

# By-Laws Management Board

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## Introduction

- (1). These By-Laws are established pursuant to article 14.3 of the Articles of Association.
- (2). These By-Laws are complementary to the provisions regarding the Management Board and the Management Board members contained in applicable law and regulations, the Articles of Association and the rules pertaining to the relationship between the Supervisory Board and the Management Board contained in the By-Laws of the Supervisory Board.
- (3). These By-Laws are posted on the Company's website.
- (4). The meaning of certain capitalised or uncapitalised terms used in these By-Laws are set forth in the List of Definitions attached as Annex 1.

## Chapter I - Composition of the Management Board; positions

### 1. Composition; Division of Tasks

- 1.1. The members of the Management Board are appointed by the General Meeting of Shareholders upon a nomination by the Supervisory Board in accordance with the Articles of Association. The Supervisory Board ensures that a formal and transparent procedure is in place for the appointment and reappointment of Management Board members, as well as a sound plan for the succession of Management Board members. Only persons in respect of which the relevant competent supervisory authority has resolved that they comply with the applicable suitability and trustworthiness requirements pursuant to the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) can become Management Board members.
- 1.2. The number of Management Board members is determined by the Supervisory Board after consultation with the Management Board, taking into account that the Management Board must consist of at least two members.
- 1.3. The Management Board shall be composed such that the requisite expertise, background and competencies are present for them to carry out their duties properly. The size of the Management Board reflects these requirements.<sup>1</sup> Each Management Board member shall have the specific expertise required for the fulfilment of his duties.<sup>2</sup>
- 1.4. The Company's corporate governance statement shall explain the Equal Opportunity Policy and the way that it is implemented in practice, addressing:
  - a. the policy objectives;
  - b. how the policy has been implemented; and
  - c. the results of the policy in the past financial year.

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<sup>1</sup> Dutch Corporate Governance Code, Principle 2.1.

<sup>2</sup> Dutch Corporate Governance Code, best practice provision 2.1.4.

- 1.5. The Management Board is responsible for:
- a. preparing an agenda and chairing meetings of the Management Board;
  - b. ensuring that the Management Board functions and makes decisions in a collective manner;
  - c. determining whether a proposed resolution should be brought to the Management Board for a vote;
  - d. ensuring that passed resolutions are in accordance with the strategy that should lead to the realisation of the objectives of the Company as referred to in clause 3.1 of these By-Laws;
  - e. supervising the implementation of passed resolutions and determining if further consultation with the Management Board on their implementation is required; and
  - f. consulting on an *ad hoc* basis with members of the Management Board regarding their respective tasks.
- 1.6. The Management Board is also responsible for the following matters regarding the relationship between the Management Board and the Supervisory Board:
- a. designating Management Board members who consult on behalf of the Management Board with Committees;
  - b. submitting a proposed agenda and preparing meetings of the Supervisory Board in consultation with the Chairman of the Supervisory Board and supported by the Company Secretary;
  - c. ensuring that the Supervisory Board is provided with all information necessary for the proper performance of its duties;
  - d. overseeing and ensuring communications of the Management Board with the Supervisory Board;
  - e. consulting regularly with the Chairman of the Supervisory Board and consulting other members of the Supervisory Board if deemed necessary or advisable; and
  - f. considering requests of Management Board members to consult with particular members of the Supervisory Board regarding an area of expertise.
- 1.7. Individual members of the Management Board may be charged with specific parts of the managerial tasks, without prejudice to the collective responsibility of the Management Board as a whole. The Management Board remains collectively responsible for decisions, even if they are prepared by individual members of the Management Board. An individual member of the Management Board may only exercise such powers as are explicitly attributed or delegated to him and he may never exercise powers beyond those exercisable by the Management Board as a whole.
- 1.8. The division of tasks within the Management Board is determined (and amended, if necessary) by the Management Board. Management Board members especially charged with particular managerial tasks are primarily responsible for the risk control and monitoring of the managerial tasks concerned.
- 1.9. Each member of the Management Board must inform the other members of the Management Board in a clear and timely manner about the way in which he has used delegated powers and about major developments in the area of his responsibilities.

## 2. Company Secretary

- 2.1. The Management Board is assisted by the Company Secretary. The Company Secretary shall be appointed and dismissed by the Management Board, after the approval of the Supervisory Board has been obtained.<sup>3</sup>
- 2.2. The Management Board and the Supervisory Board shall be supported by the Company Secretary. The Company Secretary:
- a. shall ensure that the proper procedures are followed and that the statutory obligations and obligations under the Articles of Association are complied with;
  - b. shall facilitate the provision of information to the Management Board and the Supervisory Board; and
  - c. shall support the Chairman of the Supervisory Board in the organisation of the affairs of the Supervisory Board, including the provision of information, meeting agendas, evaluations and training programmes.

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3 Dutch Corporate Governance Code, best practice provision 2.3.10.

- 2.3. When the Company Secretary undertakes work for the Management Board and the Supervisory Board and notes that the interests of the Management Board and the Supervisory Board diverge, as a result of which it is unclear which interests the Company Secretary should represent, the Company Secretary shall report this to the Chairman of the Supervisory Board and the Chairman of the Management Board.<sup>4</sup>

## Chapter II - Duties and Powers

### 3. General Duties and Powers

- 3.1. The Management Board is charged with the management of the Company, which means, among other things, that it is responsible for the achieving of the Company's objectives, strategy and the associated risk profile, the ensuing delivery of results and corporate social responsibility issues that are relevant to the Company. The Management Board is accountable for these matters to the Supervisory Board and the General Meeting of Shareholders. The responsibility for the management of the Company is vested collectively in the Management Board.
- 3.2. The Management Board adopts values embodied in the Code of Conduct for the Company and its affiliated enterprise that contribute to a culture focused on long-term value creation and takes into account the stakeholder interests that are relevant in this context, and discusses these with the Supervisory Board. The Management Board is responsible for the incorporation and maintenance of the values within the Company and its affiliated enterprise.
- 3.3. The Management Board is responsible for compliance with all relevant laws and regulations, for managing the risks attached to the Company's activities and for financing the Company. The Management Board reports on these issues and discusses the internal risk management and control systems with the Supervisory Board and the relevant Committees. The Company has adequate internal risk management and control systems in place. The Management Board is, together with the Supervisory Board, responsible for the corporate governance structure of the Company and compliance with the Dutch Corporate Governance Code.
- 3.4. When discharging its duties the Management Board shall act in accordance with the interests of the Company and the business connected with it, taking into consideration the interests of the Company's stakeholders.
- 3.5. The Management Board is itself responsible for the quality of its performance.
- 3.6. The members of the Management Board shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, with due observance of the responsibilities of its individual members.
- 3.7. The Management Board is, together with the Supervisory Board, responsible for the corporate governance structure of the Company.
- 3.8. The Management Board shall perform its activities under the supervision of the Supervisory Board.
- 3.9. The Management Board draws up a Code of Conduct, and on a continuous basis discusses its effectiveness with the Supervisory Board. The Code of Conduct will be published on the Company's website.<sup>5</sup>
- 3.10. The Management Board conducts an annual review for its own corporate body to identify any aspects with regard to which the Management Board members require training or education.<sup>6</sup>
- 3.11. The Management Board and the Supervisory Board are each responsible for stimulating openness and accountability within the corporate body of which they form part, and between the different corporate bodies within the Company.<sup>7</sup>
- 3.12. The Management Board ensures that internal procedures are established and maintained which safeguard that all relevant information is known to the Management Board and the Supervisory Board in a timely fashion. The Supervisory Board supervises the establishment and implementation of these procedures.<sup>8</sup>

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<sup>4</sup> Dutch Corporate Governance Code, best practice provision 2.3.10.

<sup>5</sup> Dutch Corporate Governance Code best practice provision 2.5.2.

<sup>6</sup> Dutch Corporate Governance Code, best practice provision 2.4.6.

<sup>7</sup> Dutch Corporate Governance Code, best practice provision 2.4.1.

<sup>8</sup> Dutch Corporate Governance Code, best practice provision 2.4.7.

- 3.13. The Chairman of the Supervisory Board acts on behalf of the Supervisory Board as the main contact for the Management Board, Supervisory Board members and shareholders regarding the functioning of Management Board members. The vice-chairman of the Supervisory Board acts as contact for individual Supervisory Board members and Management Board members regarding the functioning of the Chairman of the Supervisory Board.<sup>9</sup>
- 3.14. The Management Board is responsible for creating a culture aimed at long-term value creation for the Company and its affiliated enterprise.

#### **4. Strategy and Risks**

- 4.1. The Management Board shall formulate and record: (i) the operational and financial objectives of the Company; (ii) the strategy designed to achieve the objectives; (iii) the parameters to be applied in relation to the strategy, for example in respect of the financial ratios; and (iv) the corporate social responsibility issues that are relevant to the Company. While formulating the Company's strategy the Management Board shall engage early on the Supervisory Board and render account thereof to the Supervisory Board.
- 4.2. The Company shall have adequate internal risk management and control systems in place. The Management Board is responsible for identifying and managing the risks associated with the Company's strategy and activities.<sup>10</sup> It is responsible for establishing the risk appetite, and also the measures that are put in place in order to counter the risks being taken.<sup>11</sup>
- 4.3. Based on the risk assessment, the Management Board shall design, implement and maintain adequate internal risk management and control systems. To the extent relevant, these systems shall be integrated into the work processes within the Company and its affiliated enterprise it, and shall be familiar to those whose work they are relevant to.<sup>12</sup>
- 4.4. The Management Board shall monitor the operation of the internal risk management and control systems and shall carry out a systematic assessment of their design and effectiveness at least once a year. This monitoring shall cover all material control measures relating to strategic, operational, compliance and reporting risks. Attention shall be given to observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the External Auditor. Where necessary, improvements shall be made to internal risk management and control systems.<sup>13</sup>

#### **5. Financial Reporting; Annual Accounts and Management Report**

- 5.1. The Management Board is responsible for the quality and completeness of publicly disclosed financial reports. The preparation and publication of the Management Report, the Annual Accounts and *ad hoc* financial information require careful internal procedures. The Management Board is responsible for establishing and maintaining internal procedures that ensure that all major financial information is known to the Management Board, so that the timeliness, completeness and accuracy of the external financial reporting are assured. For this purpose the Management Board shall ensure that financial information from business divisions and/or Subsidiaries is reported directly to itself and that the integrity of that information is not compromised.
- 5.2. The Management Board shall release the Management Report and the Annual Accounts within four months of the end of the financial year.
- 5.3. In the Management Report, the Management Board gives an explanation of its view on long-term value creation and the strategy for its realisation, as well as describing which contributions were made to long-term value creation in the past financial year. The Management Board reports on both the short-term and long-term developments.<sup>14</sup> In the Management Report, the Management Board explains how the Code of Conduct is applied in this respect.<sup>15</sup>

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9 Dutch Corporate Governance Code, best practice provision 2.4.3.

10 Dutch Corporate Governance Code, Principle 1.2.

11 Dutch Corporate Governance Code, best practice provision 1.2.1.

12 Dutch Corporate Governance Code, best practice provision 1.2.2.

13 Dutch Corporate Governance Code, best practice provision 1.2.3.

14 Dutch Corporate Governance Code, best practice provision 1.1.4.

15 Dutch Corporate Governance Code, best practice provision 2.5.5.

- 5.4. In the Management Report, the Management Board renders account of:
- a. the execution of the risk assessment, with a description of the principal risks facing the Company in relation to its risk appetite. These risks may include strategic, operational, compliance and reporting risks;
  - b. the design and operation of the internal risk management and control systems during the past financial year;
  - c. any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the Audit Committee and the Supervisory Board; and
  - d. the sensitivity of the results of the Company to material changes in external factors.<sup>16</sup>
- 5.5. The Management Board states in the Management Report, with clear substantiation, that:
- a. the report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems;
  - b. the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
  - c. based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis; and
  - d. the report states those material risks and uncertainties that are relevant to the expectation of the Company's continuity for the period of twelve months after the preparation of the report.<sup>17</sup>

## 6. Relation with the External Auditor

- 6.1. The Management Board shall ensure that the External Auditor can properly perform his audit work and shall maintain regular contact with the External Auditor.<sup>18</sup> The Management Board shall ensure that the External Auditor will receive all information that is necessary for the performance of his work in a timely fashion. The Management Board shall give the External Auditor the opportunity to respond to the information that has been provided.<sup>19</sup>
- 6.2. The External Auditor shall discuss the draft audit plan with the Management Board before presenting it to the Audit Committee.<sup>20</sup>
- 6.3. The Supervisory Board shall be permitted to examine the most important points of discussion arising between the External Auditor and the Management Board based on the draft management letter or the draft audit report.<sup>21</sup>
- 6.4. The Management Board and the Audit Committee shall annually, and on an interim basis if necessary, report to the Supervisory Board on its dealings with the External Auditor.

## 7. Relation with the Supervisory Board

- 7.1. Each member of the Management Board can act as the first contact for the Chairman of the Supervisory Board and the other members of the Supervisory Board.
- 7.2. In relation to the provision of information and the exercise of duties and powers by the Supervisory Board and its members and Committees, the Management Board and its members shall act in accordance with the provisions applying to the Management Board and its members under or pursuant to these By-Laws, the By-Laws of the Supervisory Board, the Terms of Reference of the Committees, the Articles of Association and the applicable laws and regulations.

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<sup>16</sup> Dutch Corporate Governance Code, best practice provision 1.4.2.

<sup>17</sup> Dutch Corporate Governance Code, best practice provision 1.4.3.

<sup>18</sup> Dutch Corporate Governance Code, Principle 1.7.

<sup>19</sup> Dutch Corporate Governance Code, best practice provision 1.7.1.

<sup>20</sup> Dutch Corporate Governance Code, best practice provision 1.7.2.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision 1.7.5.

## 8. Relation with the shareholders

- 8.1. The Management Board and the Supervisory Board shall provide the General Meeting of Shareholders timely with all information required to exercise its powers.
- 8.2. The Management Board and the Supervisory Board shall provide the General Meeting of Shareholders timely with all requested information, unless this would be contrary to an overriding interest of the Company. If the Management Board and the Supervisory Board invoke an overriding interest, it shall state the reasons.
- 8.3. The agenda of the General Meeting of Shareholders shall state the issues that shall be discussed and the issues that shall be put to the vote. The following items shall be dealt with as separate agenda items:
  - a. material changes to the Articles of Association;
  - b. proposals relating to the appointment of Management Board and Supervisory Board members;
  - c. the policy of the Company on additions to reserves and on dividends (the level and purpose of the addition to reserves, the amount of the dividend and the type of dividend);
  - d. any proposal to pay out dividend;
  - e. resolutions to approve the management conducted by the Management Board (discharge of Management Board members from liability);
  - f. resolutions to approve the supervision exercised by the Supervisory Board (discharge of Supervisory Board members from liability);
  - g. each substantial change in the corporate governance structure of the Company and in the compliance with the Dutch Corporate Governance Code;
  - h. the policy of the Company on reserves and on dividends (the level and purpose of the reserves, the amount of the dividend and the type of dividend) and any changes to this policy; and
  - i. the appointment of the External Auditor.<sup>22</sup>
- 8.4. A proposal for approval or authorisation by the General Meeting of Shareholders shall be explained in writing. The Management 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.
- 8.5. The members of the Management Board shall be present at the General Meeting of Shareholders, unless they are unable to attend for important reasons.
- 8.6. The Management Board and the Supervisory Board shall ensure compliance with all applicable laws and regulations related to the rights of the General Meeting of Shareholders and the rights of individual shareholders with respect thereto.
- 8.7. The Management Board shall ensure that the Company gives shareholders and other persons entitled to vote the possibility of issuing voting proxies or voting instructions, respectively, to an independent third party prior to the General Meeting of Shareholders.<sup>23</sup>
- 8.8. The Management Board shall ensure that the Company formulates an outline policy on bilateral contacts with shareholders and it shall post this policy on its website.<sup>24</sup>
- 8.9. If one or more shareholders have the intention of requesting that an item be put on the agenda which may lead to a change of strategy of the Company, such as the dismissal of one or more members of the Supervisory Board, the Management Board shall respond to such request within a reasonable period of time (*the response time*). If the Management Board stipulates a response time, this shall be a reasonable period that does not exceed 180 days from the moment the Management Board is informed by one or more shareholders of their intention to put an item on the agenda to the day of the General Meeting of Shareholders at which the item is to be dealt with. The Management Board shall use the response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and shall explore the alternatives. At the end of the response time, the Management Board shall report on this consultation and the exploration to the General Meeting of Shareholders. This shall be monitored by the Supervisory Board. The response time may be

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<sup>22</sup> Dutch Corporate Governance Code, best practice provision 4.1.3.

<sup>23</sup> Dutch Corporate Governance Code, best practice provision 4.3.2.

<sup>24</sup> Dutch Corporate Governance Code, best practice provision 4.2.2.

stipulated only once for any given General Meeting of Shareholders and shall not apply to an item in respect of which the response time had been previously stipulated, or to meetings where a shareholder holds at least three-quarters of the issued capital as a consequence of a successful public bid.<sup>25</sup>

- 8.10. In the event of a takeover bid for the Company's shares or for the depositary receipts for the Company's shares, 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, both the Management Board and the Supervisory Board ensure that the stakeholder interests concerned are carefully weighed and any conflict of interest for Supervisory Board members or Management Board members is avoided. The Management Board and the Supervisory Board shall be guided in their actions by the interests of the Company and its affiliated enterprise.<sup>26</sup> When a takeover bid for the Company's shares or for the depositary receipts for the Company's shares 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 Management Board shall ensure that the Supervisory Board is involved in the takeover process and/or the change in the structure closely and in a timely fashion.<sup>27</sup>
- 8.11. If a takeover bid has been announced for the shares, or depositary receipts for shares, in the Company, and the Management Board receives a request from a competing bidder to inspect the Company's records, the Management Board shall discuss this request with the Supervisory Board without delay.<sup>28</sup>
- 8.12. If a serious private bid is made for a business unit or a participating interest and the value of the bid exceeds the threshold referred to in section 2:107a paragraph 1(c) of the Dutch Civil Code, and the bid is made public, the Management Board shall, at its earliest convenience, make public its position on the bid and the reasons for this position.<sup>29</sup>

## 9. Relation with Analysts, the Financial Press and Institutional and Other Investors

- 9.1. Analyst meetings, analyst presentations, presentations to institutional or other investors and press conferences shall be announced in advance on the Company's website and by means of press releases. Analysts' meetings and periodical presentations to all investors shall not take place shortly before the publication of the regular financial information. All shareholders shall be able to follow these meetings and presentations in real time, by means of webcasting, telephone or otherwise. After the meetings, the presentations shall be posted on the Company's website.<sup>30</sup>
- 9.2. The contacts between the Management Board on the one hand and the press and financial analysts on the other shall be handled and structured carefully and with due observance of the applicable laws and regulations. The Company shall not do anything that might compromise the independence of analysts in relation to the Company and *vice versa*.<sup>31</sup>
- 9.3. The Management Board shall outline all existing or potential anti-takeover measures, if applicable, in the Management Report and shall also indicate in what circumstances and by whom these measures may likely be used.<sup>32</sup>

## 10. Website of the company

- 10.1. The Company shall post and update information which is relevant to the shareholders and which it is required to publish or submit pursuant to the provisions of company law and securities law applicable to it in a separate section of the Company's website.<sup>33</sup>

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25 Dutch Corporate Governance Code, best practice provision 4.1.7.

26 Dutch Corporate Governance Code, Principle 2.8.

27 Dutch Corporate Governance Code, best practice provision 2.8.1.

28 Dutch Corporate Governance Code, best practice provision 2.8.2.

29 Dutch Corporate Governance Code, best practice provision 2.7.3.

30 Dutch Corporate Governance Code, best practice provision 4.2.3.

31 Dutch Corporate Governance Code, best practice provision 4.2.5.

32 Dutch Corporate Governance Code, best practice provision 4.2.6.

33 Dutch Corporate Governance Code, best practice provision 4.2.4.

## Chapter III - Meetings of the Management Board; decision-making

### 11. Meetings of the Management Board

- 11.1. The Management Board shall meet in principle every month or more often as deemed desirable or required for a proper functioning of the Management Board by any one or more Management Board members. Meetings of the Management Board shall be called by each Management Board member.
- 11.2. Management Board meetings are chaired by one of the members of the Management Board.
- 11.3. A Management Board member may be represented at meetings by another Management Board member holding a proxy in writing, such proxy may only relate to the designated meeting specified therein. The existence of such proxy must be proved satisfactorily to the member chairing the Management Board meeting or, in his absence, Management Board members present at the meeting.
- 11.4. The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting. The minutes should provide insight into the decision-making process at the meeting. The minutes shall be adopted by the Management Board (i) at the next meeting or (ii) prior to the next meeting by having them signed for adoption by the member chairing the Management Board meeting or, in his absence, two Management Board members present at the meeting.
- 11.5. Meetings of the Management Board may be held by telephone, video conference or by any other means of communication, provided all participants can communicate with each other simultaneously.

### 12. Decision-making within the Management Board

- 12.1. Each Management Board member has the right to cast one vote in the meeting of the Management Board.
- 12.2. The Management Board members shall endeavour to achieve that resolutions are as much as possible adopted unanimously.
- 12.3. 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 Management Board are adopted by an absolute majority of the votes validly cast. If there is a tie of votes the Chairman of the Management Board shall decide.
- 12.4. In general, resolutions of the Management Board are adopted at a Management Board meeting.
- 12.5. The Management Board shall not pass resolutions relating to the area of expertise of a particular Management Board member in the absence of that Management Board member.
- 12.6. Resolutions of the Management Board can be adopted without holding a meeting, provided that all members of the Management Board without a conflict of interest have been given the opportunity to express their opinion on the proposed resolution, the majority of them have expressed themselves in favour of the relevant proposal in writing and none of them have objected, on reasonable grounds, to this manner of decision making process. Adoption of resolutions in writing shall be effected by statements in writing from all the Management Board members. A statement from a Management 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.
- 12.7. The Management Board may deviate from the provisions of clauses 12.4, 12.5 and 12.6 if this is deemed necessary by the Chairman of the Management Board, considering the urgent nature and other circumstances of the case, **provided that** all Management Board members are allowed the opportunity to participate in the decision-making process. The Chairman of the Management Board and the Company Secretary shall then prepare a report on any resolution so adopted, which shall be added to the documents for the next meeting of the Management Board and be sent to the Chairman of the Supervisory Board.
- 12.8. A resolution adopted by the Management Board may be evidenced outside the Company through a statement from one of the members of the Management Board and/or the Company Secretary.

## Chapter IV – Other provisions

### 13. Conflicts of Interests of Management Board members

- 13.1. Any form of conflict of interest between the Company and the members of its Management Board or Supervisory Board shall be prevented. To avoid conflicts of interest, adequate measures shall be taken. The Supervisory Board is responsible for the decision-making on dealing with conflicts of interest regarding Management Board members, Supervisory Board members and majority shareholders in relation to the Company.<sup>34</sup>
- 13.2. A conflict of interest may exist if the Company intends to enter into a transaction with a legal entity:
- in which a member of the Management Board or the Supervisory Board personally has a material financial interest; or
  - which has a member of the Management Board or the Supervisory Board who is related under family law to a member of the Management Board or the Supervisory Board of the Company.
- A Management Board member shall report any potential conflict of interest in a transaction that is of material significance to the Company and/or to such Management Board member to the Chairman of the Supervisory Board and to the other members of the Management Board without delay. The Management Board member shall provide all relevant information in that regard, including the information relevant to the situation concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The Supervisory Board shall decide, outside the presence of the Management Board member or Supervisory Board member concerned, whether there is a conflict of interest.<sup>35</sup>
- 13.3. Management Board members and Supervisory Board members are alert to conflicts of interest and shall in any case refrain from the following:
- competing with the Company;
  - demanding or accepting substantial gifts from the Company for themselves or their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
  - providing unjustified advantages to third parties at the Company's expense;
  - taking advantage of business opportunities to which the Company is entitled for themselves or for their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.<sup>36</sup>
- 13.4. A Management Board member shall not take part in any discussion and decision-making that involves a subject or transaction in relation to which he has a conflict of interest with the Company. If, as a result, no Management Board resolution can be adopted, the resolution will be adopted by the Supervisory Board.
- 13.5. All transactions in which there are conflicts of interest with Management Board members or 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 Management Board members or Supervisory Board members that are of material significance to the Company and/or to the relevant Management Board members or Supervisory Board members shall require the approval of the Supervisory Board. Such transactions shall be published in the Management Report, together with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3 and 2.7.4 of the Dutch Corporate Governance Code have been complied with.<sup>37</sup>
- 13.6. All transactions between the Company and legal or natural persons who hold at least ten per cent. of the shares in the Company shall be agreed on terms that are customary in the market. Decisions to enter into transactions with such persons that are of material significance to the Company and/or to such persons shall require the approval of the Supervisory Board. Such transactions shall be published in the Management

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34 Dutch Corporate Governance Code, Principle 2.7.

35 Dutch Corporate Governance Code, best practice provision 2.7.3.

36 Dutch Corporate Governance Code, best practice provision 2.7.1.

37 Dutch Corporate Governance Code, best practice provision 2.7.4.

Report, together with a declaration that best practice provision 2.7.5 of the Dutch Corporate Governance Code has been complied with.<sup>38</sup>

## 14. Remuneration of Management Board members

- 14.1. The Nomination and Remuneration Committee shall submit a proposal of the remuneration policy and individual remuneration applicable to the members of the Management Board to the Supervisory Board in accordance with the Terms of Reference of the Nomination and Remuneration Committee.
- 14.2. The Company shall not grant its Management Board members and Supervisory Board members any personal loans, guarantees or the like unless in the normal course of business and on terms applicable to the personnel as a whole, and after approval of the Supervisory Board. No remission of loans shall be granted.<sup>39</sup>
- 14.3. The individual Management Board members shall provide the Nomination and Remuneration Committee with their views with regard to the amount and structure of their own remuneration.<sup>40</sup>

## 15. Outside positions

- 15.1. The acceptance by a Management Board member of the membership of the management board or supervisory board of any other company requires the prior approval of the Supervisory Board. Other important positions held by a Management Board member must be notified to the Supervisory Board.<sup>41</sup>

## 16. Internal Audit Function

- 16.1. The duty of the Internal Audit Function is to assess the design and the operation of the internal risk management and control systems. The Management Board is responsible for the Internal Audit Function. The Supervisory Board oversees the Internal Audit Function and maintains regular contact with the Head of Internal Audit.<sup>42</sup>
- 16.2. The Management Board both appoints and dismisses the Head of Internal Audit. Both the appointment and the dismissal of the Head of Internal Audit shall be submitted to the Supervisory Board for approval, along with the recommendation issued by the Audit Committee.<sup>43</sup>
- 16.3. The Management Board assesses the way in which the Internal Audit Function fulfils its responsibility annually, taking into account the Audit Committee's opinion.<sup>44</sup>
- 16.4. The Internal Audit Function draws up an Internal Audit Plan, involving the Management Board, the Audit Committee and the External Auditor in this process. The Internal Audit Plan shall be submitted to the Management Board, and then to the Supervisory Board, for approval. In this Internal Audit Plan, attention shall be paid to the interaction with the External Auditor.<sup>45</sup>

## 17. Confidentiality

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

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38 Dutch Corporate Governance Code, best practice provision 2.7.5.

39 Dutch Corporate Governance Code, best practice provision 2.7.6.

40 Dutch Corporate Governance Code, best practice provision 3.2.2.

41 Dutch Corporate Governance Code, best practice provision 2.4.2.

42 Dutch Corporate Governance Code, Principle 1.3.

43 Dutch Corporate Governance Code, best practice provision 1.3.1.

44 Dutch Corporate Governance Code, best practice provision 1.3.2.

45 Dutch Corporate Governance Code, best practice provision 1.3.3.

## **18. Miscellaneous**

### **18.1. Acceptance by Management Board members**

Anyone who is appointed as a Management 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.

### **18.2. Occasional non-compliance**

The Management Board may occasionally decide not to comply with these By-Laws, with due observance of applicable laws and regulations.

### **18.3. Amendment**

These By-Laws may be amended by the Management Board at any time and without any notification being made.

### **18.4. Interpretation**

In the event of lack of clarity or difference of opinion on the interpretation of any provision of these By-Laws, the opinion of the Chairman of the Management Board shall be decisive.

### **18.5. Governing law and jurisdiction**

These By-Laws are governed by the laws of the Netherlands. The courts of the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with these By-Laws (including any dispute regarding the existence, validity or termination of these By-Laws).

### **18.6. Complementarity to Dutch law and Articles of Association**

These By-Laws are complementary to the provisions governing the Management Board as contained in Dutch law, other applicable Dutch or EU regulations and the Articles of Association. Where these By-Laws are inconsistent with Dutch law, other applicable Dutch or EU regulations or the Articles of Association, the latter shall prevail. Where these By-Laws are consistent with the Articles of Association but inconsistent with Dutch law or other applicable Dutch or EU regulations, the latter shall prevail.

### **18.7. 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 Management Board, subject to prior approval of 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.

## Annex 1 – List of definitions

- (1). In these By-Laws the following terms have the following meanings:
- "Annual Accounts"** means the annual accounts of the Company as referred to in section 2:101 of the Dutch Civil Code.
- "Articles of Association"** means the articles of association (*statuten*) of the Company;
- "Audit Committee"** means the Committee designated as such in the By-Laws of the Supervisory Board.
- "By-Laws"** means the By-Laws of the Management Board or the By-Laws of the Supervisory Board, depending on the context, including the annexes belonging thereto.
- "Chairman of the Management Board"** means the chairman of the Management Board.
- "Chairman of the Supervisory Board"** means the chairman of the Supervisory Board.
- "Code of Conduct"** means the code of conduct of the Company as adopted in accordance with clause 3.9 of the By-Laws of the Management Board, and communicated within the organisation as the 'Adyen Formula'.
- "Committee"** means each committee of the Supervisory Board as referred to in the By-Laws of the Supervisory Board or each committee of the Management Board as referred to in clause 20.11 of the Articles of Association.
- "Company"** means Adyen N.V., and, where appropriate, the Subsidiaries and possible other group companies of the Company, whose financial information is incorporated in the consolidated annual accounts of the Company.
- "Company Secretary"** means the meaning given in clauses 2.1 and 2.2 of these By-Laws.
- "Dutch Corporate Governance Code"** means the Dutch corporate governance code as adopted by the Corporate Governance Code Monitoring Committee on 8 December 2016, and as amended from time to time.
- "Equal Opportunity Policy"** means the policy as referred to in clause 2.1(n) of the Terms of Reference of the Nomination and Remuneration Committee.
- "External Auditor"** means the accounting and auditing firm that, in accordance with section 2:393 of the Dutch Civil Code, is charged with the audit of the annual accounts of the Company.
- "General Meeting of Shareholders"** means the general meeting of shareholders (*algemene vergadering van aandeelhouders*) of the Company.
- "Head of Internal Audit"** means the senior internal auditor appointed in accordance with clause 16.2 of the By-Laws of the Management Board.
- "in writing"** means by letter, by telecopier, by e-mail, or by message which is transmitted via any other current means of communication and which can be received in written form.
- "Internal Audit Function"** means the internal audit function of the Company.
- "Internal Audit Plan"** means the internal audit plan of the Company as determined by the Management Board in accordance with clause 16.4 of the By-Laws of the Company.
- "Management Board"** means the management board (*bestuur*) of the Company.
- "Management Report"** means the management report of the Company drawn up by the Management Board, as referred to in section 2:101 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 (*raad van commissarissen*) of the Company.
- (2). Save where the context dictates otherwise, in these By-Laws:
- words and expressions expressed in the singular form also include the plural form, and *vice versa*;
  - words and expressions expressed in the masculine form also include the feminine form; and
  - 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 articles and other headings in these By-Laws are inserted for ease of reference and do not form part of the By-Laws concerned for the purpose of interpretation.