<sup>63</sup> The Supervisory Board nominates a candidate for this appointment to the General Meeting of Shareholders and may recommend replacement of the External Auditor.<sup>64</sup> The Supervisory 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.<sup>65</sup>
- 11.2 The Supervisory Board gives the External Auditor a general idea of the content of the reports relating to their functioning.<sup>66</sup> The Audit Committee shall report annually to the Supervisory Board on the functioning of, and the developments in, the relationship with the External Auditor. The Audit Committee shall advise the Supervisory 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 Executive Board observations. The Supervisory Board shall take this into account when deciding its nomination to the General Meeting of Shareholders for the appointment of an External Auditor.<sup>67</sup>
- 11.3 The main conclusions of the Supervisory 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 Supervisory 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>
- 11.4 The Supervisory 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 Supervisory Board or Executive Board<sup>70</sup>, to appoint the External Auditor, the Supervisory Board will on behalf of the Company enter into an agreement to that effect with the External Auditor.
- 11.5 The External Auditor Independence Policy is attached as **Annex 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 the Executive Board By-Laws, these By-Laws and the terms of reference of the Audit Committee, that he agrees with and will cooperate fully with their implementation.

## 12. Remuneration of Executive Board Members

- 12.1 The Supervisory Board shall be responsible for formulating the remuneration policy of the Executive Board on a proposal by the Remuneration and Nomination Committee<sup>71</sup>, and its implementation. The remuneration policy, including severance payment, shall be clear and understandable, shall focus on long-term value creation for the Company and its affiliated enterprise and take into account the

<sup>63</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>64</sup> See also clause 3.1 of the Audit Committee Terms of Reference.

<sup>65</sup> See Annex 6 of the Executive Board By-Laws.

<sup>66</sup> Dutch Corporate Governance Code, best practice provision 1.6.2.

<sup>67</sup> Dutch Corporate Governance Code, best practice provision 1.6.1.

<sup>68</sup> Dutch Corporate Governance Code, best practice provision 1.6.4.

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

<sup>70</sup> See Section 2:393(2) DCC.

<sup>71</sup> Dutch Corporate Governance Code, best practice provision 3.1.1.

internal pay ratios within the enterprise. The remuneration policy shall not encourage Executive Board members to act in their own interest, nor to take risks that are not in line with the strategy formulated and the risk appetite that has been established.<sup>72</sup>

- 12.2 The Supervisory Board shall determine the remuneration of the individual Executive Board members on a proposal by the Remuneration and Nomination Committee, within the scope of the remuneration policy adopted by the General Meeting of Shareholders.<sup>73</sup>
- 12.3 The Remuneration and Nomination Committee shall annually on behalf of the Supervisory Board prepare a Remuneration Report, in which the Supervisory Board renders account of the implementation of the remuneration policy in a transparent manner.<sup>74</sup> This report shall also contain the information as mentioned in **Annex 6**.<sup>75</sup>
- 12.4 The Supervisory Board shall have the power to adjust upwards or downwards the value of a variable remuneration component conditionally awarded in a particular financial year if payment thereof is unacceptable according to standards of reasonableness and fairness.<sup>76</sup>
- 12.5 The Supervisory Board may recover from the Executive Board members any variable remuneration awarded on the basis of incorrect financial data or other data about the realisation of targets, or circumstances that such remuneration was made conditional to, that underlie the variable remuneration (claw back clause).<sup>77</sup>
- 12.6 The main elements of the contract of an Executive Board member with the Company shall, after its conclusion, be published on the Company's website at the latest at the date of the notice convening the General Meeting of Shareholders at which the appointment of the Executive Board member concerned will be proposed.<sup>78</sup>

### **13. Relation with the Shareholders**

- 13.1 Where appropriate, the Supervisory Board shall ensure that all shareholders and other parties in the financial markets will be provided with equal and simultaneous information about matters that may influence the share price.<sup>79</sup>
- 13.2 The Executive Board and the Supervisory Board shall ensure that the General Meeting of Shareholders is adequately provided with information.<sup>80</sup> The Executive Board and the Supervisory Board shall endeavour to procure that the General Meeting of Shareholders is provided with all requested information in time, unless this would be contrary to an overriding interest of the Company. If the Executive Board or the Supervisory Board invoke an overriding interest, they must give reasons.<sup>81</sup>
- 13.3 A proposal for approval or authorisation by the General Meeting of Shareholders shall be explained in writing. The Executive Board and the Supervisory 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>82</sup>

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<sup>72</sup> Dutch Corporate Governance Code, Principle 3.1.

<sup>73</sup> Dutch Corporate Governance Code, Principle 3.2 and best practice provision 3.2.1; Section 2:135 Dutch Civil Code.

<sup>74</sup> Dutch Corporate Governance Code, Principle 3.4; see also provision 16.4 of these By-Laws.

<sup>75</sup> Dutch Corporate Governance Code, best practice provision 3.4.1.

<sup>76</sup> Section 2:135(6) Dutch Civil Code.

<sup>77</sup> Section 2:135(8) Dutch Civil Code.

<sup>78</sup> Dutch Corporate Governance Code, best practice provision 3.4.2.

<sup>79</sup> See also article 5:25i FSA and article 5:53 paragraph 1 FSA (*Wft*).

<sup>80</sup> Dutch Corporate Governance Code, Principle 4.2.

<sup>81</sup> Dutch Corporate Governance Code, best practice provision 4.2.1.

<sup>82</sup> Dutch Corporate Governance Code, best practice provision 4.1.4.

- 13.4 The Executive Board and the Supervisory Board ensure that each substantial change in the corporate governance structure of the Company and in the compliance with the Dutch Corporate Governance Code will be dealt with as separate agenda items.<sup>83</sup>
- 13.5 The Executive Board and the Supervisory Board ensure compliance with all applicable legislation and regulations with respects to the rights of the General Meeting of Shareholders and the related rights of individual shareholders.
- 13.6 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 Board shall ensure that the Supervisory Board is involved in the takeover process and/or the change in structure closely and in a timely fashion.<sup>84</sup>
- 13.7 If a takeover bid has been announced or made for (depository receipts for) shares in the Company and the Executive Board receives a request from a third competing bidder for information regarding the Company, the Executive Board shall discuss such request without delay with the Supervisory Board.<sup>85</sup>
- 13.8 The members of the Supervisory Board shall be present at the General Meetings of Shareholders, unless they are unable to attend for important reasons. Under certain circumstances, a member of the Supervisory Board may attend the General Meeting of Shareholders through means of electronic communication.
- 13.9 The Supervisory 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>86</sup>
- 13.10 The General Meetings of Shareholders are presided over by the Chairman or, in his absence, the Vice-Chairman. The Supervisory Board may designate someone else to preside over the meeting.
- 13.11 The Supervisory 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 the meeting, following which the shareholders have another three months in which to respond to the report. The report is then adopted in the manner provided for in the Articles of Association,<sup>87</sup> by the chairman and the secretary of the meeting. The provisions of this clause 13.11 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>88</sup>
- 13.12 A resolution of the General Meeting of Shareholders may be disclosed externally through a statement from the Chairman.

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<sup>83</sup> Dutch Corporate Governance Code, best practice provision 4.1.3(vii).

<sup>84</sup> Dutch Corporate Governance Code, best practice provision 2.8.1.

<sup>85</sup> Dutch Corporate Governance Code, best practice provision 2.8.2.

<sup>86</sup> Dutch Corporate Governance Code, best practice provision 4.1.9.

<sup>87</sup> Dutch Corporate Governance Code, best practice provision 4.1.9.

<sup>88</sup> See Section 5:25m paragraph 3 and 4 Wft.

**CHAPTER III**  
**SUPERVISORY BOARD MEETINGS; DECISION-MAKING**

**14. Frequency, Notice, Agenda and Venue of Meetings**

- 14.1 The Supervisory Board shall meet as often as deemed necessary for the proper functioning of the Supervisory Board. The Supervisory Board shall meet at least six times a year. Meetings shall be scheduled annually as much as possible in advance. The Supervisory Board shall also meet earlier than scheduled if this is deemed necessary by the Chairman, two other members of the Supervisory Board, or the Executive Board.
- 14.2 Meetings of the Supervisory Board are in principle called by the Company Secretary on behalf of the Chairman. Save in urgent cases to be determined by the Chairman the agenda and enclosures for a meeting shall be sent to all Supervisory Board members well in advance of the meeting. For each item on the agenda an explanation in writing shall be provided, where possible, and/or other related documentation will be attached. The Chairman shall in principle consult on the content of the agenda with the CEO prior to convening the meeting.
- 14.3 Each Supervisory Board member, the CEO, and the Executive Board collectively, has the right to request that an item be placed on the agenda for a Supervisory Board meeting.
- 14.4 Supervisory Board meetings are generally held at the offices of the Company, but may also take place elsewhere. In addition, meetings of the Supervisory 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.

**15. Attendance of and Admittance to Meetings**

- 15.1 The Executive Board shall be requested to attend as many of the Supervisory Board meetings as possible, to the extent the Supervisory Board does not indicate that it wishes to meet in the absence of the Executive Board.
- 15.2 A Supervisory Board member may be represented at Supervisory Board meetings by another Supervisory Board member holding a proxy in writing. The existence of such authorisation must be proved satisfactorily to the chairman of the meeting.
- 15.3 If a Supervisory Board member is frequently absent from Supervisory Board meetings he shall be held to account on this by the Chairman.<sup>89</sup>

**16. Chairman of the Meeting; Reports**

- 16.1 Supervisory Board meetings are presided over by the Chairman or, in his absence, the Vice-Chairman. If both are absent, one of the other Supervisory Board members, designated by a majority of votes cast by the Supervisory Board members present at the meeting, shall preside.
- 16.2 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up a report on the proceedings at the meeting. The report shall provide insight into the decision-making process at the meeting. The report shall be adopted by the Supervisory Board at the next meeting.

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<sup>89</sup> Dutch Corporate Governance Code, best practice provision 2.4.4.



## **17. Decision-making within the Supervisory Board**

- 17.1 The Supervisory Board members shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously.
- 17.2 Each Supervisory Board member has the right to cast one vote.
- 17.3 Where unanimity cannot be reached and the law, the Articles of Association or these By-Laws do not prescribe a larger majority, all resolutions of the Supervisory Board are adopted by an absolute majority of the votes cast. In the event of a tie, the Chairman has the deciding vote if more than two Supervisory Board members are present or represented. At a meeting, the Supervisory Board may only pass resolutions if the majority of the Supervisory Board members then in office are present or represented.
- 17.4 In general, resolutions of the Supervisory Board are adopted at a Supervisory Board meeting.
- 17.5 Supervisory Board resolutions may also be adopted in writing, provided the proposal concerned is submitted to all Supervisory Board members then in office and none of them objects to this form of adoption. Adoption of resolutions in writing shall be effected by statements in writing, which can also be issued through a proxy, from all the Supervisory Board members. A statement from a Supervisory Board member who wishes to abstain from voting on a particular resolution which is adopted in writing must reflect the fact that he does not object to this form of adoption.
- 17.6 The Supervisory Board may deviate from the provisions of clauses 17.3 (last sentence), 17.4 and 17.5 if this is deemed necessary by the Chairman, considering the urgent nature and other circumstances of the case, provided that all Supervisory Board members are allowed the opportunity to participate in the decision-making process. The Chairman and the Company Secretary shall then prepare a report on a resolution so adopted, which shall be added to the documents for the next meeting of the Supervisory Board.
- 17.7 A resolution adopted by the Supervisory Board may be evidenced outside the Company through a statement from the Chairman.

## **CHAPTER IV OTHER PROVISIONS**

### **18. Conflicts of Interests of Supervisory Board Members**

- 18.1 A Supervisory Board member is alert to conflicts of interest and shall in any case not:
- (a) enter into competition with the Company;
  - (b) demand or accept (substantial) gifts from the Company for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
  - (c) provide unjustified advantages to third parties to the detriment of the Company; or
  - (d) take advantage of business opportunities to which the Company is entitled for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.<sup>90</sup>

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<sup>90</sup> Dutch Corporate Governance Code, best practice provision 2.7.1.

- 18.2 A conflict of interest may exist if the Company intends to enter into a transaction with a legal entity:
- (a) in which a member of the Supervisory Board personally has a material financial interest, or
  - (b) which has a member of the management board or the supervisory board who has a relationship under family law<sup>91</sup> with a Supervisory Board member.<sup>92</sup>
- 18.3 A Supervisory Board member 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 him as a member of the Supervisory Board to the Chairman and shall provide all relevant information, including information concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The Chairman of the Supervisory Board shall without delay report any conflict of interest or potential conflict of interest that he has to the Vice-Chairman. The Supervisory Board member concerned shall not take part in the assessment by the Supervisory Board of whether a conflict of interest exists.<sup>93</sup>
- 18.4 A Supervisory Board member shall not take part in any deliberation and decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the Company.<sup>94</sup>
- 18.5 A Supervisory Board member who in connection with a (potential) conflict of interests does not exercise the duties and powers that he would otherwise have as a Supervisory Board member, will insofar be regarded as a Supervisory Board member who is unable to perform his duties (*belet*).<sup>94</sup>
- 18.6 All transactions in which there are conflicts of interest with Supervisory Board members shall be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or to the relevant Supervisory Board members require the approval of the Supervisory Board.<sup>95</sup>
- 18.7 The Supervisory Board is responsible for the decision-making on dealing with conflicts of interest regarding Executive Board members, Supervisory Board members and majority shareholders in relation to the Company.<sup>96</sup>

## 19. Remuneration of Supervisory Board Members

- 19.1 The remuneration of the Supervisory Board members is determined by the General Meeting of Shareholders. The Supervisory Board shall from time to time submit clear and understandable proposals on its remuneration to the General Meeting of Shareholders.<sup>97</sup> If a Supervisory Board member is required to charge VAT on his fees, this will be paid by the Company.
- 19.2 The remuneration of a Supervisory Board member may not depend on the results of the Company.<sup>98</sup> A Supervisory Board member may not be awarded remuneration in the form of shares and/or rights to shares in the Company's capital.<sup>99</sup>
- 19.3 Apart from their remuneration, Supervisory Board members shall be reimbursed for all reasonable costs incurred in connection with their attendance of meetings.

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<sup>91</sup> A relation under family-law consists between a child, his parents and their blood relatives (Section 1:197 Dutch Civil Code).

<sup>92</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, first paragraph.

<sup>93</sup> Dutch Corporate Governance Code, best practice provision 2.6.2.

<sup>94</sup> Section 2:140(5) Dutch Civil Code.

<sup>95</sup> Dutch Corporate Governance Code, best practice provision 2.6.3.

<sup>96</sup> Dutch Corporate Governance Code, Principle 2.7.

<sup>97</sup> Dutch Corporate Governance Code, Principle 3.3.

<sup>98</sup> Dutch Corporate Governance Code, Principle 3.3.

<sup>99</sup> Dutch Corporate Governance Code, best practice provision 3.3.2.

19.4 The Company and its Subsidiaries do not grant personal loans, guarantees or the like to Supervisory Board members, save as part of its usual business operations and after approval of the Supervisory Board. The relevant Supervisory Board member will pursuant to clause 18.4 not take part in the deliberations and decision-making within the Supervisory Board regarding this approval. Loans are not remitted.<sup>100</sup>

## **20. Introduction Programme, Ongoing Training and Education**

20.1 All Supervisory Board members shall follow an formal 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, the culture and the responsibilities of a Supervisory Board member.<sup>101</sup>

20.2 The Supervisory Board shall conduct an annual review to identify any aspects with regard to which the Supervisory Board members require further training or education during their term of office.<sup>102</sup>

20.3 The introduction course, training and education shall be facilitated and paid for by the Company.

## **21. Other Positions**

21.1 A Supervisory Board member shall report any other position he may have to the Supervisory Board in advance. The additional positions will be discussed at least annually at a meeting of the Supervisory Board.<sup>103</sup>

21.2 A member of the Supervisory Board will hold no more than five supervisory memberships of boards of Dutch large companies or large foundations, with a chairmanship counted twice.<sup>104</sup>

21.3 Supervisory Board members 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 Supervisory Board in accordance with clause 18. If such conflict concerns the Chairman, he will inform the Vice-Chairman who then carries out the task of the Chairman as referred to in the previous sentence. The Company Secretary shall keep a list of the outside positions concerned of each Supervisory Board member.

## **22. Holding and Trading Securities**

22.1 Any shareholding in the Company by Supervisory Board members is for the purpose of long-term investment.<sup>105</sup>

22.2 Supervisory Board members are bound to the Company's insider dealing rules which include the regulations concerning the purchase and sale of the Company's securities and other dealings in securities. These rules are posted on the Company's website.

## **23. Confidentiality**

No Supervisory Board member shall, during his membership of the Supervisory 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 any companies in which it holds a stake, that came to

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<sup>100</sup> Dutch Corporate Governance Code, best practice provision 2.6.5.

<sup>101</sup> Dutch Corporate Governance Code, best practice provision 2.4.5.

<sup>102</sup> Dutch Corporate Governance Code, best practice provision 2.4.6.

<sup>103</sup> Dutch Corporate Governance Code, best practice provision 2.4.2.

<sup>104</sup> Section 2:142a Dutch Civil Code contains detailed provisions.

<sup>105</sup> Dutch Corporate Governance Code, best practice provision 3.3.2.

his knowledge in the capacity of his work for the Company and any companies in which it holds a stake and which he knows or should know to be of a confidential nature, unless required by law. A Supervisory Board member is allowed to disclose the above information to Executive Board members and Supervisory Board members as well as to staff members of the Company and companies in which the Company holds a stake who, in view of their activities for the Company and companies in which the Company holds a stake, should be informed of the information concerned. A Supervisory Board member shall not in any way whatsoever utilise the information referred to above for his personal benefit.

## **24. Miscellaneous**

- 24.1 **Acceptance by Supervisory Board members.** Anyone who is appointed as a Supervisory Board member must, upon assuming office, declare in writing to the Company that he accepts and agrees to the contents of these By-Laws and pledge to the Company that he will comply with the provisions of these By-Laws. These By-laws are also applicable to anyone who is designated as a substitute member for a Supervisory Board member in absence or prevented from acting.
- 24.2 **Occasional non-compliance.** Subject to applicable law and regulation, the Supervisory Board may occasionally decide at its sole discretion not to comply with these By-Laws.
- 24.3 **Amendment.** These By-Laws may be amended by the Supervisory Board at its sole discretion without prior notification. Prior to amendment of these By-Laws the Executive Board shall be consulted.
- 24.4 **Interpretation.** In case of uncertainty or difference of opinion on how a provision of these By-Laws should be interpreted, the opinion of the Chairman shall be decisive.
- 24.5 **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 rules).
- 24.6 **Complementarity to Dutch law and Articles of Association.** These By-Laws are complementary to the provisions governing the Supervisory 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 rules and 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 rules and regulations, the latter shall prevail.
- 24.7 **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 Supervisory Board may 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 these By-Laws, 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 audit committee of the Supervisory Board.

**By-Laws** means the By-Laws of the Executive Board or the By-Laws of the Supervisory Board, depending on the context, including the annexes belonging thereto.

**CEO** means the chief executive officer, who is also the chairman of the Executive Board of the Company.

**CFO** means the chief financial officer of the Company.

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

**Committee** means each committee of the Supervisory Board.

**Company** means Randstad Holding N.V., and, where appropriate, the subsidiary companies and possible other group companies of the Company, whose financial information is incorporated in the consolidated Annual Accounts.

**Company Secretary** means the company secretary of the Company appointed in accordance with clause 4 of the By-Laws of the Executive Board.

**Executive Board** means the executive board 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.

**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.

**in writing** means by letter, by e-mail, WhatsApp or by message which is transmitted via any other current means of communication and which can be received in written form.

**Remuneration and Nomination Committee** means the remuneration and nomination committee of the Supervisory Board.

**Remuneration Report** means the remuneration report of the Supervisory Board regarding the remuneration policy of the Company as drawn up by the Remuneration and Nomination Committee.

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

**Subsidiary** has the meaning attributed to it in Section 2:24a of the Dutch Civil Code.

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

**Supervisory Board Profile** means the profile for the size and composition of the Supervisory Board, as designated in clause 1.1.

**Vice-Chairman** means the vice-chairman of the Supervisory Board.

2. Save where the context dictates otherwise, in these By-Laws:
  - (i) unless a different intention clearly appears, a reference to a clause or Annex is a reference to a clause or annex of these By-Laws;
  - (ii) words and expressions expressed in the singular form also include the plural form, and vice versa;
  - (iii) words and expressions expressed in the masculine form also include the feminine form; and
  - (iv) 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.
3. Headings of clauses and other headings in these By-Laws are inserted for ease of reference and do not form part of these By-Laws for the purpose of interpretation.

## ANNEX 2

### SUPERVISORY BOARD PROFILE

#### 1. Description of the nature and activities of the Company and its affiliated enterprise

Under clause 1.1 of these By-Laws the nature and size of the Company and its affiliated enterprise must be taken into account when determining the activities and composition of the Supervisory Board. Relevant factors are:

- (a) the nature, culture and activities of the business of the Company and its Subsidiaries
- (b) the stock exchanges where the Company is listed
- (c) the specific role of the Company within the group it heads
- (d) the organisational structure of the Company and its Subsidiaries
- (e) the core values and business principles of the Company and its Subsidiaries
- (f) the number of employees of the Company and its Subsidiaries
- (g) the applicability or non-applicability to the Company of the statutory two-tier regime
- (h) the composition (nationalities, number of shareholders, presence of absence of controlling shareholders, etc.) of the General Meeting of Shareholders
- (i) the geographical location of the Subsidiaries
- (j) the composition and size of the Executive Board

#### 2. Description of the desired composition of the Supervisory Board

Factors which may play a part in the description of the desired composition of the Supervisory Board as a whole are:

- (a) responsible performance of the duties attributed to the Supervisory Board by legislation, the Dutch Corporate Governance Code and other regulations and code of conduct
- (b) balance between nationalities, gender, age, experience and background of each of the members of the Supervisory Board
- (c) the Supervisory Board Profile will set out the aspects of diversity in the composition of the Supervisory Board (Section 2:166 DCC, at least 30% women and at least 30% men) that are relevant to the Company as well as the current aim applied by the Supervisory Board in respect of diversity.
- (d) balance between and experience and affinity with the nature and culture of the business of the Company and its Subsidiaries
- (e) the organisational structure of the Company and its Subsidiaries
- (f) the role of the Company in society

- (g) political and cultural knowledge of the countries where the Company and its Subsidiaries operate
- (h) (international) knowledge of and experience in financial, legal, economic, commercial, HR, social and marketing areas

**3. Description of the desired expertise and background of the individual members of the Supervisory Board**

Factors which may play a role in the description of the desired expertise and background of the individual members of the Supervisory Board are:

- (a) knowledge of and experience in financial, legal, economic, commercial, HR, social and marketing areas
- (b) experience with (the management or supervision of the management of) a listed company
- (c) national and international experience with groups of companies
- (d) experience with corporate governance
- (e) experience with organisational processes
- (f) knowledge of and experience and affinity with the business of the Company and its Subsidiaries
- (g) knowledge of information and communication technology systems (ICT) and related cyber security risks (disruption, failure or abuse of ICT)
- (h) expertise on the field of technological innovation
- (i) expertise on the field of new business models
- (j) to be able, also by having a sufficient amount of available time, to supervise and promote the policy of the Executive Board and the general course of affairs within the Company timely and adequately and to assist the Executive Board with the preparation and implementation of its policy
- (k) to be able to operate independently and critically in relation to the other members of the Executive Board and the Supervisory Board and to take measures in the absence of the Executive Board to provide for the management of the Company
- (l) to be prepared to take a seat in the Audit Committee and/or the Remuneration and Nomination Committee
- (m) to be prepared to do an introduction, education or training programme
- (n) to be prepared to approve of these By-Laws
- (o) not to have a conflict of interest at the time of appointment, unless approved by the Supervisory Board
- (p) to be prepared and able to act as Chairman and/or Vice-Chairman
- (q) to be prepared and able to lead the General Meeting of Shareholders
- (r) to be prepared and able to temporarily manage the Company if one or more members of the Executive Board are absent or unable to perform their duties



- (s) to be a team player
- (t) to match with the composition of the Supervisory Board at the time of appointment

#### **4. Diversity policy of the Supervisory Board**

The Supervisory Board shall draw up a diversity policy with regard to the composition of the Supervisory Board that addresses the diversity aspects relevant to the Company, such as nationality, age, gender, and education and work background.<sup>106</sup>

#### **5. Size and composition of the Supervisory Board**

- (a) Point of departure at all times is that the size of the Supervisory Board must be such that the Supervisory Board as a whole can perform its duties effectively and responsibly and that each individual member of the Supervisory Board is able to make a contribution by his specific qualities.
- (b) The Supervisory Board must at all times be so composed that clause 1.4 of these By-Laws is complied with as much as possible.

#### **6. Miscellaneous**

- (a) The Supervisory Board discusses at least once a year, without the Executive Board being present, the composition and competence of the Supervisory Board.<sup>107</sup>
- (b) This Supervisory Board Profile must be taken into account on each (re)appointment of members of the Supervisory Board.<sup>108</sup>
- (c) This Supervisory Board Profile is posted on the Company's website.<sup>109</sup>

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<sup>106</sup> Dutch Corporate Governance Code, best practice provision 2.1.5

<sup>107</sup> Dutch Corporate Governance Code, best practice provision 2.2.6.

<sup>108</sup> Dutch Corporate Governance Code, Principe 2.2.2.

<sup>109</sup> Dutch Corporate Governance Code, best practice provision 2.1.1.

### ANNEX 3

#### ROTATION PLAN SUPERVISORY BOARD

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<b>Name</b>	<b>Position</b>	<b>First appointed</b>	<b>Start and end of current term</b>
Wout Dekker	Chairman	2012	2016 - 2020
Jaap Winter	Vice-Chairman	2011	2015 - 2019
Henri Giscard d'Estaing	Member	2008	2016 –2020
Frank Dorjee	Member	2014	2018 - 2022
Barbara Borra	Member	2015	2015 –2019
Rudy Provoost	Member	2015	2015 –2019
Annet Aris	Member	2018	2018 - 2022

## ANNEX 4

### LIST OF APPROVAL SUPERVISORY BOARD

The approval of the Supervisory Board is required for:

1. the allocation of duties of the Executive Board to individual members of the Executive Board;<sup>110</sup>
2. the establishment of an Executive Committee;<sup>111</sup>
3. all transactions between the Company and natural or legal persons who hold at least 10% of the shares in the Company that are of material significance to the Company and/or such persons;<sup>112</sup>
4. all transactions in which there are conflicts of interest with Executive Board members that are of material significance to the Company and/or the relevant Executive Board members;<sup>113</sup>
5. all transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or the relevant Supervisory Board members;<sup>114</sup>
6. the appointment and removal of the Company Secretary;<sup>115</sup>
7. issue and acquisition of shares and debt instruments at the expense of the Company or of debt instruments at the expense of a limited partnership or general partnership in respect of which the Company is a partner with full liability;
8. co-operation in the issue of registered depositary receipts for shares;
9. petition for quotation or withdrawal of a quotation in any stock exchange list of debentures referred to under 7. and depositary receipts referred to under 8.;
10. entering into or termination of a structural business co-operation of the Company or a dependent company with another legal entity or company or, as a partner with full liability, in a limited partnership or general partnership if such co-operation or termination is of fundamental importance for the Company;
11. participation by the Company or a Subsidiary in the capital of another company if the value of such participation is at least EUR 25 million, as well as significantly increasing or reducing such participation to the extent not already provided for and approved in the budget;
12. investments requiring an amount equal to at least EUR 25 million to the extent not already provided for and explicitly approved in the budget;
13. proposal to amend the Articles of Association;
14. proposal to dissolve the Company;
15. petition for bankruptcy or a request for suspension of payments (*surséance van betaling*);

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<sup>110</sup> Executive Board By-Laws, clause 1.8.

<sup>111</sup> Dutch Corporate Governance Code, best practice provision 2.1.3.

<sup>112</sup> Executive Board By-Laws, clause 5.7.

<sup>113</sup> Executive Board By-Laws, clause 16.6.

<sup>114</sup> Supervisory Board By-Laws, clause 18.6.

<sup>115</sup> Executive Board By-Laws, clause 4.1.

16. termination of the employment of a considerable number of the employees of the Company;
17. radical change in the employment conditions of a considerable number of the employees of the Company;
18. proposal to reduce the Company's issued capital;
19. a merger or demerger (*splitsing*) within the meaning of Part 7 of Book 2 of the Netherlands Civil Code of the Company;
20. approval of the budget and the strategic plan (Long Term Planning);
21. reservation of profits of the Company;
22. lend money to a non-affiliated entity to an amount in excess of EUR 25 million, to the extent not already provided for and approved in the budget;
23. borrow money in excess of the amount of committed funding previously approved by the Supervisory Board;
24. radical change in the organization of the Company;
25. close-down of all or a material part of the business of the Company;
26. location of the head-office, or a change thereof;
27. encumbering any assets of the Company or of a Subsidiary for debts of third parties (i.e. non-affiliated entities), either through guarantees or otherwise;
28. all other acts that require the approval by legislation, the Articles of Association, the By-Laws of the Executive Board, the By-Laws of the Supervisory Board, the Dutch Corporate Governance Code or any other applicable laws or regulations; and
29. insofar not already subject to 1 up to and including 28 above, any other resolutions which the Supervisory Board deems necessary, at the sole discretion of the Supervisory Board.

## ANNEX 5

### INFORMATION TO BE INCLUDED IN THE SUPERVISORY BOARD REPORT<sup>116</sup>

The annual report of the Supervisory Board shall in any case contain the following information:

- (a) an account of the involvement of the Supervisory Board in the establishment of the strategy, and the way in which the Supervisory Board monitors its implementation;<sup>117</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>118</sup>
- (c) the absenteeism rate at Supervisory Board meetings and Committee meetings of each Supervisory Board member;<sup>119</sup>
- (d) a statement that in the opinion of the Supervisory Board clause 1.4(e), 1.5 and 3.1 of these By-Laws have been complied with and which member of members of the Supervisory Board, if present, shall not be deemed independent;<sup>120</sup>
- (e) a reference as to how the evaluation of the Supervisory Board, the Committees and the individual members of the Supervisory Board described in clause 8.3 of these By-Laws has been carried out and what has been of will be done with the conclusions from the evaluations;<sup>121</sup>
- (f) a reference as to how the evaluation of the Executive Board and the individual members of the Executive Board described in clause 8.4 of these By-Laws has been carried out and what has been of will be done with the conclusions from the evaluations;<sup>122</sup>
- (g) the arguments for reappointment of a member of the Supervisory Board after a period of eight years;<sup>123</sup>
- (h) a reference to the Supervisory Board resolutions pursuant to clauses 24.2 and 24.3 of these By-Laws, to the extent of material significance;
- (i) 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>124</sup>
- (j) the following information on each Supervisory Board member:<sup>125</sup> (i) gender; (ii) age; (iii) nationality; (iv) chief position; (v) other positions to the extent relevant for the performance of his duties as member of the Supervisory Board; (vi) date of initial appointment and term of appointment of relevant member of Supervisory Board.

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<sup>116</sup> Dutch Corporate Governance Code, best practice provision 2.3.11.

<sup>117</sup> Dutch Corporate Governance Code, best practice provision 1.1.3.

<sup>118</sup> Dutch Corporate Governance Code, best practice provision 1.3.6.

<sup>119</sup> Dutch Corporate Governance Code, best practice provision 2.4.4.

<sup>120</sup> Dutch Corporate Governance Code, best practice provision 2.1.10.

<sup>121</sup> Dutch Corporate Governance Code, best practice provision 2.2.8(i) en (ii)..

<sup>122</sup> Dutch Corporate Governance Code, best practice provision 2.2.8(ii) en (iii).

<sup>123</sup> Dutch Corporate Governance Code, best practice provision 2.2.2.

<sup>124</sup> Dutch Corporate Governance Code, best practice provision 2.1.8.

<sup>125</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

## ANNEX 6

### INFORMATION TO BE INCLUDED IN THE REMUNERATION REPORT

The Remuneration Report shall contain an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy planned by the Supervisory Board for the next financial year and subsequent years.<sup>126</sup>

The overview shall furthermore, in any event, contain the following information:<sup>127</sup>

- (a) how the implementation of the remuneration policy contributes to long-term value creation;
- (b) that scenario analyses have been taken into consideration;
- (c) the pay ratios within the Company and its affiliated enterprise and, if applicable, any changes in these ratios in comparison with the previous financial year;
- (d) in the event an Executive Board member receives variable remuneration: how this remuneration contributes to long-term value creation, the measurable performance criteria determined in advance upon which the variable remuneration depends and the relationship between the remuneration and performance; and
- (e) in the event that a current or former Executive Board member receives a severance payment, the reason for this payment.

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<sup>126</sup> Dutch Corporate Governance Code, best practice provision 3.4.1 (i).

<sup>127</sup> Dutch Corporate Governance Code, best practice provision 3.4.1 (ii), (iii) en (iv).

## ANNEX 7 EXTERNAL AUDITOR INDEPENDENCE POLICY

The policy set out below was adopted by the Supervisory Board on a proposal of the Audit Committee and after consultation with the Executive Board.

### 1. General Policy

On the back of new EU rules, the Dutch auditor independence rules, laid down in the Regulation on Auditor Independence in Assurance Engagements (*Verordening inzake de Onafhankelijkheid van accountants bij assurance-opdrachten, ViO*), are amended. Just like the EU rules, the amended ViO will apply to financial years starting on or after June 17, 2016. The Dutch Audit Firms Supervision Act (*Wet Toezicht Accountantsorganisaties, Wta*) will likewise be amended to reflect the new EU rules.

#### Services provided

The basic underlying principle of the new EU regulation is that the auditor must be independent of Randstad, both in fact and in appearance. The following services can be distinguished:

#### Audit services

Audit services are all services in respect of information provided by Randstad, where the assurance is provided for the benefit of third parties and/or to the Supervisory Board (including the Audit Committee) of Randstad. The audit services result in a conclusion that aims to strengthen the trust of a third party and/or Supervisory Board in the information provided by Randstad. Examples are:

- (a) audits on group reporting and on statutory financial statements;
- (b) review and agreed upon procedures on quarterly statements;
- (c) comfort letter on prospectus;
- (d) audit or review on other information provided by the Company;
- (e) opening balance sheet audits of acquisitions;
- (f) closing balance sheet audits on disposals; and
- (g) IT audits related to the financial statements audit.

For services under (c) - (g), the external auditor can be engaged by the Executive Board to perform the services without the requirements to have a tender process. Approval in advance of the services under (c) - (g) is needed from the Audit Committee if the fee exceeds a level of € 100,000. Any operating company engaging the external auditor with these services exceeding a fee level of € 10,000 should obtain the approval of the Executive Board in advance.

#### Non-audit services

Due to the new EU rules, stricter rules apply for non-audit services by foreign member firms of the external auditor to foreign Randstad subsidiaries. The existing prohibition in Dutch law for non-audit services performed by the external auditor in the Netherlands will be maintained in Dutch law.

To avoid any issues related to independence of the external auditor, Randstad has decided to prohibit any non-audit services in the Netherlands and abroad as of January 1, 2017.

## **2. Rotation of firm and its partners**

Firm rotation is required by EU law every 10 years. EU law requires the senior staff of the external auditor (for instance quality review partner, engagement partner, engagement director) to rotate after a maximum of 5 years.

The same applies to partners engaged in the audit of each major Randstad company.

## **3. Appointment of auditor**

The appointment of the external auditor will be an annual appointment by the Annual Shareholders Meeting following a proposal by the Supervisory Board. The Audit Committee reviews the auditors performance every year to assess the following:

- (a) quality of the audit work;
- (b) sufficiency and fulfilment of the audit engagement;
- (c) quality of the reports of the auditor;
- (d) independence of the auditor;
- (e) general appearance of the auditor;
- (f) expertise and composition of the audit team;
- (g) audit fee; and
- (h) quality control within the audit firm.

## **4. Responsibility of the Audit Committee**

Each year the Audit Committee will formally review the Auditor Independence and documents its position on the matter, and address any changes to this Policy or situation as needed. The Audit Committee will discuss the audit approach and the annual reporting of the auditor on internal controls and accounting. The Audit Committee is informed on the annual audit fees and other audit services for the year.

## **5. Attention**

In the sections above, the approved and prohibited services are tabulated. However, for certain audit services not mentioned, it could be difficult to ascertain independence. In those cases, the MD group accounting and the group auditor should assess together and make a recommendation to the Audit Committee on approving these services.



## ANNEX 8

### TERMS OF REFERENCE AUDIT COMMITTEE

#### 2. INTRODUCTION

- 2.1 These terms of reference have been drawn up by the Supervisory Board pursuant to clause 5 of the By-Laws of the Supervisory Board.
- 2.2 The Audit Committee is a standing committee of the Supervisory Board.
- 2.3 Certain capitalised or uncapitalised terms used but not defined in these terms of reference have the meanings given to them in the By-Laws of the Supervisory Board and the List of Definitions attached to the By-Laws as Annex 1 thereto.

#### 3. COMPOSITION

- 3.1 The Audit Committee shall consist of a minimum of 3 members. All members of the Audit Committee must also be members of the Supervisory Board. More than half of the members of the Audit Committee shall be independent within the meaning of clause 1.5 of the By-Laws of the Supervisory Board.<sup>128</sup>
- 3.2 At least one member of the Audit Committee shall have competence in accounting or auditing.<sup>129</sup>
- 3.3 The members of the Audit Committee shall be appointed and may be replaced at any time by the Supervisory Board. The Supervisory Board shall appoint one of the members of the Audit Committee as chairman of the Audit Committee.<sup>130</sup> The Audit Committee shall not be chaired by the Chairman of the Supervisory Board or by a former member of the Executive Board.<sup>131</sup>
- 3.4 The term of office of a member of the Audit Committee will generally not be set beforehand. It will, *inter alia*, depend on the composition of the Supervisory Board as a whole and that of other committees from time to time.
- 3.5 The Company Secretary shall act as secretary to the Audit Committee. The Company Secretary may delegate his duties, or parts thereof, under these terms of reference, to a deputy appointed by him in consultation with the chairman of the Audit Committee.

#### 4. DUTIES AND POWERS

- 4.1 Working within the Supervisory Board, the Audit Committee is charged in particular with:<sup>132</sup>
- (a) the monitoring of the financial-accounting process and preparation of proposals to safeguard the integrity of said process;
  - (b) the monitoring of the efficiency of the internal management system, the internal audit system and the risk management system; with respect to financial reporting;

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<sup>128</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

<sup>129</sup> Audit Committee Decree 2016, article 2(3).

<sup>130</sup> Audit Committee Decree 2016, article 2(3).

<sup>131</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

<sup>132</sup> Audit Committee Decree 2016, Article 2(2) (b-f).

- (c) the monitoring of the statutory audit of the annual accounts and consolidated accounts, and in particular the process of such audit (taking into account the review of the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten (AFM)*) in accordance with Section 26 EU-Regulation 537/2014);
- (d) the review and monitoring of the independence of the External Auditor or auditor firm, with a special focus on other services provided to the Company; and
- (e) the adoption of a procedure for the selection of the External Auditor or audit firm and the nomination for appointment of the external auditor with respect to the statutory audit of the annual accounts and consolidated accounts.

4.2 Working within the Supervisory Board, the Audit Committee is furthermore charged with:

- (a) the preparatory work for the Supervisory Board's decision-making regarding the supervision of the integrity and quality of the Company's financial reporting and the effectiveness of the Company's internal risk management and control systems. Among other things, it focuses on monitoring the Executive Board with regard to:<sup>133</sup>
  - (i) relations with, and following up of comments by, the internal audit function and the External Auditor;
  - (ii) the financing of the Company;
  - (iii) the application of information and communication technology (ICT), including risks relating to cyber security; and
  - (iv) the Company's tax policy.
- (b) the preparation of meetings of the Supervisory Board with the Executive Board where the Report of the Executive Board, the Annual Accounts and the interim figures of the Company are discussed.

4.3 The following Annexes to these terms of reference contain further details on some of the duties of the Audit Committee described in clause 2.1 and clause 2.2:

**Annex 1** – Supervision of the External Auditor and the internal audit function;

**Annex 2** – Supervision of financial reporting and publications;

**Annex 3** – Supervision of compliance with legislation and regulations;

**Annex 4** – Financing and finance-related strategies;

**Annex 5** – Information to be included in the report of the External Auditor; and

**Annex 6** – Selection procedure regarding the External Auditor.

4.4 Each member of the Audit Committee has access to all relevant books, records and offices of the Company and the authority to interview officers and employees of the Company to the extent necessary or useful for the proper performance of his duties. Members of the Audit Committee shall exercise this right in consultation with the chairman of the Audit Committee.

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<sup>133</sup> Dutch Corporate Governance Code, best practice provision 1.5.1.

- 4.5 When performing its duties the Audit Committee may seek assistance or information from one or more experts appointed by the Audit Committee at a price agreed upon with the Audit Committee, which will be paid by the Company.
- 4.6 While the Audit Committee has the responsibilities and powers set forth in these terms of reference, it is not the duty of the Audit Committee to plan or conduct audits or to determine that the Company's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations.
- 4.7 The Audit Committee may only exercise such powers as are explicitly attributed to it by the Supervisory Board and may never exercise powers beyond those exercisable by the Supervisory Board as a whole.

## **5. DUTIES REGARDING THE EXTERNAL AUDITOR AND THE INTERNAL AUDIT FUNCTION**

- 5.1 The Audit Committee shall advise the Supervisory Board regarding the External Auditor's nomination for appointment, reappointment or dismissal and shall prepare the selection of the External Auditor. During the aforementioned tasks the Audit Committee shall give due consideration to the Executive Board's observations.<sup>134</sup> Furthermore, the (preparation of the) selection of the External Auditor shall be in accordance with Section 16 EU-Regulation 537/2014, as reflected in **Annex 6**.
- 5.2 The Audit Committee shall submit a proposal to the Supervisory Board for the External Auditor's engagement to audit the financial statements, taking into account the scope of the audit, the materiality to be used and remuneration for the audit. The Supervisory Board shall resolve on the engagement.<sup>135</sup>
- 5.3 The Audit Committee shall determine whether, and if so, how the External Auditor should be involved in the content and publication of financial reports of the Company other than the Annual Accounts.<sup>136</sup>
- 5.4 The Audit Committee shall request that the External Auditor include in his report the matters which the External Auditor wishes to bring to the attention of the Executive Board and the Supervisory Board in relation to his audit of the Annual Accounts and the related audits, which in any event will include the matters listed in **Annex 5**.<sup>137</sup>
- 5.5 When drafting the internal audit plan by the internal audit function, the Executive Board, the External Auditor and the Audit Committee will be involved.<sup>138</sup>
- 5.6 The internal audit function reports the essence of its audit results to the Audit Committee and shall inform the External Auditor thereof. The internal audit function shall have direct access to the External Auditor and the Audit Committee.<sup>139</sup>
- 5.7 The Company shall publish a press release, after consultation with the Audit Committee, in the event the early termination of the relationship with the external audit firm.<sup>140</sup>

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<sup>134</sup> Dutch Corporate Governance Code, best practice provision 1.6.1.

<sup>135</sup> Dutch Corporate Governance Code, best practice provision 1.6.3.

<sup>136</sup> Dutch Corporate Governance Code, best practice provision 1.7.3.

<sup>137</sup> This obligation could also be included in the Executive Board By-Laws. The obligation should in any case be included in the engagement letter to the auditor.

<sup>138</sup> Dutch Corporate Governance Code, best practice provision 1.3.3.

<sup>139</sup> Dutch Corporate Governance Code, best practice provision 1.3.5.

<sup>140</sup> Dutch Corporate Governance Code, best practice provision 1.6.5.

## **6. MEETINGS**

- 6.1 The Audit Committee shall meet as often as required for a proper functioning of the Audit Committee. The Audit Committee shall meet at least four times a year. The Audit Committee shall meet at least once a year with the External Auditor without the Executive Board being present.<sup>141</sup> The meetings are as much as possible scheduled annually in advance and are held as far as possible shortly before the meetings of the Supervisory Board. The Audit Committee shall meet earlier if this is deemed necessary by the chairman of the Audit Committee or by two other members of the Audit Committee.
- 6.2 Meetings of the Audit Committee are in principle called by the Company Secretary on behalf of the chairman of the Audit Committee. Save in urgent cases, to be determined by the chairman of the Audit Committee, the agenda and enclosures for the meeting shall be sent well in advance of the meeting to all members of the Audit Committee. To the extent possible, written explanations and/or other related documents will be enclosed for each item on the agenda.
- 6.3 The CEO, CFO, the Managing Director Group Control, the Managing Director Group Accounting, the Managing Director Group Business Risk & Audit and the External Auditor shall attend the Audit Committee meetings, unless the Audit Committee decides otherwise.<sup>142</sup> In addition, independent experts may be invited to attend meetings of the Audit Committee. Each member of the Supervisory Board may attend meetings of the Audit Committee.
- 6.4 The Audit Committee may require any officer or employee of the Company, its external legal advisers or the External Auditor to attend a meeting of the Audit Committee or to consult with members or advisers of the Audit Committee.
- 6.5 Each member of the Audit Committee has the right to cast one vote. All resolutions must be adopted by an absolute majority of the votes cast. If there is a tie in voting, the chairman of the Audit Committee shall have a casting vote.
- 6.6 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting of the Audit Committee.

## **7. REPORTING TO THE SUPERVISORY BOARD**

- 7.1 The Audit Committee must inform the Supervisory Board in a clear and timely manner about the way it has used its powers and of major developments in the area of its responsibilities.
- 7.2 The Audit Committee shall report annually, and earlier if required, to the Supervisory Board on the functioning of and its dealings with the External Auditor (such as timing, approach and scope of the independent External Auditor's audit examination and the related fees).
- 7.3 The Audit Committee shall report to the Supervisory Board on its deliberations and findings. In this report attention shall in any event be paid to:<sup>143</sup>
- (i) the methods used to assess the effectiveness of the design and operation of the internal risk management and control systems;
  - (ii) the methods used to assess the effectiveness of the internal and external audit processes;
  - (iii) material considerations concerning the financial reporting; and

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<sup>141</sup> Dutch Corporate Governance Code, best practice provision 1.7.4.

<sup>142</sup> Dutch Corporate Governance Code, best practice provision 1.5.2.

<sup>143</sup> Dutch Corporate Governance Code, best practice provision 1.5.3.

(iv) the way material risks and uncertainties referred to in the Report of the Executive Board have been analysed and discussed, along with a description of the most important findings of the Audit Committee.

7.4 The Audit Committee informs the Supervisory Board of the result of the statutory audit of the Annual Accounts and the consolidated accounts, with an explanation of the way in which the statutory audit contributes to the integrity of the financial reporting and the role of the Audit Committee in this process.<sup>144</sup>

7.5 The reports of meetings of the Audit Committee are distributed among all members of the Supervisory Board as soon as possible after the meeting concerned.

7.6 If requested, the chairman of the Audit Committee shall at meetings of the Supervisory Board provide the Supervisory Board with further information on the outcome of the discussions of the Audit Committee.

7.7 Every Supervisory Board member has unrestricted access to all records of the Audit Committee and can attend each meeting of the Audit Committee.

## **8. MISCELLANEOUS**

8.1 The chairman of the Audit Committee (or one of the other Audit Committee members) shall be available to answer questions regarding the Audit Committee's activities at the annual General Meeting of Shareholders.

8.2 The Supervisory Board may occasionally decide at its sole discretion not to comply with these terms of reference, subject to applicable law and regulations.

8.3 The Audit Committee shall review and re-assess the adequacy of these terms of reference annually, report its assessment to the Supervisory Board and recommend, where appropriate, any proposed changes to the Supervisory Board.

8.4 The Supervisory Board can at all times amend these terms of reference and/or revoke any powers granted by it to the Audit Committee.

8.5 Clauses 24.4 to 24.7 inclusive of the By-Laws of the Supervisory Board apply by analogy to the Audit Committee, while for the application of these terms of reference the power of the Supervisory Board or the Chairman referred to in these Clauses is considered a power of the Audit Committee or the chairman thereof.

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<sup>144</sup> Audit Committee Decree 2016, Article 2(2) (a).

## ANNEX 1

### SUPERVISION OF THE EXTERNAL AUDITOR AND THE INTERNAL AUDIT FUNCTION

1. Assess and evaluate the External Auditor and the lead partner of the audit team of the External Auditor.
2. Obtain and review a report from the External Auditor (at least annually) regarding (i) the External Auditor's internal quality control procedures, (ii) any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five months with respect to one or more independent audits carried out by the firm, (iii) any steps taken to deal with any such issues and (iv) all relationships between the External Auditor and the Company. Evaluate the qualifications, performance and independence of the External Auditor, including considering whether the External Auditor's quality controls are adequate, and taking into account the opinions of the Executive Board and internal auditors.
3. Ensure the rotation of the lead (or co-ordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as well as the other members of the External Auditor, as required by law, regulation or the Company's Auditor Independence Policy.
4. Review and discuss annually with the External Auditor, the regulations for the internal audit function and the Executive Board the internal audit charter and the independence of the audit process (as prescribed by legislation or regulation and the Company's Auditor Independence Policy).
5. Meet with the External Auditor prior to the audit to discuss the planning, scope and staffing of the audit.
6. Review the reports most significant to the Executive Board prepared by internal audit function and the Executive Board's response.
7. Discuss with the External Auditor and the Executive Board the internal audit function's responsibilities, budget and staffing and any recommended changes in the planned scope of the internal audit.
- (8) If there is no separate department for the internal audit function, the Audit Committee shall annually advise the Supervisory Board regarding the need for an internal audit department and whether adequate alternative measures have been taken. On the proposal of the Audit Committee, the Supervisory Board shall include the conclusions, along with any resulting recommendations and alternative measures, in the report of the Supervisory Board.<sup>145</sup>
- (9) Annually discussing with the External Auditor:<sup>146</sup>
  - (a) the scope and materiality of the audit plan and the principal risks of the financial statements identified by the External Auditor in the audit plan; and
  - (b) based also on the documents from which the audit plan was developed, the findings and outcomes of the audit work on the financial statements and the management letter.

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<sup>145</sup> Dutch Corporate Governance Code, best practice provision 1.3.6.

<sup>146</sup> Dutch Corporate Governance Code, best practice provision 1.7.2.

## ANNEX 2

### SUPERVISION OF FINANCIAL REPORTING AND PUBLICATIONS

1. Review and discuss with the Executive Board and the External Auditor the Annual Accounts and the Report of the Executive Board, including disclosures made in management interviews, analyses and the like.
2. Review and discuss with the Executive Board and the External Auditor the interim financial statements prior to their release, including the results of any review by the External Auditors of the interim financial statements.
3. Discuss with the Executive Board and the External Auditor significant financial reporting issues and judgements made in connection with the preparation of the Company's financial statements, including the quality of earnings, significant deviations between planned and actual performance, any significant changes in the Company's selection or application of accounting principles, any issues as to the adequacy of the Company's internal controls and any special steps adopted in light of control deficiencies.
4. Review and discuss reports of the External Auditor on:
  - (i) all major elements of the accounting policies and the methods used;
  - (ii) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with the Executive Board or any member thereof, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the External Auditor; and
  - (iii) other important written communications between the External Auditor and the Executive Board or one of its members, e.g. management letters.
5. Discuss with the Executive Board the Company's (i) earnings press releases, including the use of non-GAAP information and (ii) plans and policies of the Company with respect to comments on financial information and earnings guidance given by analysts and rating agencies.
6. Discuss with the Executive Board and the External Auditor the consequences of legislative or regulatory initiatives as well as of off-balance structures for the financial reporting by the Company.
7. Discuss with the Executive Board the Company's major financial risk exposures and the steps the Executive Board has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies.
8. Discuss with the Executive Board their approach to inform shareholders and other parties in the financial markets with equal and simultaneous information about matters that may influence the share price, including earnings press releases, as well as the involvement of the External Auditor in reviewing such information.

## **ANNEX 3**

### **SUPERVISION OF COMPLIANCE WITH LEGISLATION AND REGULATIONS**

1. Obtain reports from the Executive Board, the head of the internal audit function of the Company and the External Auditor to the effect that the Company and its Subsidiaries comply with the applicable legislation and regulations and the internal rules of the Company. Review reports on and intended disclosures on insider and affiliated party transactions. Advise the Supervisory Board on policy and procedures of the Company for compliance with applicable legislation and regulations.
2. Discuss with the Executive Board and the External Auditor any correspondence with regulators or governmental agencies and any published reports which raise material issues regarding the Company's financial statements or accounting policies.
3. Discuss with the relevant persons in the legal department of the Company the legal issues that may materially affect the financial reports or the policy of the Company regarding its compliance with legislation and regulations.



## **ANNEX 4**

### **FINANCING AND FINANCE-RELATED STRATEGIES**

1. Review and discuss with the Executive Board at least once a year the general financial strategy of the Company.
2. Review and discuss with the Executive Board the financial policy and financial procedures of the Company, including its currency policies and procedures.
3. Review and discuss any proposed equity, debt or securities offerings and private placements.
4. Review and make recommendation to the Executive Board concerning the level of dividend pay out.

The discussions between the Audit Committee and the Executive Board on the above issues shall take place prior to the discussions on these issues between the Supervisory Board and the Executive Board.

## ANNEX 5

### LIST OF INFORMATION TO BE INCLUDED IN THE REPORT OF THE EXTERNAL AUDITOR<sup>147</sup>

Pursuant to Section 2:393, subsection 4 of the Dutch Civil Code, the report of the External Auditor shall contain the matters which the External Auditor wishes to bring to the attention of the Executive Board and the Supervisory Board in relation to its audit of the Annual Accounts and the related audits.

The following examples can be given:

**(A) With regard to the audit:**

- information about matters of importance to the assessment of the independence of the External Auditor;
- information about the course of events during the audit and co-operation with internal auditors and/or any other external auditors, matters for discussion with the Executive Board, a list of corrections that have not been made, etc.

**(B) With regard to the financial figures:**

- analyses of changes in shareholders' equity and results which do not appear in the information to be published and which, in the view of the External Auditor, contribute to an understanding of the financial position and results of the Company;
- comments regarding the processing of one-off items, the effects of estimates and the manner in which they have been arrived at, the choice of accounting policies when other choices were possible, and particular effects of such policies;
- comments on the quality of forecasts and budgets.

**(C) With regard to the operation of the internal risk management and control systems (including the reliability and continuity of automated data processing) and the quality of the internal provision of information:**

- points for improvement, gaps and quality assessments;
- comments about threats and risks to the Company and the manner in which they should be reported in the particulars to be published;
- compliance with articles of association, instructions, regulations, loan covenants, requirements of external supervisors, etc.

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<sup>147</sup> [previous: Dutch Corporate Governance Code, best practice provision V.4.3.]

## ANNEX 6

### SELECTION PROCEDURE REGARDING THE EXTERNAL AUDITOR<sup>148</sup>

Unless it concerns the renewal of an audit engagement, the advise of the Audit Committee referred to in Clause 3.1 of these Terms shall be prepared following a selection procedure organised by the Company respecting the following criteria:

- (a) the Company shall be free to invite any audit firm to submit proposals for the provision of the statutory audit service on the condition that the cooling down period is respected and that the organisation of the tender process does not in any way preclude the participation in the selection procedure of firms which received less than 15 % of the total audit fees from public-interest entities in the Netherlands in the previous calendar year;
- (b) the Company shall prepare tender documents for the attention of the invited audit firms. Those tender documents shall allow them to understand the business of the Company and the type of statutory audit that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the Company to evaluate the proposals made by audit firms;
- (c) the Company shall be free to determine the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;
- (d) if the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten, (AFM)*) require audit firms to comply with certain quality standards, those standards shall be included in the tender documents;
- (e) the Company shall evaluate the proposals made by the audit firms in accordance with the selection criteria predefined in the tender documents. The Company shall prepare a report on the conclusions of the selection procedure, which shall be validated by the Audit Committee. The Company and the Audit Committee shall take into consideration any findings or conclusions of any inspection report on the applicant audit firm;
- (f) the Company shall be able to demonstrate, upon request, to the AFM that the selection procedure was conducted in a fair manner.

The Audit Committee is responsible for the selection procedure referred to in this annex.

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Based on Section 16(3) EU-Regulation 537/2014. Pursuant to Section 16(4) public interest companies which meet the criteria referred to in Section 2(1) (f) and (t) Directive 2003/71/EC are not required to apply the selection procedure; it concerns companies that: (i) meet at least two of following three criteria: average number of employees during the financial year < 250, a total balance sheet not exceeding EUR 43,000,000, an annual net turnover not exceeding EUR 50,000,000; and (ii) an average market capitalisation of less than EUR 100,000,000 on the basis of end-year quotes for the previous 3 calendar years.

## ANNEX 9

### TERMS OF REFERENCE REMUNERATION AND NOMINATION COMMITTEE

#### 9. INTRODUCTION

- 9.1 These terms of reference have been drawn up by the Supervisory Board pursuant to clause 5 of the By-Laws of the Supervisory Board.
- 9.2 The Remuneration and Nomination Committee is a standing committee of the Supervisory Board.
- 9.3 Certain capitalised or uncapitalised terms used but not defined in these terms of reference have the meanings given to them in the By-Laws of the Supervisory Board and the List of Definitions attached to these By-Laws as Annex 1 thereto.

#### 10. COMPOSITION

- 10.1 The Remuneration and Nomination Committee shall consist of a minimum of three members. All members of the Remuneration and Nomination Committee must also be members of the Supervisory Board. More than half of the members of the Remuneration and Nomination Committee shall be independent within the meaning of clause 1.5 of the By-Laws of the Supervisory Board.<sup>149</sup>
- 10.2 The members of the Remuneration and Nomination Committee shall be appointed and may be replaced at any time by the Supervisory Board. The Chairman of the Supervisory Board is a member in his capacity as such. The Supervisory Board shall appoint one of the members of the Remuneration and Nomination Committee as Chairman Remuneration and one of the members of the Remuneration and Nomination Committee as Chairman Nomination. The Chairman Remuneration shall not be the Chairman of the Supervisory Board nor a former member of the Executive Board.<sup>150</sup>
- 10.3 The term of office of a member of the Remuneration and Nomination Committee will generally not be set beforehand. It will, *inter alia*, depend on the composition of the Supervisory Board as a whole and that of other committees from time to time.
- 10.4 The Company Secretary shall act as secretary to the Remuneration and Nomination Committee. The Company Secretary may delegate his duties, or parts thereof, under these terms of reference, to a deputy appointed by him in consultation with the chairman of the Remuneration and Nomination Committee.

#### 11. DUTIES AND POWERS

- 11.1 The Remuneration and Nomination Committee is within the Supervisory Board especially charged with the following duties with respect to nomination:
- (a) to draft selection criteria and appointment procedures for Supervisory Board members and Executive Board members;<sup>151</sup>
  - (b) to assess at least [once] a year the size and composition of the Supervisory Board and the Executive Board, and to make proposals for the Supervisory Board Profile;<sup>152</sup>

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<sup>149</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

<sup>150</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

<sup>151</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part i.

<sup>152</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part ii.

- (c) to assess at least [once] a year the functioning of individual Supervisory Board members and Executive Board members, and report their findings to the Supervisory Board;<sup>153</sup>
- (d) to draft a plan for the succession of Executive Board members and Supervisory Board members, that is aimed at retaining the balance in the requisite expertise, experience and diversity;<sup>154</sup>
- (e) to make proposals for (re)appointments;<sup>155</sup>
- (f) to supervise the policy of the Executive Board on the selection criteria and appointment procedures for senior management, including the members of the Executive Board;<sup>156</sup>
- (g) to prepare the decision-making process of the Supervisory Board on the acceptance by a member of the Executive Board of the membership of the Supervisory Board of a listed company;
- (h) to prepare the decision-making process of the Supervisory Board concerning any conflicts of interest that may arise in the acceptance by members of the Supervisory Board of additional positions; and
- (i) to render advice in the field of long-term succession planning for Executive Board members.

11.2 In the conduct of their duties referred to in clause 2.1, the Remuneration and Nomination Committee takes the diversity policy of the Company in consideration.

11.3 Within the Supervisory Board, the Remuneration and Nomination Committee is especially charged with the following duties with respect to remuneration:

- (a) submitting a clear and understandable proposal to the Supervisory Board for the remuneration policy (which includes the severance pay) to be pursued for members of the Executive Board, whereby the following aspects should be considered in any event:<sup>157</sup>
  - (i) the objectives for the strategy for the implementation of long-term value creation;
  - (ii) the culture, core values and business principles of the Company;
  - (iii) the scenario analyses carried out in advance;
  - (iv) the pay ratios within the Company and its affiliated enterprise, including the pay levels of senior management;
  - (v) the development of the market price of the shares;
  - (vi) an appropriate ratio between the variable and fixed remuneration components; the variable remuneration component is linked to measurable performance criteria determined in advance, which are predominantly long-term in character;
  - (vii) if shares are being awarded, the terms and conditions governing this; shares should be held for at least five years after they are awarded;<sup>158</sup> and

<sup>153</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part iii.

<sup>154</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part iv and best practice provision 2.2.4.

<sup>155</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part v.

<sup>156</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part vi.

<sup>157</sup> Dutch Corporate Governance Code, best practice provision 3.1.2.

<sup>158</sup> However, the Company allows an earlier share sale after at least a two year holding period to the extent necessary to settle any related tax liabilities.

- (viii) if share options are being awarded, the terms and conditions governing this and the terms and conditions subject to which the share options can be exercised; share options cannot be exercised during the first three years after they are awarded.
  - (b) to make a proposal concerning the remuneration of the individual members of the Executive Board; the proposal is drawn up in accordance with the remuneration policy that has been established and will, in any event, cover the remuneration structure, the amount of the fixed and variable remuneration components, the performance criteria used, the scenario analyses that are carried out and the pay ratios within the Company and its affiliated enterprise;<sup>159</sup>
  - (c) to prepare the Remuneration Report referred to in clause 12.3 of the By-Laws of the Supervisory Board;<sup>160</sup> and
  - (d) to make proposals to the Supervisory Board for the remuneration of the individual members of the Supervisory Board, which remuneration will be submitted to the General Meeting of Shareholders for adoption.
- 11.4 When drafting the proposal for the remuneration of Executive Board members, the Remuneration and Nomination Committee takes note of individual Executive Board members' views with regard to the amount and structure of their own remuneration. The Remuneration and Nomination Committee should ask the Executive Board members to pay attention to the aspects referred to in clause 2.1(a).<sup>161</sup>
- 11.5 When exercising its duties regarding the composition of the Supervisory Board, the Remuneration and Nomination Committee shall observe the criteria on the composition of the Supervisory Board as laid down in clause 1 of the By-Laws of the Supervisory Board.
- 11.6 The Remuneration and Nomination Committee may only exercise such powers as are explicitly attributed to it by the Supervisory Board and it may never exercise powers beyond those exercisable by the Supervisory Board as a whole.
- 11.7 The Remuneration and Nomination Committee may in exercising its duties seek the assistance or advice of one or more experts at a price agreed upon with the Supervisory Board.

## 12. MEETINGS

- 12.1 The Remuneration and Nomination Committee shall meet as often as required for a proper functioning of the Remuneration and Nomination Committee. The Remuneration and Nomination Committee shall meet at least twice a year. The meetings are, as much as possible, scheduled annually in advance. The Remuneration and Nomination Committee shall meet earlier if this is deemed necessary by any of its chairmen or members.
- 12.2 Meetings of the Remuneration and Nomination Committee are in principle called by the Company Secretary on behalf of the Chairman Remuneration and/or the Chairman Nomination of the Remuneration and Nomination Committee. Save in urgent cases, to be determined by the Chairman Remuneration and/or the Chairman Nomination, the agenda and enclosures for the meeting shall be sent well in advance of the meeting to all members of the Remuneration and Nomination Committee. For each item on the agenda an explanation will be provided, where possible, and/or related documents will be attached.

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<sup>159</sup> Dutch Corporate Governance Code, best practice provision 3.2.1.

<sup>160</sup> Dutch Corporate Governance Code, best practice provision 3.4.1.

<sup>161</sup> Dutch Corporate Governance Code, best practice provision 3.2.2.

- 12.3 The Remuneration and Nomination Committee shall decide if and when the CEO should attend its meetings. The CEO shall not attend meetings of the Remuneration and Nomination Committee where his own remuneration is discussed. Each member of the Supervisory Board may attend meetings of the Remuneration and Nomination Committee.
- 12.4 Each member of the Remuneration and Nomination Committee has the right to cast one vote. All resolutions must be adopted by an absolute majority of the votes cast. If there is a tie in voting, the Chairman Remuneration shall have a casting vote on a remuneration topic and the Chairman Nomination on a nomination topic.
- 12.5 The Company Secretary or any other person designated for such purpose by the chairman (or chairmen) of the meeting shall draw up minutes of the meeting of the Remuneration and Nomination Committee.
- 12.6 The Remuneration and Nomination Committee shall exercise utmost discretion when making written records of its deliberations and recommendations.

### **13. REPORTING TO THE SUPERVISORY BOARD**

- 13.1 The Remuneration and Nomination Committee must inform the Supervisory Board in a clear and timely manner about the way it has used its powers and of major developments in the area of its responsibilities.
- 13.2 The Supervisory Board shall receive from the Remuneration and Nomination Committee a report of its deliberations and findings.<sup>162</sup> The reports of the meetings of the Remuneration and Nomination Committee shall be circulated as soon as possible after the meeting among all members of the Supervisory Board.
- 13.3 If requested, the chairman of the Remuneration and Nomination Committee shall at meetings of the Supervisory Board provide the Supervisory Board with further information on the outcome of the discussions of the Remuneration and Nomination Committee.
- 13.4 Every Supervisory Board member shall have unrestricted access to all records of the Remuneration and Nomination Committee.

### **14. MISCELLANEOUS**

- 14.1 The chairmen of the Remuneration and Nomination Committee (or one of the other Remuneration and Nomination Committee members) shall be available to answer questions regarding the Remuneration and Nomination Committee's activities at the annual General Meeting of Shareholders.
- 14.2 The Supervisory Board may occasionally decide at its sole discretion not to comply with these terms of reference, subject to applicable law and regulations.
- 14.3 The Remuneration and Nomination Committee shall review and re-assess the adequacy of these terms of reference annually, report its assessment to the Supervisory Board and recommend, where appropriate, any proposed changes to the Supervisory Board.
- 14.4 The Supervisory Board can at all times amend these terms of reference and/or revoke any powers granted by it to the Remuneration and Nomination Committee.

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<sup>162</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

14.5 Clauses 24.4 to 24.7 inclusive of the By-Laws of the Supervisory Board shall apply by analogy to the Remuneration and Nomination Committee, while the power of the Supervisory Board or the Chairman referred to in these clauses shall for the application of these terms of reference be considered a power of the Remuneration and Nomination Committee or the relevant chairman.

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