



**EBUSCO HOLDING N.V.**

**BY-LAWS MANAGEMENT BOARD**

**Adopted by the Management Board as of 26 October 2021**

**Approved by the Supervisory Board as of 26 October 2021**

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## INTRODUCTION

- 0.1 These By-Laws are established pursuant to article 15.2 of the Articles of Association, subject to any deviations provided for in the comply-or-explain statement of the Company.
- 0.2 These By-Laws are complementary to the provisions regarding the Management Board and the Management Board members contained in applicable law and regulation, 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.
- 0.3 These By-Laws are posted on the Company's website.
- 0.4 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 1

### COMPOSITION OF THE MANAGEMENT BOARD; POSITIONS

#### 1. COMPOSITION; DIVISION OF TASKS

- 1.1 The Management Board members are appointed by the General Meeting of Shareholders. The number of Management Board members is determined by the Supervisory Board after consultation with the Management Board. The Supervisory Board nominates one or more candidates for appointment.
- 1.2 Management Board members are appointed for a maximum of four years per term, up to and including the first General Meeting of Shareholders taking place in the fourth year after appointment.<sup>1</sup>
- 1.3 The nomination of the Supervisory Board is in accordance with the diversity policy drawn up by the Supervisory Board with regard to the composition of the Management Board. The diversity policy addresses the concrete targets relating to diversity and the diversity aspects relevant to the Company, such as nationality, age, gender and background of education and professional experience.<sup>2</sup>
- 1.4 Management Board members that are nominated for appointment shall attend the General Meeting of Shareholders at which votes will be cast on their nomination.<sup>3</sup>
- 1.5 Management Board members shall retire periodically in accordance with a rotation plan to be drawn up by the Supervisory Board in order to avoid as much as possible the situation in which many Management Board members retire at the same time. The current rotation plan is attached as Fout! Verwijzingsbron niet gevonden.. The Supervisory Board may at any time amend the rotation plan. Amendments to the rotation plan, however, do not entail that a sitting Management Board member remains in office for a longer period than he or she was appointed for, or that he or she retires against his or her will before his or her term has expired.

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision 2.2.1.

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

<sup>3</sup> Dutch Corporate Governance Code, best practice provision 4.1.8.

- 1.6 A Management Board member shall retire early in the event of inadequate functioning, structural incompatibility of interests, and in other instances in which this is deemed necessary by the Supervisory Board.<sup>4</sup>
- 1.7 Individual Management Board members 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 Management Board members. An individual Management Board member may only exercise such powers as are explicitly attributed or delegated to him or her and he or she 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, subject to the approval of the Supervisory 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 Management Board member must inform the other Management Board members in a clear and timely manner about the way in which he or she has used delegated powers and about major developments in the area of his or her responsibilities.

## **2. CHIEF EXECUTIVE OFFICER**

- 2.1 The Supervisory Board appoints one of the Management Board members as CEO.
- 2.2 The CEO is primarily responsible for:
  - (a) preparing an agenda and chairing meetings of the Management Board;
  - (b) ensuring that budgets and policy plans are drawn up in a timely manner;
  - (c) ensuring that the Management Board functions effectively and makes decisions in a collective manner;
  - (d) determining whether a proposed resolution should be brought to the Management Board for a vote;
  - (e) 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 6;
  - (f) supervising the implementation of passed resolutions and determining if further consultation with the Management Board on their implementation is required;
  - (g) consulting on an ad hoc basis with Management Board members regarding their respective tasks; and
  - (h) ensuring that all resolutions of the Management Board and all actions of the Company are in compliance with the applicable laws, regulations, the Articles of Association, the Supervisory Board By-Laws and these By-Laws.

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<sup>4</sup> Dutch Corporate Governance Code, best practice provision 2.2.3.

- 2.3 The CEO 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 the Committees;
  - (b) submitting items on the agenda and in this regard 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) involving the Supervisory Board in a timely manner when formulating the strategy concerning the long-term value creation;
  - (f) consulting regularly with the Chairman of the Supervisory Board and consulting other members of the Supervisory Board if deemed necessary or advisable;
  - (g) considering requests of Management Board members to consult with particular members of the Supervisory Board regarding their area of expertise; and
  - (h) if requested<sup>5</sup>, participating in meetings with the Audit Committee and the CFO as described in Clause 3.
- 2.4 The CEO is assisted in the organisation of the matters set out in Clauses 2.2 and 2.3 by the Company Secretary.

### **3. CHIEF FINANCIAL OFFICER**

- 3.1 The Supervisory Board appoints one of the Management Board members as CFO with approval of the CEO.
- 3.2 The CFO is primarily responsible for:
- (a) formulating, communicating and executing the Company's financial strategy;
  - (b) formulating, communicating and executing the Company's business risk and audit strategy;
  - (c) overseeing and ensuring the integrity of the Company's accounts;
  - (d) the functioning of the internal audit function;
  - (e) the financial, tax and management accounting reporting and filing of the Company; and
  - (f) performing any other related duties as may be prescribed from time to time by the Management Board.

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<sup>5</sup> Dutch Corporate Governance Code, best practice provision 1.5.2.

- 3.3 The CFO is also primarily responsible for taking part in meetings of the Audit Committee to discuss,<sup>6</sup> among other things:
- (a) the integrity of the financial statements of the Company (including but not limited to the choice of accounting policies, application and assessments of the effects of new rules, information about the handling of estimated items in the Annual Accounts and forecasts);
  - (b) the qualifications, independence, remuneration and non-auditing work of the External Auditor for the Company (without prejudice to the responsibilities of the Audit Committee in the area of finance, accounting and tax);
  - (c) the performance of tasks by the internal audit function and the External Auditor;
  - (d) the financial reporting process;
  - (e) risk management;
  - (f) the system of internal business controls (including but not limited to the effect of internal risk management and control systems);
  - (g) compliance by the Company with laws and regulations and applicable codes of conduct in the area of finance, accounting and tax;
  - (h) compliance by the Company with recommendations of the External Auditor and the Company's internal audit function;
  - (i) the financing of the Company and finance-related strategies; and
  - (j) the Company's tax policy.

#### **4. MANAGEMENT TEAM**

- 4.1 The Company has a management team that is not considered an Executive Committee under the Dutch Corporate Governance Code.

#### **5. COMPANY SECRETARY<sup>7</sup>**

- 5.1 The Management Board is assisted by the Company Secretary, who is appointed by the Management Board, after approval by the Supervisory Board. The Company Secretary may be removed by the Management Board after approval by the Supervisory Board.
- 5.2 All Management Board members have access to the advice and services of the Company Secretary.
- 5.3 The Company Secretary sees to it that correct Management Board procedures are followed and that the obligations of the Management Board under the law, the Articles of Association as well as the by-laws are complied with. The Company Secretary shall assist the CEO in the organisation of the affairs of the Management Board (the preparing and reporting of meetings, information etc.).
- 5.4 The Company Secretary may delegate his or her duties under these By-Laws, or parts thereof, to one (or more) deputy (or deputies) appointed by him or her in consultation with the CEO.

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<sup>6</sup> Dutch Corporate Governance Code, best practice provision 1.5.2.  
Compare clause 4 of the By-Laws of the Supervisory Board and Dutch Corporate Governance Code, best practice provision 2.3.10.

- 5.5 If the Company Secretary 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, he or she should report this to the Chairman of the Supervisory Board.
- 5.6 The Company Secretary also performs tasks for the Supervisory Board, as provided for in the By-Laws of the Supervisory Board.

## **CHAPTER II DUTIES AND POWERS**

### **6. GENERAL DUTIES AND POWERS**

- 6.1 The Management Board is charged with the management of the Company, which means, among other things, that it is responsible for the continuity of the Company and the business connected with it. The Management Board focuses on long-term value creation for the Company and the business connected with it, and takes into account the stakeholders interests that are relevant in this context.<sup>8</sup> The responsibility for the management of the Company is vested collectively in the Management Board. The Supervisory Board monitors the Management Board in this.
- 6.2 The Management Board members 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.
- 6.3 The Management Board is responsible for the compliance with all relevant laws and regulations. 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.<sup>9</sup>
- 6.4 The Management Board is responsible for creating a culture that contributes to long-term value creation of the Company. The Management Board shall<sup>10</sup>:
- (a) adopt common values for the Company and the business connected with it that contribute to a culture focused on long-term value creation and discuss these with the Supervisory Board; the Management Board is responsible for the incorporation and maintenance of the values within the Company and the business connected with it;
  - (b) encourage behaviour that is in keeping with the values, and propagate these values through leading by example; and
  - (c) draw up a code of conduct and monitor its effectiveness and compliance with this Code, both on the part of itself and of the employees of the Company.

The conduct and culture in the Company and the business connected with it shall be discussed in the consultations between the Management Board, the Supervisory Board.<sup>11</sup>

- 6.5 The Management Board promotes a culture of openness and accountability within the Management Board.<sup>12</sup>

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<sup>8</sup> Dutch Corporate Governance Code, best practice provision 1.1.

<sup>9</sup> Dutch Corporate Governance Code, part: 'Compliance with the Code'.

<sup>10</sup> Dutch Corporate Governance Code, best practice provisions 2.5.1 and 2.5.2.

<sup>11</sup> Dutch Corporate Governance Code, best practice provision 2.5.3.

<sup>12</sup> Dutch Corporate Governance Code, best practice provision 2.4.1.

- 6.6 The Management Board shall ensure that employees have the possibility of reporting actual (or suspected) misconduct or irregularities in the Company to the CEO or an officer designated thereto, without jeopardising their legal position. When these concern the functioning of the Management Board members, it shall be reported to the Chairman of the Supervisory Board. The Management Board informs the Chairman of the Supervisory Board without delay on signs of actual (or suspected) material misconduct or irregularities within the Company and the business connected with it.<sup>13</sup>
- 6.7 All transactions between the Company and individuals or legal entities who hold at least 10% of the shares in the Company must be agreed on terms that are customary in the market. Decisions to enter into transactions in which there are conflicts of interest with such persons that are of material significance to the Company and/or to such persons require the approval of the Supervisory Board.<sup>14</sup>
- 6.8 At least once a year the Management Board itself shall evaluate the functioning of the Management Board as a whole and the functioning of its individual members, and discuss the conclusions that must be drawn on the basis thereof.<sup>15</sup>

## 7. STRATEGY AND RISKS

- 7.1 The Management Board shall develop a view on long-term value creation by the Company and the business connected with it and shall formulate a strategy in line with this. When developing the strategy, attention shall in any event be paid to:<sup>16</sup>
- (a) the strategy's implementation and feasibility;
  - (b) the business model applied by the Company and the market in which the Company and the business connected with it operate;
  - (c) opportunities and risks for the Company;
  - (d) the Company's operational and financial goals and their impact on its future position in relevant markets;
  - (e) the interests of the stakeholders;
  - (f) any other aspects relevant to the Company and the business connected with it, such as the environment, social and employee-related matters, the chain within which the enterprise operates, respect for human rights, and fighting corruption and bribery; and
  - (g) the information and communication technology (ICT) systems of the Company and the affiliated risks of cyber security (including disturbance, failure or abuse of ICT).<sup>17</sup>
- 7.2 The Management Board shall engage the Supervisory Board at an early stage in formulating the strategy for realising long-term value creation, and renders account to the Supervisory Board of the strategy and the explanatory notes to that strategy.<sup>18</sup>

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<sup>13</sup> Dutch Corporate Governance Code, best practice provision 2.6.1. and 2.6.2.

<sup>14</sup> Dutch Corporate Governance Code, best practice provision 2.7.5.

<sup>15</sup> Dutch Corporate Governance Code, best practice provision 2.2.7.

<sup>16</sup> Dutch Corporate Governance Code; best practice provision 1.1.1.

<sup>17</sup> Cyber Security Council; Cybersecurity guide for Management Board members

<sup>18</sup> Dutch Corporate Governance Code, best practice provision 1.1.2.



- 7.3 The Management Board shall identify and analyse the risks associated with the Company's strategy and activities and the business connected with it. It is responsible for establishing the risk appetite, and also the measures that are put in place in order to counter the risks being taken.<sup>19</sup> Based on the risk assessment, the Management Board shall design, implement and maintain adequate internal risk management and control systems.<sup>20</sup>
- 7.4 The Management Board monitors the operation of the internal risk management and control systems and conducts a systematic assessment of the design and effectiveness of the systems at least once a year. The monitoring covers all material control measures, relating to strategic, operational, compliance and reporting risks. Attention shall be given to observed weaknesses, instances of misconduct and irregularities, indications from whistle-blowers, lessons learned and findings from the internal audit function and the External Auditor. Where necessary, improvements shall be made to the internal risk management and control systems.<sup>21</sup>
- 7.5 The Management Board may appoint a Chief Information Security Officer (CISO), who is responsible for the formulation and monitoring of the physical and digital information security policy within the Company. The CISO advises the Management Board and reports to the Management Board. The Management Board ensures that the CISO can operate independently in the Company.<sup>22</sup>
- 7.6 The Management Board discusses the effectiveness of the design and the operation of the internal risk management and control systems with the Audit Committee and render account of this to the Supervisory Board.<sup>23</sup>
- 8. INTERNAL AUDIT FUNCTION**
- 8.1 The duty of the internal audit function is to assess the design and the operation of the internal risk management and control systems. The internal audit function shall have sufficient resources to execute the internal audit plan and shall have direct access to the Audit Committee and the External Auditor.<sup>24</sup> The Management Board is responsible for the internal audit function.<sup>25</sup>
- 8.2 The Management Board both appoints and dismisses the senior internal auditor which decisions will be submitted to the Supervisory Board for approval, along with the recommendation issued by the Audit Committee.<sup>26</sup>
- 8.3 The Management Board annually assesses the way in which the internal audit function fulfils its responsibility, taking into account the Audit Committee's opinion.<sup>27</sup>
- 8.4 The Management Board adopts terms relating to the internal audit function and may amend these at any time with the approval of the chairman of the Audit Committee. These terms mark the role and responsibility of the internal audit function, its composition and in which manner it should perform its tasks.

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<sup>19</sup> Dutch Corporate Governance Code, best practice provision 1.2.1.

<sup>20</sup> Dutch Corporate Governance Code, best practice provision 1.2.2.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision 1.2.3.

<sup>22</sup> Cyber Security Council, Cybersecurity-guide for the Management Board members, p. 6.

<sup>23</sup> Dutch Corporate Governance Code, best practice provision 1.4.1.

<sup>24</sup> Dutch Corporate Governance Code, best practice provision 1.3.4.

<sup>25</sup> Dutch Corporate Governance Code, Principle 1.3.

<sup>26</sup> Dutch Corporate Governance Code, best practice provision 1.3.1.

<sup>27</sup> Dutch Corporate Governance Code, best practice provision 1.3.2.

8.5 The Management Board and the Supervisory Board will be asked to approve the audit plan of the internal audit function. The internal audit function will draw up its audit plan involving the Management Board, the Audit Committee and the External Auditor.<sup>28</sup>

## 9. FINANCIAL REPORTING; ANNUAL ACCOUNTS AND REPORT OF THE MANAGEMENT BOARD

9.1 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.<sup>29</sup>

9.2 The Management Board is responsible for the quality and completeness of publicly disclosed financial reports.<sup>30</sup>

9.3 The Management Board shall prepare quarterly and half-yearly financial statements that will be discussed at the first meeting of the Supervisory Board thereafter.

9.4 Annually, at the latest in April, the Management Board shall submit the Report of the Management Board and the Annual Accounts together with the audit report, the management letter and all further required additional information, to the Supervisory Board for discussion. The Management Board shall make available for the public the Report of the Management Board and the Annual Accounts within four months of the end of the financial year.

9.5 The Management Board shall ensure that the information listed in **Annex 3** is included in the Report of the Management Board.

## 10. RELATION WITH THE EXTERNAL AUDITOR

10.1 The Management Board shall ensure that the External Auditor can properly perform its audit work, and it shall encourage both the External Auditor and the Company to properly perform and pursue the role and the policy of the Company regarding the External Auditor, as provided for by agreement with the External Auditor, these By-Laws, the By-Laws of the Supervisory Board, the terms of reference of the Audit Committee and the terms of the internal audit function.

10.2 The Management Board and the Supervisory Board maintain on regular basis contact with the External Auditor. In its contact with the External Auditor the Management Board discusses at least the draft audit plan before presenting it to the Audit Committee.<sup>31</sup> The Management Board ensures that the External Auditor receives all information necessary for completing its task and will give the External Auditor the opportunity to respond to the information that has been provided.<sup>32</sup>

10.3 The Supervisory Board is 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>33</sup>

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<sup>28</sup> Dutch Corporate Governance Code, best practice provision 1.3.3.

<sup>29</sup> Dutch Corporate Governance Code 2009, best practice provision V.1.3.

<sup>30</sup> Dutch Corporate Governance Code 2009, Principle V.1.

<sup>31</sup> Dutch Corporate Governance Code, Principle 1.7 and best practice provision 1.7.2.

<sup>32</sup> Dutch Corporate Governance Code, best practice provision 1.7.1.

<sup>33</sup> Dutch Corporate Governance Code, best practice provision 1.7.5.

10.4 The Management Board annually reports its observations to the Audit Committee and the Supervisory Board on the functioning of the External Auditor and the fulfilment of its duties, in respect of the (re)appointment or dismissal of the External Auditor and the issue of a new audit-engagement.<sup>34</sup> The Management Board facilitates the process of appointment of the External Auditor, paying attention to the scope of the audit, the materiality to be used and remuneration for the audit.<sup>35</sup>

10.5 The Management Board publishes a press release in the event of the early termination of the relationship with external audit firm, which shall explain the reasons for such early termination.<sup>36</sup>

## **11. RELATION WITH THE SUPERVISORY BOARD**

11.1 The CEO is the first contact for the Chairman of the Supervisory Board and the other members of the Supervisory Board.

11.2 The Management Board members attend as many meetings of the Supervisory Board as possible, to the extent the Supervisory Board does not indicate that it wishes to meet in the absence of the Management Board members.<sup>37</sup>

11.3 The Management Board stimulates a culture of openness and accountability between the Management Board and the Supervisory Board.<sup>38</sup>

11.4 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.

11.5 The Management Board sees to it 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.<sup>39</sup>

## **12. RELATION WITH THE SHAREHOLDERS**

12.1 The Management Board and the Supervisory Board ensure that the General Meeting of Shareholders is adequately provided with information.<sup>40</sup>

12.2 The Management Board and the Supervisory Board 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.<sup>41</sup>

12.3 The agenda of the General Meeting of Shareholders shall list which items are for discussion and which items are to be voted on.<sup>42</sup>

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<sup>34</sup> Dutch Corporate Governance Code, best practice provision 1.6.1.

<sup>35</sup> Dutch Corporate Governance Code, best practice provision 1.6.3.

<sup>36</sup> Dutch Corporate Governance Code, best practice provision 1.6.5.

<sup>37</sup> See also clause 16.1 of the by-laws of the Supervisory Board.

<sup>38</sup> Dutch Corporate Governance Code, best practice provision 2.4.1.

<sup>39</sup> Dutch Corporate Governance Code, best practice provision 2.4.7.

<sup>40</sup> Dutch Corporate Governance Code, Principle 4.2.

<sup>41</sup> Section 2:107 lid 2 of the Dutch Civil Code and Dutch Corporate Governance Code, best practice provision 4.2.1.

<sup>42</sup> Dutch Corporate Governance Code, best practice provision 4.1.3.

- 12.4 Proposals for the following items shall be dealt with as separate agenda items:
- (a) material changes to the Articles of Association;
  - (b) the appointment of individual Management Board members 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) the distribution of 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; and
  - (h) the appointment of the External Auditor.<sup>43</sup>
- 12.5 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.<sup>44</sup>
- 12.6 The Management Board members shall be present at the General Meeting of Shareholders, unless they are unable to attend for important reasons. Under certain circumstances, a Management Board member may attend the General Meeting of Shareholders through means of electronic communication.
- 12.7 The Company shall provide shareholders and others who have the right to vote at the General Meeting of Shareholders the possibility to issue, prior to the General Meeting of Shareholders, voting proxies or voting instructions to an independent third party.<sup>45</sup>
- 12.8 The Company shall formulate an outline policy on bilateral contacts with the shareholders.<sup>46</sup>
- 12.9 If one or more shareholders have the intention of requesting that an item be put on the agenda which may result in a change of strategy of the Company, for example as a result of the dismissal of one or several Management Board members or Supervisory Board members, the Management Board shall respond to such request within a reasonable period of time (the **response time**). The opportunity to stipulate the response time also applies to an intention as referred above for judicial leave to call a General Meeting of Shareholders pursuant to Section 2:110 of the Dutch Civil Code. The response time shall not exceed 180 days, calculated as from the date on which the Management Board was informed by one or more shareholders of the intention to put this item on the agenda until the date of the General Meeting of Shareholders at which the item is to be dealt with. The

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<sup>43</sup> Dutch Corporate Governance Code, best practice provision 4.1.3.

<sup>44</sup> Dutch Corporate Governance Code, best practice provision 4.1.4; see also 5:25ka(1)(c).

<sup>45</sup> Dutch Corporate Governance Code, best practice provision 4.3.2.

<sup>46</sup> Dutch Corporate Governance Code, best practice provision 4.2.2.

Management Board shall use this response time for further deliberation and constructive consultation, in any event with the relevant shareholder(s), and to explore alternatives. The Supervisory Board shall monitor this.<sup>47</sup> Notwithstanding this Clause, the Management Board may under certain circumstances invoke a statutory cooling-off period of up to 250 days during which the General Meeting of Shareholders would not be able to dismiss, suspend or appoint members of the Management Board or Supervisory Board (or amend the provisions in the Articles of Association dealing with those matters) unless those matters would be proposed by the Management Board. This cooling-off period could be invoked by the Management Board in case: (i) shareholders, using either their shareholder proposal right or their right to request a General Meeting of Shareholders, propose an agenda item for the General Meeting of Shareholders to dismiss, suspend or appoint a member of the Management Board or Supervisory Board (or to amend any provision in the Articles of Association dealing with those matters); or (ii) a public offer for the Company is made or announced without the Company's support, provided, in each case, that the Management Board believes that such proposal or offer materially conflicts with the interests of the Company and its business.

- 12.10 When a takeover bid for (depository receipts for) shares in the Company is being prepared, in the event of a private bid for a business unit or a participating interest, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, and/or in the event of other substantial changes in the structure of the organisation, the Management Board shall ensure that the Supervisory Board is involved in the takeover process and/or the change in structure closely and in a timely fashion.<sup>48</sup>
- 12.11 If a takeover bid has been announced or made for (depository receipts for) shares in the Company and the Management Board receives a request from a third competing bidder for information regarding the Company, the Management Board shall discuss such request without delay with the Supervisory Board.<sup>49</sup>
- 12.12 If a private bid for a business unit or a participating interest has been made public, where the value of the bid exceeds the threshold referred to in Section 2:107a(1)(c) of the Dutch Civil Code, the Management Board shall, as soon as possible, publicly announce its position on the bid and the reasons for this position.<sup>50</sup>
- 13. RELATION WITH THE AFM, ANALYSTS, THE FINANCIAL PRESS AND INSTITUTIONAL AND OTHER INVESTORS**
- 13.1 The Management Board is obliged to provide and to communicate the information disclosed in **Annex 3** to the AFM, with regard to the statutory and legal regulations applicable to the Company.
- 13.2 The contacts between the Management Board on the one hand and the press and financial analysts on the other shall be carefully handled and structured with due observance of the applicable statutory regulations and the Company shall not engage in any acts that compromise the independence of analysts in relation to the Company and vice versa.<sup>51</sup>
- 13.3 Meetings with and presentations to analysts, presentations to (institutional) investors and press conferences shall be announced in advance on the Company's website and by means of press

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<sup>47</sup> Dutch Corporate Governance Code, best practice provision 4.1.6 and 4.1.7.

<sup>48</sup> Dutch Corporate Governance Code, best practice provision 2.8.1.

<sup>49</sup> Dutch Corporate Governance Code, best practice provision 2.8.2.

<sup>50</sup> Dutch Corporate Governance Code, best practice provision 2.8.3.

<sup>51</sup> Dutch Corporate Governance Code, best practice provision 4.2.5.

releases. Analysts' meetings and -presentations to investors shall not take place shortly before the publication of the regular financial information. Provisions shall be made for all shareholders to follow these meetings and presentations in real time, by means of webcasting, telephone or by other means.<sup>52</sup>

## 14. WEBSITE OF THE COMPANY

The Management Board shall post and update all information relevant to the shareholders that the Company is required to publish or deposit pursuant to the applicable provisions of company law or securities law and regulation on a separate part of the Company's website and provides that the information on the website is accessible for at least one year.<sup>53</sup> A list of items that must be placed on the website is attached as **Annex 5**.<sup>54</sup>

## CHAPTER III MEETINGS OF THE MANAGEMENT BOARD; DECISION-MAKING

### 15. MEETINGS OF THE MANAGEMENT BOARD

- 15.1 The Management Board shall in principle meet once a week, 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 may be called by each of the Management Board members. Save in urgent cases, to be determined by the CEO, the agenda for the meeting shall be sent at least three calendar days before the meeting to all Management Board members. Whenever possible, an explanation in writing and/or other related documentation shall be attached for each item on the agenda.
- 15.2 Management Board meetings are being held at the office of the Company or anywhere else. Meetings of the Management Board can be held by means of conference call, video conference or other means of communication, provided that all the participants are able to see and hear each other.
- 15.3 Management Board meetings are chaired by the CEO. If the CEO is absent, one of the other Management Board members, designated by a majority of votes cast by the Management Board members present and represented at the meeting, presides over the meeting.
- 15.4 A Management Board member may be represented at meetings by another Management Board member holding a proxy in writing. The existence of such proxy must be proved satisfactorily to the CEO or, in his or her absence, Management Board members present at the meeting.
- 15.5 The admittance to the meeting of persons other than the Management Board members and the Company Secretary or his deputy shall be decided by majority vote of the Management Board members present and represented at the meeting.
- 15.6 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting. The minutes shall provide insight into the decision-making process at the meeting. The minutes shall be adopted by the Management Board at the same meeting or the next meeting.

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<sup>52</sup> Dutch Corporate Governance Code, best practice provision 4.2.3.

<sup>53</sup> See also section 5:25m paragraph 3 Wft.

<sup>54</sup> Dutch Corporate Governance Code, best practice provision 4.2.4.

## **16. DECISION-MAKING WITHIN THE MANAGEMENT BOARD**

- 16.1 The Management Board members shall endeavour to achieve that resolutions are as much as possible adopted unanimously.
- 16.2 Each Management Board member has the right to cast one vote.
- 16.3 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 cast. In the event of a tie, the CEO shall have the deciding vote, provided that the Management Board consists of at least three members. At a meeting, the Management Board may only pass resolutions if the majority of the Management Board members then in office are present or represented.
- 16.4 In general, resolutions of the Management Board are adopted at a Management Board meeting.
- 16.5 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.
- 16.6 Management Board resolutions may also be adopted in writing, provided the proposal concerned is submitted to all Management Board members then in office and none of them objects to this form of adoption. Adoption of resolutions in writing shall be effected by statements in writing, which can also be issued through a proxy, from all the 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.
- 16.7 The Management Board may deviate from the provisions of Clauses 16.3 (last sentence), 16.4, 16.5 and 16.6 if this is deemed necessary by the CEO, 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 CEO and the Company Secretary shall then prepare a report on any resolution so adopted, that shall be added to the documents for the next meeting of the Management Board.
- 16.8 A resolution adopted by the Management Board may be evidenced outside the Company through a statement from the CEO and/or the Company Secretary.
- 16.9 Pursuant to article 17.2 of the Articles of Association, the Supervisory Board is entitled to require resolutions of the Management Board to be subject to its approval. Such resolutions must be clearly specified and notified to the Management Board in writing. Reference is made to **Annex 2**.

## **CHAPTER IV OTHER PROVISIONS**

### **17. CONFLICTS OF INTERESTS OF MANAGEMENT BOARD MEMBERS**

- 17.1 A Management Board member is alert to conflicts of interests and shall in any case not:
- (a) enter into competition with the Company;

- (b) demand or accept (substantial) gifts from the Company for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
- (c) provide unjustified advantages to third parties to the detriment of the Company; or
- (d) take advantage of business opportunities to which the Company is entitled for himself or for his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.<sup>55</sup>

17.2 A conflict of interest exists if with respect to the matter concerned a Management Board member has a direct or indirect personal interest that conflicts with the interests of the Company and the business connected with it. In addition, a conflict of interest may exist if (i) the Company enters into a *Related Party Transaction* and a Management Board member qualifies as a Related Party under the Company's policy on related party transactions and (ii) the Company intends to enter into a transaction with a legal entity:

- (a) in which a Management Board member personally has a material financial interest, or
- (b) which has a management board member or a supervisory board member who has a relationship under family law<sup>56</sup> with a Management Board member.<sup>57</sup>

17.3 A Management Board member shall without delay report any conflict of interests or potential conflict of interests in a transaction that is of material significance to the Company and/or to the member concerned, to the Chairman and to the other Management Board members and shall provide all relevant information, including information concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage upon the second degree. The Supervisory Board shall decide, without the Management Board member concerned being present, whether there is a conflict of interests.<sup>58</sup>

17.4 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 or she has a conflict of interests with the Company. If, as a result, no Management Board resolution can be adopted, the resolution will be adopted by the Supervisory Board.<sup>59</sup>

17.5 A Management Board member who in connection with a (potential) conflict of interests does not exercise the duties and powers that he or she would otherwise have as a Management Board member, will insofar be regarded as a Management Board member who is unable to perform his duties (*belet*).

17.6 All transactions in which there are conflicts of interest with Management 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 that are of material significance to the Company and/or the relevant Management Board members require the approval of the Supervisory Board.<sup>60</sup>

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<sup>55</sup> Dutch Corporate Governance Code, best practice provision 2.7.1.

<sup>56</sup> A relation under family law consists between a child, his parents and their blood relatives (section 1:197 Dutch Civil Code).

<sup>57</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, first paragraph.

<sup>58</sup> Dutch Corporate Governance Code, best practice provision 2.7.3, second paragraph and third paragraph on the end.

<sup>59</sup> Section 2:129 paragraph 6 Dutch Civil Code.

<sup>60</sup> Dutch Corporate Governance Code, best practice provision 2.7.4.



**18. INTERNAL INVESTIGATION**

A Management Board member is at all times obliged to cooperate fully with an investigation set up by the Company into signs of material misconduct and irregularities in the Company and the business connected with it.<sup>61</sup>

**19. REMUNERATION OF MANAGEMENT BOARD MEMBERS**

19.1 The remuneration policy applicable to Management Board members shall be clear and understandable, shall focus on long-term value creation, and take into account the internal pay ratios within the enterprise.<sup>62</sup>

19.2 The remuneration and contractual terms of employment of Management Board members are determined by the Supervisory Board in accordance with article 13.4 of the Articles of Association and clause 12 of the By-Laws of the Supervisory Board, within the scope of the remuneration policy adopted by the General Meeting of Shareholders.<sup>63</sup>

19.3 When drafting the proposal for the remuneration of Management Board members, the remuneration committee shall take note of individual Management Board members' views with regard to the amount and structure of their own remuneration.<sup>64</sup>

19.4 The Company and its Subsidiaries shall not grant personal loans, guarantees or the like to Management Board members except within the framework of its usual business operations, on conditions which apply to all employees and with the approval of the Supervisory Board. Loans are not remitted.<sup>65</sup>

19.5 Apart from their remuneration, Management Board members shall be reimbursed for all reasonable costs incurred with the consent of the CEO, or, with respect to the CEO, incurred with the consent of the Chairman of the Supervisory Board.

**20. OTHER POSITIONS**

20.1 A Management Board member shall report any other position he may have to the Supervisory Board in advance, and at least annually these outside positions will be discussed in a Supervisory Board meeting. The acceptance of the position of a supervisory director by a Management Board member requires the approval of the Supervisory Board.<sup>66</sup>

20.2 A Management Board member may not hold more than two supervisory memberships of Dutch large companies or large foundations. A Management Board member may not concurrently serve as chairman of the supervisory board or one tier board of a large company or a large foundation.<sup>67</sup>

20.3 Management Board members shall not without prior permission of the CEO (following consultation with the Chairman of the Supervisory Board) or, in the case of the CEO, prior permission of the Chairman of the Supervisory Board, accept:

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<sup>61</sup> Dutch Corporate Governance Code, best practice provision 2.6.4. and clause 9.1(c) of the by-laws of the Supervisory Board.

<sup>62</sup> Dutch Corporate Governance Code, Principle 3.1.

<sup>63</sup> Dutch Corporate Governance Code, Principle 3.2.

<sup>64</sup> Dutch Corporate Governance Code, best practice provision 3.2.2.

<sup>65</sup> Dutch Corporate Governance Code, best practice provision 2.7.6.

<sup>66</sup> Dutch Corporate Governance Code, best practice provision 2.4.2.

<sup>67</sup> Section 2:132a of the Dutch Civil Code contains more detailed provisions in this regard.

- (a) any other remunerated employment position, including in an advisory or supervisory capacity; or
- (b) any non-remunerated employment position.

## 21. HOLDING AND TRADING SECURITIES

- 21.1 Any shareholding by Management Board members is for the purpose of long-term investment.<sup>68</sup> If shares are awarded to a Management Board member, the shares shall be held for at least five years after they are awarded.<sup>69</sup> If share options are being awarded, the options cannot be exercised during the first three years after they are awarded.<sup>70</sup>
- 21.2 A Managing Director shall not own securities issued by entities other than the Company or carry out transactions in those securities, other than in accordance with the Regulations on Insider Trading. The provisions of the previous sentence shall not apply if a Managing Director holds the securities for investment in listed investment funds or, if investing in other funds, only if he or she has transferred the disposition of his securities portfolio to an independent third party by means of a written mandate.
- 21.3 Management Board members are bound to the Regulations on Insider Trading of the Company regarding the Company and other securities referred to in these Regulations.

## 22. TRAINING & EDUCATION

The Management Board conducts an annual review to identify any aspects with regard to which the Management Board members require training or education.<sup>71</sup>

## 23. CONFIDENTIALITY

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 or her knowledge in the capacity of his work for the Company and the companies in which it holds a stake and which he or she 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, shall be informed of the information concerned. A Management Board member shall not in any way whatsoever utilise the information referred to above for his or her personal benefit.

## 24. MISCELLANEOUS

- 24.1 **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 or she accepts and agrees to the contents of these By-Laws and pledge to the Company that he or she will comply with the provisions of these By-Laws. These By-laws are also applicable to anyone who in the event of

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<sup>68</sup> Dutch Corporate Governance Code 2009, Principle II.2; currently to deduce out of Principles 1.1 and 3.1.

<sup>69</sup> Dutch Corporate Governance Code, best practice provision 3.1.2(vi).

<sup>70</sup> Dutch Corporate Governance Code, best practice provision 3.1.2(vii).

<sup>71</sup> Dutch Corporate Governance Code, best practice provision 2.4.6.

absence or inability to act of one or more Management Board members, has been appointed by the Supervisory Board to perform managerial duties.

- 24.2 **Occasional non-compliance.** The Management Board may occasionally decide not to comply with these By-Laws, with due observance of applicable laws and regulations and with the prior approval of the Supervisory Board.
- 24.3 **Amendment.** These By-Laws may be amended by the Management Board at any time and without any notification being made, subject only to prior Supervisory Board approval.
- 24.4 **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 Supervisory Board shall be decisive.
- 24.5 **Governing law and jurisdiction.** These By-Laws are governed by the laws of the Netherlands. The courts of the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with these By-Laws (including any dispute regarding the existence, validity or termination of these By-Laws).
- 24.6 **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.
- 24.7 **Partial invalidity.** If one or more provisions of these By-Laws are or become invalid, this shall not affect the validity of the remaining provisions. The 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.

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**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.

**AFM** means the Authority for the Financial Markets (*Autoriteit Financiële Markten*).

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

**Audit Committee** means the audit committee of the Supervisory Board.

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

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

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

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

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

**Company** means Ebusco Holding 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.

**Company Secretary** means the company secretary of the Company appointed in accordance with Clause 5.

**Executive Committee** means the executive committee of the Company (if any).

**External Auditor** means the accounting and auditing firm that, in accordance with Section 2:393 of the Dutch Civil Code, is charged with the audit of the Annual Accounts.

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

**group company** has the meaning attributed to it in Section 2:24b of the Dutch Civil Code.

**in writing** means by letter, by 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.

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

**Nomination Committee** means the nomination committee of the Supervisory Board.

**Remuneration Committee** means the remuneration committee of the Supervisory Board.

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

**Report of the Management Board** means the Report of the Management Board 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 of the Company.

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

2. Save where the context dictates otherwise, in these By-Laws:
  - (a) unless a different intention clearly appears, a reference to a Clause or Annex is a reference to a clause or annex of these By-Laws;
  - (b) words and expressions expressed in the singular form also include the plural form, and vice versa;
  - (c) words and expressions expressed in the masculine form also include the feminine form; and
  - (d) 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 these By-Laws for the purpose of interpretation.

**ANNEX 2****LIST OF APPROVAL SUPERVISORY BOARD**

The approval of the Supervisory Board is required for:

- (a) the allocation of duties of the Management Board to individual members of the Management Board;
- (b) the establishment of an Executive Committee;
- (c) all transactions between the Company and natural or legal persons who hold at least 10% of the shares in the Company that are of material significance to the Company and/or such persons
- (d) all transactions in which there are conflicts of interest with Management Board members that are of material significance to the Company and/or the relevant Management Board members;
- (e) all transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Company and/or the relevant Supervisory Board members;
- (f) the appointment and dismissal of the Company Secretary;
- (g) the appointment and dismissal of the senior internal auditor;
- (h) the internal audit plan;
- (i) 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;
- (j) cooperation in the issuance of depositary receipts for Shares;
- (k) entering into or termination of a long term cooperation of the Company or a subsidiary 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;
- (l) participation by the Company or a subsidiary 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;
- (m) 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;
- (n) proposal to amend these Articles of Association;
- (o) proposal to dissolve the Company;
- (p) petition for bankruptcy or a request for suspension of payments (*surseance van betaling*);

- (q) termination of the employment of a considerable number of employees of the Company or of a subsidiary simultaneously or within a short period of time;
- (r) radical change in the employment conditions of a considerable number of the employees of the Company or of a subsidiary;
- (s) proposal to reduce the Company's issued capital;
- (t) acquiring, alienating, encumbering, leasing, letting and in any other way obtaining and giving the use or benefit of registered property with a total value exceeding an amount of EUR 5,000,000;
- (u) entering into agreements, whereby the Company is granted credit by a bank with a total value exceeding an amount of EUR 5,000,000;
- (v) lending and borrowing money, with the exception of acquiring money under a credit already granted to the Company by a bank with a total value exceeding an amount of EUR 5,000,000;
- (w) desinvestments with a total value exceeding an amount of EUR 5,000,000;
- (x) entering into agreements by which the Company binds itself as guarantor or as severally-liable co debtor, or otherwise guarantees or agrees to bind itself as security for a debt of a third party with a total value exceeding an amount of EUR 5,000,000;
- (y) making settlements with a total value exceeding an amount of EUR 5,000,000;
- (z) being a party to legal proceedings, including conducting arbitration proceedings, with the exception of taking legal measures that cannot be delayed with a total value exceeding an amount of EUR 5,000,000;
- (aa) establishing pension plans and granting pension rights in excess of those arising from existing arrangements with a total value exceeding an amount of EUR 5,000,000; and
- (bb) all other acts that require the approval by legislation, the Articles of Association, the By-Laws of the Management Board, the By-Laws of the Supervisory Board, the Dutch Corporate Governance Code or any other applicable legislation.

**ANNEX 3****INFORMATION TO BE INCLUDED IN THE REPORT OF THE MANAGEMENT BOARD**

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

- 1.1.4 CG Code            A detailed explanation of the view of the Management Board on the long-term value creation, the strategy for its realisation and which contributions were made to the long-term value creation in the past financial year.<sup>72</sup>
- 1.4.2 CG Code            Accountability about (a) the execution of the risk assessment, with a description of the principal risks facing the Company in relationship to the risk appetite; (b) the design and operation of the internal risk management and control systems during the past financial year; (c) any major failings in the internal risk management and control systems which have been observed in the financial year, any significant changes made to these systems and any major improvements planned, along with a confirmation that these issues have been discussed with the Audit Committee and the Supervisory Board; and (d) the sensitivity of the results of the Company to material changes in external factors.<sup>73</sup>
- 1.4.3 CG Code            With clear substantiation that (a) the Report of the Management Board 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 of the Management Board 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>74</sup>
- 2.5.4 CG Code            An explanation of the values and the way in which they are incorporated in the Company and the business connected with it, and the effectiveness of, and compliance with, the code of conduct.<sup>75</sup>
- 2.7.4 CG Code            Publication of all 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, with a statement of the conflict of interest and a declaration that best practice provisions 2.7.3. and 2.7.4. have been complied with.<sup>76</sup>
- 2.7.5 CG Code            Publication of all transactions between the Company and legal or natural persons who holds at least 10% of the shares in the Company, which are of material

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<sup>72</sup> Cf. By-laws Management Board, Clause 7.1.

<sup>73</sup> Cf. By-laws Management Board, Clause 7.3 and 7.4.

<sup>74</sup> Cf. By-laws Management Board, Clause 4.

<sup>75</sup> Cf. By-laws Management Board, Clause 6.4.

<sup>76</sup> Cf. By-laws Management Board, Clause 17.



significance for the Company and/or the legal or natural person, with a declaration that best practice provision 2.7.5. has been complied with.<sup>77</sup>

#### 4.2.6 CG Code

A survey of all existing or potential anti-takeover measures and an indication of the circumstances in which and by whom these measures can be used.

#### CG Code<sup>78</sup>

In a separate chapter: the broad outline of the corporate governance structure of the Company, partly on the basis of the principles stated in the Dutch Corporate Governance Code and explicitly stating the extent to which it complies with the principles and best practice provisions stipulated in the Dutch Corporate Governance Code and, where it does not comply with them, why and to what extent it deviates from them. If the composition of the Management Board and/or the Supervisory Board diverges from the targets stipulated in the Company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law, the current state of affairs shall be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target, and by when this is likely to be achieved.<sup>79</sup>

#### 2:391 paragraph 7 DCC

To the extent the seats on the Management Board or Supervisory Board are not divided in a balanced manner amongst men and women as referred to in Section 2:166 DCC, an explanation: (a) why the seats are not divided in a balanced manner, (b) what the Company has done to establish a balanced division, and (c) what the intentions of the Company are to establish a balanced division of seats in the future.

#### Management Report Decree

A corporate governance statement regarding: (a) compliance with the principles and best practice provisions of the Dutch Corporate Governance Code, (b) the most important characteristics of the management- and control system of the Company in respect of the process of financial reporting of the Company and the group of which the financials are consolidated, (c) the functioning of the General Meeting of Shareholders, its major powers and the shareholders' rights and the way they can be exercised, (d) the composition and functioning of the Management Board and Supervisory Board and its committees, (e) the diversity policy with respect to the composition of the Management Board and the Supervisory Board (by which the Company describes the manner in which the diversity policy has been executed and the results thereof in the last financial year), and (f) the information referred to in Section 10(1)(c)(d)(f)(h) and (i) EU-Directive 2004/25 regarding public takeovers.<sup>80</sup>

#### Non-financial Information Decree

Notices regarding: (a) a brief description of the Company's business model, (b) a description of the policies pursued by the Company in relation to those matters, including due diligence processes implemented and the outcome of those policies regarding: (i) environmental, social and employee matters, (ii) respect for human rights and (iii) anti-corruption and anti-bribery matters, (c) the principal risks related to those matters referred to under (b) and linked to the Company's operations, (d) the non-financial key performance indicators relevant to the particular business of

<sup>77</sup> Cf. By-laws Management Board, Clause 6.7.

<sup>78</sup> See part of the Code 'Compliance with the Code' and Section 2 Management Report Decree (*Vaststellingsbesluit nadere voorschriften bestuursverslag*).

<sup>79</sup> Dutch Corporate Governance Code, best practice provision 2.1.6.

<sup>80</sup> See Section 2a(2) Management Report Decree. The corporate governance statement may form a part of the Report of the Management Board or an annex thereof, or a digitally accessible separate document to which the Report of the Management Board refers (Section 2(1) Management Report Decree).



the Company. Where the Company does not pursue policies in relation to those matters referred to under (b), the non-financial notice shall provide a clear and reasoned explanation for not doing so.<sup>81</sup>

A reference to the Management Board resolutions pursuant to Clauses 24.2 and 24.3 of these By-Laws, to the extent of material significance.

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<sup>81</sup> Section 3 Non-financial Information Decree, *Stb.* 2017, 100.

**ANNEX 4****INFORMATION THAT MUST BE PROVIDED TO THE AFM<sup>82</sup>**

2:393 paragraph 1 DCC	Announcement of the proposed appointment of the External Auditor for the audit on the Annual Accounts
2:393 paragraph 2 DCC	Announcement of the withdrawal of the instructions to audit the Annual Accounts by the Company or an early termination by the External Auditor
5:25o paragraph 1 FSA	Adopted Annual Accounts and the Report of the Management Board (within 5 days after the adoption)
5:25o paragraph 2 FSA	Announcement when the Annual Accounts have not been adopted within 6 months after the ending of the financial year
5:25m paragraph 6 FSA	Regulated information that will be generally available
5:48 paragraph 8 FSA	Resignation of a Management Board member or a Supervisory Board member <sup>83</sup>

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<sup>82</sup> This concerns information that must be given on a regular base by the Company to the AFM; this does not affect the FSA obligations regarding information to be provided in specific circumstances (such as price-sensitive information).

<sup>83</sup> Based upon the Dutch Corporate Governance Code, best practice provision 2.2.3, the Company should issue a press release when a Management Board or Supervisory Board member retires early, in which statement the reasons for departure are stated.

**ANNEX 5****ITEMS TO BE PLACED ON THE COMPANY'S WEBSITE**

2.1.1 CG Code	Supervisory Board Profile. <sup>84</sup>
2.2.4 CG Code	Supervisory Board Rotation Plan. <sup>85</sup>
2.3.1 CG Code	By-laws of the Supervisory Board. <sup>86</sup>
2.3.3 CG Code	Terms of reference and composition of the Committees. <sup>87</sup>
2.5.2 CG Code	A code of conduct. <sup>88</sup>
2.6.1 CG Code	Whistle-blower policy. <sup>89</sup>
3.4 CG Code/ Sections 2:135b and 2:145 DCC	Remuneration Report
Sections 2:135a and 2:145 DCC	Remuneration policy
3.4.2 CG Code	Main elements of the agreement of a Management Board member, after the agreement has been concluded and in any event no later than the date of the notice calling the General Meeting of Shareholders where the appointment of that Management Board member will be proposed.
4.1.4 CG Code	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. <sup>90</sup>
4.2.2 CG Code	An outline policy on bilateral contacts with shareholders. <sup>91</sup>
4.2.3 CG Code	Announcements prior meeting and presentations to analysts, presentations and (institutional) investors and press conferences. <sup>92</sup>
4.2.4 CG Code	The Company shall post and update information relevant to the shareholders and which it is required to publish or submit pursuant to the provisions of company law and securities law and regulation applicable to it, on a separate section of the Company's website. <sup>93</sup>

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<sup>84</sup> By-laws Supervisory Board, clause 1.1.

<sup>85</sup> By-laws Supervisory Board, clause 2.6.

<sup>86</sup> By-laws Supervisory Board, clause 0.3.

<sup>87</sup> By-laws Supervisory Board, clause 5.4.

<sup>88</sup> By-laws Management Board, Clause 6.4(c).

<sup>89</sup> By-laws Management Board, Clause 6.6.

<sup>90</sup> By-laws Management Board, Clause 12.5.

<sup>91</sup> By-laws Management Board, Clause 12.8.

<sup>92</sup> By-laws Management Board, Clause 13.3.

<sup>93</sup> By-laws Management Board, Clause 14.

## 4.1.4 CG Code

Shareholder circulars drawn up by the Company.<sup>94</sup>

By-Laws of the Management Board.<sup>95</sup>

Rotation plan of the Management Board.<sup>96</sup>

Resolutions of the General Meeting of Shareholders and (draft) reports or minutes of General Meetings of Shareholders.<sup>97</sup>

Regulations on Insider Trading of the Company.<sup>98</sup>

Annual Report.

Articles of Association.

Reference to Dutch Corporate Governance Code.

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<sup>94</sup> By-laws Management Board, Clause 12.5 **Fout! Verwijzingsbron niet gevonden..**

<sup>95</sup> By-laws Management Board, Clause 0.3.

<sup>96</sup> By-laws Management Board, Clause 1.5.

<sup>97</sup> By-laws Supervisory Board, clause 13.12.

<sup>98</sup> By-laws Supervisory Board, clause 23.2.