

Draft

ARTICLES OF ASSOCIATION:

CHAPTER 1. DEFINITIONS AND CONSTRUCTION.

Article 1. Definitions and Construction.

1.1 In these Articles of Association, the following terms have the following meanings:

Share means a share in the capital of the Company.

Shareholder means a holder of one or more Shares.

General Meeting or **General Meeting of Shareholders** means the body of the Company consisting of the person or persons holding the voting rights attached to Shares, as a Shareholder or otherwise, or (as the case may be) a meeting of such persons (or their representatives) and other persons holding Meeting Rights.

Works Council has the meaning referred to in Article 24.3 or Article 25.4, as it appears from the context.

Managing Director means a member of the Management Board.

Management Board means the management board of the Company.

Supervisory Director means a member of the Supervisory Board.

Supervisory Board means the supervisory board of the Company.

Regulator means the applicable authorised supervisory authority.

Company means the company the internal organisation of which is governed by these Articles of Association.

Meeting Rights means the right to attend General Meetings of Shareholders and to speak at such meetings, as a Shareholder or as a person to whom these rights have been attributed in accordance with Article 9.

DFSA means the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).

1.2 A message **in writing** means a message transmitted by letter, by telecopier, by e-mail or by any other means of electronic communication provided the relevant message or document is legible and reproducible, and the term **written** is to be construed accordingly.

1.3 The Management Board, the Supervisory Board and the General Meeting each constitute a distinct body of the Company.

1.4 References to **Articles** refer to articles which are part of these Articles of Association, except where expressly indicated otherwise.

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

CHAPTER 2. NAME, OFFICIAL SEAT AND OBJECTS.

Article 2. Name and Official Seat.

2.1 The Company's name is:
BinckBank N.V.

2.2 The official seat of the Company is in Amsterdam.

Article 3. Objects.

The objects of the Company are:

- conducting the banking business of a credit institution (*bank*) by taking deposits or other repayable funds from the public and granting credits for its own account;
- conducting the business of an investment firm (*beleggingsonderneming*) by:
 - (a) providing investment services, including (i) the reception and transmission of orders in relation to one or more financial instruments, (ii) the execution of orders on behalf of clients, (iii) portfolio management and (iv) investment advice;
 - (b) dealing on own account; and
 - (c) providing safekeeping and administration services with respect to financial instruments and for the account of clients, including custodianship and related services such as cash/collateral management,

as well as to participate in, to manage and to finance other enterprises and companies, to provide security for the debts of third parties and to do all that is connected therewith or may be conducive thereto, all to be interpreted in the broadest sense.

CHAPTER 3. CAPITAL AND SHARES.

Article 4. Authorised Capital.

4.1 The authorised capital of the Company is ten million euros (EUR 10,000,000).

4.2 The authorised capital of the Company is divided into one hundred million (100,000,000) Shares with a nominal value of ten euro cents (EUR 0.10) each.

4.3 All Shares are registered. No share certificates will be issued.

Article 5. Register of Shareholders.

5.1 The Management Board must keep a register of Shareholders in which the

names and addresses of all Shareholders are recorded. In the register of Shareholders, the names and addresses of all other persons holding Meeting Rights must also be recorded, as well as the names and addresses of all holders of a right of pledge or usufruct in respect of Shares not holding Meeting Rights.

5.2 Section 2:85 of the Dutch Civil Code applies to the register of Shareholders.

Article 6. Issuance of Shares.

6.1 Shares may be issued pursuant to a resolution of the General Meeting or of another body of the Company designated for that purpose by a resolution of the General Meeting for a fixed period, not exceeding five years. On such designation the number of Shares which may be issued must be specified. The designation may be extended, from time to time, for a period not exceeding five years. Unless the designation provides otherwise, it may not be withdrawn.

6.2 A resolution to issue Shares must stipulate the issue price and the other conditions of issue.

6.3 The provisions of Articles 6.1 and 6.2 apply by analogy to the granting of rights to subscribe for Shares, but do not apply to the issuance of Shares to a person exercising a right to subscribe for Shares previously granted.

6.4 The issue of a Share furthermore requires a notarial deed, to be executed for that purpose before a civil law notary registered in the Netherlands, to which deed those involved in the issuance must be parties.

6.5 Upon issuance of Shares, each Shareholder will have a right of pre-emption in proportion to the aggregate nominal value of his Shares, subject to the relevant limitations prescribed by law and the provisions of Articles 6.6, 6.7 and 6.8.

6.6 Shareholders will have no right of pre-emption on Shares which are issued to employees of the Company or of a group company (*groepsmaatschappij*).

6.7 Prior to each single issuance of Shares, the right of pre-emption may be limited or excluded by a resolution of the General Meeting. The right of pre-emption may also be limited or excluded by the body of the Company designated pursuant to Article 6.1, if, by a resolution of the General Meeting, it was designated and authorised for a fixed period, not exceeding five years, to limit or exclude such right of pre-emption. The designation may be extended, from time to time, for a period not exceeding five years. Unless the designation provides otherwise, it may not be withdrawn. If less than one-half of the Company's issued capital is represented at the meeting, a majority of at least two-thirds of the votes cast will be required for a resolution of the General Meeting to limit or exclude such right of pre-

emption or to make such designation.

- 6.8 Shareholders will have no right of pre-emption in respect of Shares which are issued to a person exercising a right to subscribe for Shares previously granted.
- 6.9 Upon subscription of each Share, the full nominal value thereof must be paid up, and, in addition, if the Share is issued at a higher amount, the difference between such amounts.
- 6.10 The Management Board is authorised to perform legal acts relating to non-cash contributions on Shares and other legal acts mentioned in Section 2:94 of the Dutch Civil Code, without prior approval of the General Meeting.

Article 7. Own Shares; Reduction of the Issued Capital.

- 7.1 The Company and its subsidiaries (*dochtermaatschappijen*) may acquire fully paid-up Shares or depositary receipts thereof, with due observance of the relevant statutory provisions.
- 7.2 The Company and its subsidiaries (*dochtermaatschappijen*) may grant loans with a view to a subscription for or an acquisition of Shares or depositary receipts thereof, with due observance of the relevant statutory provisions.
- 7.3 The Company may not give security, guarantee the price, or in any other way answer to or bind itself either severally or jointly for or on behalf of third parties, with a view to a subscription for or an acquisition of Shares or depositary receipts thereof by others. This prohibition also applies to subsidiaries (*dochtermaatschappijen*).
- 7.4 The prohibition of Article 7.3 will not apply to Shares or depositary receipts thereof subscribed or acquired by or for employees of the Company or of a group company (*groepsmaatschappij*).
- 7.5 In the General Meeting, no voting rights may be exercised for any Share held by the Company or a subsidiary (*dochtermaatschappij*) thereof, nor for any Share for which the Company or a subsidiary (*dochtermaatschappij*) thereof holds the depositary receipts.
- 7.6 The General Meeting may resolve to reduce the Company's issued capital in accordance with the relevant statutory provisions.

Article 8. Transfer of Shares.

- 8.1 The transfer of a Share requires a notarial deed, to be executed for that purpose before a civil law notary registered in the Netherlands, to which deed those involved in the transfer must be parties.
- 8.2 Unless the Company itself is party to the transfer, the rights attributable to the Share can only be exercised after the Company has acknowledged said transfer or said deed has been served upon it, in accordance with the relevant provisions of the law.

Article 9. Pledging of Shares and Usufruct in Shares; Depositary Receipts.

- 9.1 The provisions of Articles 8.1 and 8.2 apply by analogy to the pledging of Shares.
- 9.2 The voting rights attached to pledged Shares accrue to the Shareholder. However, pursuant to a written agreement between the Shareholder and the pledgee, the voting rights may accrue to the pledgee if such transfer of voting rights has been approved by the General Meeting. The Meeting Rights accrue to the Shareholder, whether holding voting rights or not, and to the pledgee holding voting rights, but will not accrue to the pledgee not holding voting rights.
- 9.3 The provisions of Articles 8.1 and 8.2 apply by analogy to the creation or transfer of a right of usufruct in Shares. The voting rights attached to Shares encumbered by a right of usufruct accrue to the Shareholder. The Meeting Rights will not accrue to the holder of a right of usufruct.
- 9.4 The Company will not cooperate in the issuance of depositary receipts for Shares and will not grant Meeting Rights to holders of depositary receipts issued for Shares.

CHAPTER 4. THE MANAGEMENT BOARD.

Article 10. Managing Directors.

- 10.1 The Management Board will consist of two or more Managing Directors, their number to be determined by the Supervisory Board. Only individuals can be Managing Directors.
- 10.2 Managing Directors must meet the integrity and suitability standards as meant in Article 3:8 and 3:9 of the DFSA.
- 10.3 Managing Directors are appointed by the Supervisory Board. The Supervisory Board must notify the General Meeting of an intended appointment of a Managing Director. A resolution to appoint a Managing Director can only be adopted with unanimous votes of all Supervisory Directors then in office. In deviation of the preceding sentence a resolution to appoint a Managing Director can also be adopted by simple majority of the votes cast without a quorum being required, provided that this resolution will then be subject to the approval of the General Meeting. The appointment of a Managing Director will not come into effect until the Regulator has confirmed that the relevant Managing Director meets the integrity and suitability standards as meant in Article 3:8 and 3:9 of the DFSA.
- 10.4 A Managing Director may be removed by the Supervisory Board at any time. The Supervisory Board may not remove a Managing Director until the General Meeting has been consulted on the intended removal. A Managing

Director may also be suspended by the Supervisory Board at any time. A resolution to suspend or remove a Managing Director can only be adopted with unanimous votes of all Supervisory Directors then in office. In deviation of the preceding sentence a resolution to suspend or remove a Managing Director can also be adopted by simple majority of the votes cast without a quorum being required, provided that this resolution will then be subject to the approval of the General Meeting.

10.5 The Company has a policy on the remuneration of the Management Board. Section 2:135 of the Dutch Civil Code applies to this policy.

10.6 The authority to establish remuneration and other conditions of employment for Managing Directors is vested in the General Meeting, with due observance of the policy referred to in Article 10.5.

Article 11. Duties, Decision-making Process and Allocation of Duties.

11.1 The Management Board is entrusted with the management of the Company. In the exercise of their duties, the Managing Directors must be guided by the interests of the Company and the business connected with it.

11.2 Managing Directors will perform their duties from the Netherlands.

11.3 The Management Board may establish rules regarding its decision-making process and working methods. In this context, the Management Board may also determine the duties for which each Managing Director is particularly responsible. The General Meeting may resolve that such rules and allocation of duties must be put in writing and that such rules and allocation of duties will be subject to its approval.

11.4 Management Board resolutions at all times may be adopted in writing, provided the proposal concerned is submitted to all Managing Directors and none of them objects to this manner of adopting resolutions.

Article 12. Representation.

12.1 The Company is represented by the Management Board. The power to represent the company shall also be vested in two members of the Management Board acting jointly.

12.2 The Management Board may appoint officers with general or limited power to represent the Company. Each officer will be competent to represent the Company, subject to any restrictions imposed on him. The Management Board will determine each officer's title.

12.3 Legal acts of the Company vis-à-vis a holder of all of the Shares, or vis-à-vis a participant in a community property of married or registered non-married partners of which all of the Shares form a part, whereby the Company is represented by such Shareholder or one of the participants, must be put in writing. With regard to the foregoing sentence, Shares held

by the Company or its subsidiaries (*dochtermaatschappijen*) will not be taken into account. The aforementioned provisions in this Article 12.3 do not apply to legal acts which, under their agreed terms, form part of the normal course of business of the Company.

Article 13. Approval of Management Board Resolutions.

13.1 Resolutions of the Management Board entailing a significant change in the identity or character of the Company or its business are subject to the approval of the General Meeting, including in any case:

- (a) the transfer of (nearly) the entire business of the Company to a third party;
- (b) entering into or breaking off long-term co-operations of the Company or a subsidiary (*dochtermaatschappij*) with another legal entity or company or as fully liable partner in a limited partnership or general partnership, if this co-operation or termination is of major significance for the Company;
- (c) acquiring or disposing of participating interests in the capital of a company of at least one third of the sum of the assets of the Company as shown on its balance sheet plus explanatory notes or, if the Company prepares a consolidated balance sheet, its consolidated balance sheet plus explanatory notes according to the last adopted annual accounts of the Company, by the Company or a subsidiary (*dochtermaatschappij*).

13.2 Without prejudice to any other applicable provisions of the law or these Articles of Association, Management Board resolutions with respect to any one or more of the following matters are subject to the approval of the Supervisory Board:

- (a) issue and acquisition of Shares and debentures at the expense of the Company or of debentures at the expense of a limited partnership or general partnership in respect of which the Company is a partner with full liability;
- (b) cooperation in the issuance of depositary receipts for Shares;
- (c) the application for admission of the securities under (a) and (b) above to trading on a trading venue (*handelsplatform*) as referred to in Section 1:1 of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) or a trading facility system that is comparable with a trading venue from a state that is not a member state, or, as the case may be, the cancellation of such admission;
- (d) entering into or termination of a long term cooperation 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 cooperation or termination is of fundamental importance for the Company;
- (e) participation by the Company or a Dependent Company in the capital of another company if the value of such participation is at least one quarter of the amount of the issued capital plus reserves of the Company according to its balance sheet and explanatory notes, as well as significantly increasing or reducing such participation;
 - (f) investments requiring an amount equal to at least one quarter of the issued capital plus reserves of the Company according to its balance sheet and explanatory notes;
 - (g) proposal to amend these Articles of Association;
 - (h) proposal to dissolve the Company;
 - (i) petition for bankruptcy or a request for suspension of payments (*surseance van betaling*);
 - (j) termination of the employment of a considerable number of employees of the Company or of a Dependent Company simultaneously or within a short period of time;
 - (k) radical change in the employment conditions of a considerable number of the employees of the Company or of a Dependent Company;
 - (l) proposal to reduce the Company's issued capital.
- 13.3 The General Meeting may require Management Board resolutions to be subject to its approval or to be subject to approval of the Supervisory Board. The Management Board is to be notified in writing of such resolutions, which is to be clearly specified.
- 13.4 The absence of approval by the General Meeting of a resolution as referred to in Article 13.1, or of the General Meeting or Supervisory Board of a resolution as referred to in Article 13.3 will not affect the authority of the Management Board or the Managing Directors to represent the Company.

Article 14. Conflicts of Interest.

- 14.1 A Managing Director having a conflict of interests as referred to in Article 14.2 or an interest which may have the appearance of such a conflict of interests (both a **(potential) conflict of interests**) must declare the nature and extent of that interest to the other Managing Directors and the Supervisory Board.
- 14.2 A Managing Director may not participate in deliberating or decision-making within the Management Board, if with respect to the matter concerned he

has a direct or indirect personal interest that conflicts with the interests of the Company and the business connected with it.

- 14.3 A conflict of interests as referred to in Article 14.2 only exists if in the situation at hand the Managing Director must be deemed to be unable to serve the interests of the Company and the business connected with it with the required level of integrity and objectivity. If a transaction is proposed in which apart from the Company also an affiliate of the Company has an interest, then the mere fact that a Managing Director holds any office or other function with the affiliate concerned or another affiliate, whether or not it is remunerated, does not mean that a conflict of interests as referred to in Article 14.2 exists.
- 14.4 The Managing Director who in connection with a (potential) conflict of interests does not exercise certain duties and powers will insofar be regarded as a Managing Director who is unable to perform his duties (*belet*).
- 14.5 A (potential) conflict of interests does not affect the authority concerning representation of the Company set forth in Article 12.1. The Supervisory Board may determine that, in addition, one or more persons will be authorised pursuant to this Article 14.5 to represent the Company in matters in which a (potential) conflict of interests exists between the Company and one or more Managing Directors.

Article 15. Vacancy or Inability to Act.

- 15.1 If a seat on the Management Board is vacant (*ontstentenis*) or a Managing Director is unable to perform his duties (*belet*), the remaining Managing Directors or Managing Director will be temporarily entrusted with the management of the Company.
- 15.2 If all seats on the Management Board are vacant or all Managing Directors or the sole Managing Director, as the case may be, are unable to perform their duties, the management of the Company will be temporarily entrusted to the Supervisory Board, with the authority to temporarily entrust the management of the Company to one or more Supervisory Directors and/or one or more other persons.
- 15.3 When determining to which extent Managing Directors are present or represented, consent to a manner of adopting resolutions, or vote, no account will be taken of vacant board seats and Managing Directors who are unable to perform their duties.

CHAPTER 5. THE SUPERVISORY BOARD.

Article 16. Supervisory Directors.

- 16.1 The Company will have a Supervisory Board consisting of at least three Supervisory Directors. The number of Supervisory Directors is determined

by the General Meeting with due observance of this minimum. If the number of Supervisory Directors is less than three, the Supervisory Board must take measures forthwith to supplement the number of Supervisory Directors.

- 16.2 Only individuals may be Supervisory Directors.
- 16.3 The Supervisory Board will adopt a profile on its size and composition, taking into account the character of the business, its activities and the desired expertise and background of the Supervisory Directors. The Supervisory Board will discuss the profile in the General Meeting of Shareholders and with the Works Council, for the first time at the occasion of adoption and subsequently at each amendment thereof.
- 16.4 Supervisory Directors cannot be:
 - (a) persons in the service of the Company;
 - (b) persons in the service of a Dependent Company;
 - (c) officials or persons in the service of a trade union which is usually involved in determining the terms of employment of the persons referred to under (a) and (b) above.
- 16.5 Supervisory Directors must meet the integrity and suitability standards as meant in Articles 3:8 and 3:9 of the DFSA.
- 16.6 The General Meeting may award a remuneration to the Supervisory Directors.

Article 17. Appointment of Supervisory Directors.

- 17.1 Notwithstanding the provision of Article 17.5, Supervisory Directors are appointed by the General Meeting on a nomination of the Supervisory Board. The Supervisory Board must simultaneously inform the General Meeting and the Works Council of the nomination. The nomination will state the reasons on which it is based.
- 17.2 The General Meeting and the Works Council may recommend candidates to the Supervisory Board to be nominated as Supervisory Director. The Supervisory Board must inform them in time, when and why and in accordance with what profile a vacancy has to be filled in its midst. If the special right of recommendation referred to in Article 17.4 applies, the Supervisory Board will announce that as well.
- 17.3 A nomination or a recommendation as referred to in this Article 17 must state the candidate's age, his profession, the number of the Shares he holds and the positions he holds or has held, in so far as these are relevant for the performance of the duties of a Supervisory Director. Furthermore, the names of the legal entities of which he is already a Supervisory Director must be indicated; if those include legal entities which belong to a group,

reference of that group will be sufficient. The recommendation and the nomination for appointment or re-appointment must be accounted for by giving reasons for it. In case of re-appointment, the performance in the past period of the candidate as a Supervisory Director will be taken into account.

- 17.4 With regard to one third of the total number of Supervisory Directors, the Supervisory Board will put a person recommended by the Works Council on the nomination, unless the Supervisory Board objects to the recommendation; taken into account Section 2:158 subsections 6 and 7 of the Dutch Civil Code.
- 17.5 The General Meeting can reject the nomination by an absolute majority of the votes cast, representing at least one third of the issued capital. If the General Meeting resolves by an absolute majority of the votes cast to reject the nomination but this majority does not represent at least one third of the issued capital, a new meeting can be convened where the nomination can be rejected by an absolute majority of the votes cast. The Supervisory Board will then prepare a new nomination. Articles 17.2 through 17.4 apply. If the General Meeting does not appoint the person nominated by the Supervisory Board and does not resolve to reject the nomination, the Supervisory Board will appoint the person nominated. The appointment of Supervisory Directors will not come into effect until the Regulator has confirmed that the Supervisory Director meets the integrity and suitability standards as meant in Article 3:8 and 3:9 of the DFSA.
- 17.6 The making of a recommendation as referred to in Article 17.2 as well as the resolution to appoint or object, can be discussed in one and the same General Meeting of Shareholders. The notice of that meeting therefor states the vacancy and the opportunity for the General Meeting to make a recommendation and, for the situation in which no recommendation is made by the General Meeting, the name of the person nominated by the Supervisory Board. If the General Meeting does not make a recommendation, the person nominated can be appointed by the General Meeting.
- 17.7 If all seats on the Supervisory Board are vacant, other than pursuant to Article 18.5, the appointment will be made by the General Meeting in accordance with Section 2:159 Dutch Civil Code.

Article 18. Retirement, suspension and removal.

- 18.1 A Supervisory Director must retire not later than the day on which the first General Meeting of Shareholders is held after four years have elapsed since his appointment.

- 18.2 The Supervisory Directors will retire periodically in accordance with a rotation plan to be drawn up by the Supervisory Board. Any alteration to the rotation plan cannot require a Supervisory Director to resign against his will before the term of his appointment has lapsed.
- 18.3 A Supervisory Director can be suspended by the Supervisory Board; the suspension will lapse by law, if the Company has not submitted a petition as referred to in Article 18.4 to the Commercial Division within one month after commencement of the suspension. The general meeting can terminate the suspension at any time.
- 18.4 The Commercial Division of the Amsterdam Court of Appeal may upon a request to that effect remove a Supervisory Director for neglecting his duties, for other important reasons or for a fundamental change of circumstances on the basis of which in all reasonableness the Company cannot be required to keep him on as a Supervisory Director. Section 2:161 subsection 2 of the Dutch Civil Code is applicable to such request.
- 18.5 The General Meeting can, by an absolute majority of the votes cast, representing at least one third of the issued capital, resolve to abandon its trust (*het vertrouwen opzeggen*) in the entire Supervisory Board. Section 2:161a of the Dutch Civil Code is applicable to such abandon of trust.

Article 19. Duties and Powers.

- 19.1 It is the duty of the Supervisory Board to supervise the management of the Management Board and the general course of affairs of the Company and the business connected with it. The Supervisory Board will assist the Management Board by giving advice. In the exercise of their duties, the Supervisory Directors must be guided by the interests of the Company and the business connected with it.
- 19.2 The Management Board must supply the Supervisory Board in due time with the information required for the exercise of its duties.
- 19.3 At least once a year, the Management Board must provide the Supervisory Board with a written outline of the strategic policy, the general and financial risks and the Company's management and control system.
- 19.4 The Supervisory Board may request assistance from experts. The costs of such assistance will be for the account of the Company.
- 19.5 The Supervisory Board may decide that one or more Supervisory Directors and/or experts have access to the office and the other buildings and premises of the Company and that such persons are authorised to inspect the books and records of the Company.
- 19.6 The Supervisory Board may establish rules regarding its decision-making process and working methods, in addition to the relevant provisions of these

Articles of Association. The General Meeting may resolve that such rules must be put in writing and that such rules will be subject to its approval.

Article 20. Chairperson and Secretary.

- 20.1 The General Meeting may appoint one of the Supervisory Directors as chairperson of the Supervisory Board. If the General Meeting has not appointed a chairperson, the Supervisory Board will appoint a chairperson itself from among its members. The Supervisory Board may also appoint a deputy chairperson from among its members, who must take over the duties and powers of the chairperson in the latter's absence.
- 20.2 The Supervisory Board will also appoint a secretary of the Supervisory Board, from among its members or not, and make arrangements for his substitution in case of absence.
- 20.3 The foregoing provisions of this Article 20 need not be complied with if only one Supervisory Director is in office.

Article 21. Meetings.

- 21.1 The Supervisory Board meets whenever a Supervisory Director or the Management Board deems necessary.
- 21.2 A Supervisory Director may be represented at a meeting by another Supervisory Director authorised in writing.
- 21.3 The meetings of the Supervisory Board are presided over by its chairperson or his deputy. In their absence, the chairperson of the meeting is appointed by a majority of the votes cast by the Supervisory Directors present at the meeting.
- 21.4 The chairperson of the meeting appoints a secretary for the meeting.
- 21.5 The secretary of a meeting of the Supervisory Board must keep minutes of the proceedings at the meeting. The minutes must be adopted by the Supervisory Board, in the same meeting or the next. Evidencing their adoption, the minutes must be signed by the chairperson and the secretary of the meeting in which the minutes are adopted.
- 21.6 The Supervisory Board meets with the Management Board as often as the Supervisory Board or the Management Board deems necessary.

Article 22. Decision-making Process.

- 22.1 When making Supervisory Board resolutions, each Supervisory Director may cast one vote.
- 22.2 All resolutions of the Supervisory Board will be adopted by a majority of the votes cast, unless explicitly stated otherwise in these Articles of Association.
- 22.3 At a meeting, the Supervisory Board may only pass valid resolutions if the majority of the Supervisory Directors are present or represented, unless

explicitly stated otherwise in these Articles of Association.

- 22.4 Supervisory Board resolutions may also be adopted in a manner other than at a meeting, in writing or otherwise, provided the proposal concerned is submitted to all Supervisory Directors and none of them objects to the relevant manner of adopting resolutions. A report must be prepared by the secretary of the Supervisory Board on a resolution adopted other than at a meeting which is not adopted in writing, and such report must be signed by the chairperson and the secretary of the Supervisory Board. Adoption of resolutions in writing is effected by written statements from all Supervisory Directors.
- 22.5 A Supervisory Director may not participate in deliberating or decision-making within the Supervisory Board, if with respect to the matter concerned he has a direct or indirect personal interests that conflicts with the interests of the Company and the business connected with it. The Supervisory Director who in connection with a (potential) conflict of interests does not exercise the duties and powers otherwise accruing to him as a Supervisory Director, will as such be regarded as a Supervisory Director who is unable to perform his duties within the meaning of Article 23.

Article 23. Vacancy or Inability to Act.

- 23.1 Without prejudice to the provisions of Articles 10.3. and 10.4, if a seat on the Supervisory Board is vacant or a Supervisory Director is unable to perform his duties, the remaining Supervisory Directors or Supervisory Director will be temporarily entrusted with the duties and powers of the Supervisory Board, notwithstanding the obligation of the General Meeting to take measures forthwith to supplement the number of Supervisory Directors to at least three.
- 23.2 If all seats on the Supervisory Board are vacant or all Supervisory Directors are unable to perform their duties, the General Meeting will determine to what extent and in which manner the duties and powers of the Supervisory Board are to be taken over temporarily.
- 23.3 The provision of Article 15.3 applies by analogy.

CHAPTER 6. THE WORKS COUNCIL.

Article 24. Position adopted and Right to Explain.

- 24.1 The following proposals and nomination will not be put to the General Meeting of Shareholders unless the Works Council has been given the opportunity to, timely prior to such general meeting, adopt a certain position:
- (a) a proposal to adopt or amend the remuneration policy as referred to

- in Article 10.5;
 - (b) a proposal to approve a resolution as referred to Article 13.1; and
 - (c) a nomination for appointment of a Supervisory Director as referred to in Article 17.1.
- 24.2 The Chairman or a member of the Works Council designated thereto by him, may explain the position of the Works Council as referred to in Article 24.1 at the General Meeting of Shareholders. The absence of such position does not affect the decision-making regarding the proposal.
- 24.3 For the purposes of Articles 24.1(a) and 24.1(b) **Works Council** also means the works council of the business of a subsidiary, if the majority of the employees of the Company and its subsidiaries are employed within the Netherlands. If there is more than one works council, the powers of these works councils will be exercised jointly. If a central works council has been instituted for the business or businesses involved, the powers of these works councils will accrue to such central works council. The powers of the works council referred to in Article 24.1 apply insofar as and to the extent prescribed by Sections 2:107a, 2:135 and 2:158 subsection 4 of the Dutch Civil Code.

Article 25. Works Council and Large Company Regime.

- 25.1 Notice of the meeting convoked as referred to in Article 17.6 may not be given unless it is certain:
- (a) that the Works Council has either made a recommendation as referred to in Article 17.2, or - if applicable – Article 17.4, or has given notice that it does not wish to do so, or that a reasonable period of time, to be determined by the Supervisory Board, has lapsed in which to make a recommendation; and
 - (b) if the Works Council has made a recommendation as referred to in Article 17.4, the Supervisory Board nominated the person recommended.
- 25.2 After preparation of the annual accounts, the Management Board must send these to the Works Council.
- 25.3 An amendment of the Articles of Association following which, in accordance with Section 2:158 subsection 12 of the Dutch Civil Code, the Articles of Association deviate from the statutory provisions regarding appointment of Supervisory Directors, is subject to approval of the Works Council.
- 25.4 In relation to Articles 17, 24.1(c), 25.2 and 25.3 **Works Council** means the works council of the Company's business or of the business of a dependent company. If there is more than one works council, the powers of the works

council under these Articles of Association will be exercised by such works councils severally; however where it concerns a recommendation as referred to in Article 17.4, the powers of the works councils will be exercised by the works councils jointly. If a central works council has been instituted for the business or businesses involved, the powers of the works council under these Articles of Association will accrue to such central works council.

CHAPTER 7. ANNUAL ACCOUNTS AND DISTRIBUTIONS.

Article 26. Financial Year and Annual Accounts.

- 26.1 The Company's financial year is the calendar year.
- 26.2 Annually, not later than five months after the end of the financial year, save where this period is extended by the General Meeting by not more than five months by reason of special circumstances, the Management Board must prepare annual accounts, and must deposit the same for inspection by the Shareholders and other persons holding Meeting Rights at the Company's office.
- 26.3 Within the same period, the Management Board must also deposit the report of the Management Board for inspection by the Shareholders and other persons Meeting Rights, unless the Company is not obliged thereto pursuant to Section 2:396 or Section 2:403 of the Dutch Civil Code.
- 26.4 The annual accounts must be signed by the Managing Directors and the Supervisory Directors. If the signature of one or more of them is missing, this must be stated and reasons for this omission must be given.
- 26.5 Annually, the Supervisory Board will prepare a report, which will be enclosed with the annual accounts and the report of the Management Board. The provisions of Article 26.3 apply by analogy.
- 26.6 The Company may, and if the law so requires must, appoint an accountant to audit the annual accounts. Such appointment must be made by the General Meeting.
- 26.7 The annual accounts must be submitted to the General Meeting for adoption.
- 26.8 At the General Meeting of Shareholders at which it is resolved to adopt the annual accounts, it will be separately proposed that the Managing Directors on the one hand and the Supervisory Directors on the other be released from liability for their respective duties, insofar as the exercise of such duties is reflected in the annual accounts or otherwise disclosed to the General Meeting prior to the adoption of the annual accounts.

Article 27. Profits and Distributions.

- 27.1 The authority to decide over the allocation of profits determined by the adoption of the annual accounts and to make distributions is vested in the

- General Meeting, with due observance of the limitations prescribed by law.
- 27.2 Distributions may be made only up to an amount which does not exceed the amount of the Distributable Equity and, if it concerns an interim distribution, the compliance with this requirement is evidenced by an interim statement of assets and liabilities as referred to in Section 2:105, subsection 4, of the Dutch Civil Code. The Company must deposit the statement of assets and liabilities at the office of the Commercial Register within eight days after the day on which the resolution to make the distribution is published.
- 27.3 The authority of the General Meeting to make distributions applies to both distributions at the expense of non-appropriated profits and distributions at the expense of any reserves, and to both distributions on the occasion of the adoption of the annual accounts and interim distributions.
- 27.4 A resolution to make a distribution will not be effective until approved by the Management Board. The Management Board may only refuse to grant such approval if it knows or reasonably should foresee that after the distribution the Company would not be able to continue to pay its debts as they fall due.

CHAPTER 8. GENERAL MEETING OF SHAREHOLDERS.

Article 28. General Meetings of Shareholders.

- 28.1 The annual General Meeting of Shareholders must be held within six months after the end of the financial year.
- 28.2 Other General Meetings of Shareholders will be held as often as the Management Board, the Supervisory Board or a shareholder holding more than fifty percent (50%) of the issued and outstanding capital of the Company deems necessary.
- 28.3 Shareholders and/or other persons holding Meeting Rights representing in the aggregate at least one-tenth of the Company's issued capital may request the Management Board and the Supervisory Board in writing to convene a General Meeting of Shareholders, stating specifically the business to be discussed. If the Management Board or the Supervisory Board has not given proper and timely notice of a General Meeting of Shareholders such that the meeting can be held within six weeks after receipt of the request, the applicants will be authorised to convene a meeting themselves.
- 28.4 Within three months of it becoming apparent to the Management Board that the equity of the Company has decreased to an amount equal to or lower than half of the paid-up part of the capital, a General Meeting of Shareholders will be held to discuss any requisite measures.

Article 29. Notice, Agenda and Venue of Meetings.

- 29.1 Notice of General Meetings of Shareholders will be given by the Management Board, the Supervisory Board or a shareholder holding more than fifty percent (50%) of the issued and outstanding capital of the Company, without prejudice to the provisions of Article 28.3.
- 29.2 Notice of the meeting must be given no later than on the fifteenth day prior to the day of the meeting, without prejudice to the provision of Article 33.4. The notice is given in accordance with Article 36.1.
- 29.3 The notice convening the meeting must specify the business to be discussed. Other business not specified in such notice may be announced at a later date, with due observance of the term referred to in Article 28.2.
- 29.4 Items for which a written request has been submitted by one or more Shareholders and/or other persons holding Meeting Rights, alone or jointly representing at least three per cent of the issued capital, must be included in the notice or announced in the same manner, provided that the Company received the request or proposed resolutions, including the reasons for if, no later than on the sixtieth day before the date of the meeting can be given.
- 29.5 General Meetings of Shareholders are held in the municipality in which, according to these Articles of Association, the Company has its official seat or in the municipality Haarlemmermeer (Schiphol Airport). General Meetings of Shareholders may also be held elsewhere, in which case valid resolutions of the General Meeting may only be adopted if all of the Company's issued capital is represented.

Article 30. Admittance and Rights at Meetings.

- 30.1 Each Shareholder, and any other person holding Meeting Rights, is entitled to attend the General Meetings of Shareholders, to address the meeting and, to the extent this right has accrued to him, to exercise his voting rights. They may be represented in a meeting by a proxy authorised in writing.
- 30.2 The Meeting Rights and voting rights may be exercised using any appropriate means of electronic communication, if that possibility is expressly provided for in the notice of the meeting or accepted by the chairperson of the meeting. The means of electronic communication used must be such that the persons holding Meeting Rights or their representatives can be identified through it to the satisfaction of the chairperson of the meeting. The notice of the meeting may contain further details and the chairperson of the meeting may give further requirements with respect to the permitted means of electronic communication and its use.
- 30.3 The chairperson of the meeting may determine that each person with voting rights present at a meeting must sign the attendance list. The chairperson of

the meeting may also decide that the attendance list must be signed by other persons present at the meeting as well.

30.4 The Managing Directors and the Supervisory Directors have the right to give advice in the General Meetings of Shareholders.

30.5 The chairperson of the meeting decides on the admittance of other persons to the meeting, without prejudice to the provisions of Article 24.2.

Article 31. Chairperson and Secretary of the Meeting.

31.1 The General Meetings of Shareholders are presided over by the chairperson of the Supervisory Board. In his absence, the Supervisory Directors present at the meeting will appoint a chairperson for the meeting from among their midst. The Supervisory Board may appoint a different chairperson for a General Meeting of Shareholders.

31.2 If the chairpersonship of a meeting is not provided in accordance with Article 31.1, the chairperson of the meeting will be appointed by a majority of the votes cast by the persons with voting rights present at the meeting.

31.3 The chairperson of the meeting must appoint a secretary for the meeting.

Article 32. Minutes; Recording of Shareholders' Resolutions.

32.1 The secretary of a General Meeting of Shareholders must keep minutes of the proceedings at the meeting. The minutes must be adopted by the chairperson and the secretary of the meeting and as evidence thereof must be signed by them.

32.2 The Management Board must keep a record of all resolutions adopted by the General Meeting. If the Management Board is not represented at a meeting, the chairperson of the meeting must ensure that the Management Board is provided with a transcript of the resolutions adopted, as soon as possible after the meeting. The records must be deposited at the Company's office for inspection by the Shareholders. On application, each of them must be provided with a copy of or an extract from the records.

Article 33. Adoption of Resolutions in a Meeting.

33.1 Each Share confers the right to cast one vote.

33.2 To the extent that the law or these Articles of Association do not provide otherwise, all resolutions of the General Meeting will be adopted by a simple majority of the votes cast, without a quorum being required.

33.3 If there is a tie in voting, the proposal will thus be rejected.

33.4 If the formalities for convening and holding of General Meetings of Shareholders, as prescribed by law or these Articles of Association, have not been complied with, valid resolutions of the General Meeting may only be adopted in a meeting, if in such meeting all of the Company's issued capital is represented and such resolution is carried by unanimous vote.

- 33.5 When determining how many votes are cast by Shareholders, how many Shareholders are present or represented, or what portion of the Company's issued capital is represented, no account will be taken of Shares for which no vote can be cast pursuant to the law.

Article 34. Voting.

- 34.1 All voting must take place orally. The chairperson is, however, entitled to decide that votes be cast by a secret ballot. If it concerns the holding of a vote on persons, anyone present at the meeting with voting rights may demand a vote by a secret ballot. Votes by secret ballot must be cast by means of secret, unsigned ballot papers.
- 34.2 Blank and invalid votes will not be counted as votes.
- 34.3 Resolutions may be adopted by acclamation if none of the persons with voting rights present at the meeting objects.
- 34.4 The chairperson's decision at the meeting on the result of a vote will be final and conclusive. The same applies to the contents of an adopted resolution if a vote is taken on an unwritten proposal. However, if the correctness of such decision is challenged immediately after it is pronounced, a new vote must be taken if either the majority of the persons with voting rights present at the meeting or, where the original vote was not taken by roll call or in writing, any person with voting rights present at the meeting, so demands. The legal consequences of the original vote will be made null and void by the new vote.

Article 35. Adoption of Resolutions without holding Meetings.

- 35.1 Shareholders may adopt resolutions of the General Meeting in writing without holding a meeting, provided they are adopted by the unanimous vote of all Shareholders entitled to vote. The provisions of Articles 24.1 and 30.4 apply by analogy. Adoption of resolutions outside of meetings is not permissible if any person other than Shareholders holds Meeting Rights.
- 35.2 Each Shareholder with voting rights must ensure that the Management Board is informed of the resolutions thus adopted as soon as possible in writing. The Management Board must keep a record of the resolutions adopted and it must add such records to those referred to in Article 32.2.

Article 36. Notices and Announcements.

- 36.1 The notice of a General Meeting must be in writing and sent to the addresses of the Shareholders and all the other persons holding Meeting Rights as shown in the register of Shareholders. However, if a Shareholder or another person holding Meeting Rights has provided the Company with another address for the purpose of receiving such notice, the notice may alternatively be sent to such other address.

- 36.2 The provisions of Article 36.1 apply by analogy to notifications which pursuant to the law or these Articles of Association must be made to the General Meeting, as well as to other announcements, notices and notifications to Shareholders and other persons holding Meeting Rights.

CHAPTER 9. INDEMNIFICATION

Article 37. Indemnification; Limitation of Liability.

- 37.1 To the extent permissible by law, the Company will indemnify and hold harmless each member of the Management Board and of the Supervisory Board, both former members and members currently in office (each of them, for the purpose of this Article 37 only, an **Indemnified Person**), against any and all liabilities, claims, judgments, fines and penalties (**Claims**) incurred by the Indemnified Person as a result of any expected, pending or completed action, investigation or other proceeding, whether civil, criminal or administrative (each, a **Legal Action**), of or initiated by any party other than the Company itself or a group company (*groepsmaatschappij*) thereof, in relation to any acts or omissions in or related to his capacity as an Indemnified Person. Claims will include derivative actions of or initiated by the Company or a group company (*groepsmaatschappij*) thereof against the Indemnified Person and (recourse) Claims by the Company itself or a group company (*groepsmaatschappij*) thereof for payments of Claims by third parties if the Indemnified Person will be held personally liable therefore.
- 37.2 The Indemnified Person will not be indemnified with respect to Claims in so far as they relate to the gaining in fact of personal profits, advantages or remuneration to which he was not legally entitled, or if the Indemnified Person has been adjudged to be liable for wilful misconduct (*opzet*) or intentional recklessness (*bewuste roekeloosheid*).
- 37.3 The Company will provide for and bear the cost of adequate insurance covering Claims against sitting and former Managing Directors and sitting and former Supervisory Directors (**D&O insurance**), unless such insurance cannot be obtained at reasonable terms.
- 37.4 Any expenses (including reasonable attorneys' fees and litigation costs) (collectively, **Expenses**) incurred by the Indemnified Person in connection with any Legal Action will be settled or reimbursed by the Company, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such Expenses if a competent court in an irrevocable judgment has determined that he is not entitled to be indemnified. Expenses will be deemed to include any tax liability which the Indemnified Person may be subject to as a result of his indemnification.

- 37.5 Also in case of a Legal Action against the Indemnified Person by the Company itself or its group companies (*groepsmaatschappijen*), the Company will settle or reimburse to the Indemnified Person his reasonable attorneys' fees and litigation costs, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such fees and costs if a competent court in an irrevocable judgment has resolved the Legal Action in favour of the Company or the relevant group company (*groepsmaatschappij*) rather than the Indemnified Person.
- 37.6 The Indemnified Person may not admit any personal financial liability vis-à-vis third parties, nor enter into any settlement agreement, without the Company's prior written authorisation. The Company and the Indemnified Person will use all reasonable endeavours to cooperate with a view to agreeing on the defence of any Claims, but in the event that the Company and the Indemnified Person fail to reach such agreement, the Indemnified Person will comply with all directions given by the Company in its sole discretion, in order to be entitled to the indemnity contemplated by this Article 37.
- 37.7 The indemnity contemplated by this Article 37 does not apply to the extent Claims and Expenses are reimbursed by insurers.
- 37.8 This Article 37 can be amended without the consent of the Indemnified Persons as such. However, the provisions set forth herein nevertheless continues to apply to Claims and/or Expenses incurred in relation to the acts or omissions by the Indemnified Person during the periods in which this Article was in effect.

CHAPTER 10. AMENDMENT OF THE ARTICLES OF ASSOCIATION, DISSOLUTION AND LIQUIDATION.

Article 38. Amendment of the Articles of Association.

The General Meeting may resolve to amend these Articles of Association. When a proposal to amend these Articles of Association is to be made to the General Meeting, the notice convening the General Meeting must state so and a copy of the proposal, including the verbatim text thereof, must be deposited and kept available at the Company's office for inspection by the Shareholders and other persons holding Meeting Rights, until the conclusion of the meeting.

Article 39. Dissolution and Liquidation.

- 39.1 The Company may be dissolved pursuant to a resolution to that effect by the General Meeting. When a proposal to dissolve the Company is to be made to the General Meeting, this must be stated in the notice convening the General Meeting.
- 39.2 If the Company is dissolved pursuant to a resolution of the General

Meeting, the Managing Directors become the liquidators of the dissolved Company's property, unless the General Meeting resolves to appoint one or more other persons as liquidator.

39.3 During liquidation, the provisions of these Articles of Association remain in force to the extent possible.

39.4 The balance remaining after payment of the debts of the dissolved Company must be transferred to the Shareholders in proportion to the aggregate nominal value of the Shares held by each.

39.5 In addition, the liquidation is subject to the relevant provisions of Book 2, Title 1, of the Dutch Civil Code.

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