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## INTRODUCTION

- 0.1 These Regulations are established pursuant to article 28.10 of the Company's articles of association and best practice provision III.1.1 of the Dutch Corporate Governance Code.<sup>1</sup>
- 0.2 These Regulations are complementary to the provisions regarding the Supervisory Board and the Supervisory Board members as contained in applicable legislation and regulations, the articles of association of the Company and the rules pertaining to the relationship between Managing Board and Supervisory Board as contained in the Regulations of the Managing Board (which have been approved by the Supervisory Board).
- 0.3 These Regulations are posted on the Company's website.<sup>2</sup>
- 0.4 The meaning of certain capitalised or uncapitalised terms used in these Regulations is set forth in the List of Definitions attached as Annex I.

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision III.1.1.

<sup>2</sup> Dutch Corporate Governance Code, best practice provision III.1.1.

## CHAPTER I

### COMPOSITION OF THE SUPERVISORY BOARD; POSITIONS; COMMITTEES

#### 1. Supervisory Board Profile, Size, Expertise and Independence

- 1.1 The Supervisory Board shall prepare a profile of its size and composition, taking account of the nature of the business of the Group and the desired expertise and background of the Supervisory Board members (the Supervisory Board Profile). The Supervisory Board Profile will set out the aspects of diversity in the composition of the Supervisory Board that are relevant to the Company as well as the current aim applied by the Supervisory Board in respect of diversity. To the extent that the existing situation deviates from the situation pursued, the Supervisory Board will account for this in the Supervisory Board report and must indicate how and within what term it expects to realise its aim. The current Supervisory Board Profile is attached as Annex II. The Supervisory Board Profile is made available on written demand to the Company (for the attention of the Company Secretary) and is posted on the Company's website.<sup>3</sup>
- 1.2 The number of Supervisory Board members is determined by the Supervisory Board after consultation with the CEO/Chairman of the Managing Board, and has a minimum of 5 members.
- 1.3 The Supervisory Board shall endeavour to ensure, within the limits of its powers, that it is at all times composed so that:
  - (a) its members are able to act critically and independently of one another, the Managing Board and any particular interest;<sup>4</sup>
  - (b) each Supervisory Board member is capable of assessing the broad outline of the overall policy of the Company;<sup>5</sup>
  - (c) each Supervisory Board member has the specific expertise required to perform his duties within the framework of his role within the Supervisory Board Profile;<sup>6</sup>
  - (d) the Supervisory Board as a whole matches the Supervisory Board Profile and that the composition of the Supervisory Board is such that it is able to carry out its duties properly. The Supervisory Board will strive for a mixed composition including in respect of sex and age;<sup>7</sup>
  - (e) at least one Supervisory Board member is a financial expert, in the sense that he has relevant knowledge and expertise of financial administration and accounting for listed companies or other large companies;<sup>8</sup>
  - (f) all Supervisory Board members, with the exception of not more than one, are independent within the meaning of clause 1.4 of these Regulations; and<sup>9</sup>
  - (g) all Supervisory Board members observe the restrictions regarding the nature and number of their other positions as set forth in clause 21.1 of these Regulations.

<sup>3</sup> Dutch Corporate Governance Code, best practice provision III.3.1.

<sup>4</sup> Dutch Corporate Governance Code, Principle III.2.

<sup>5</sup> Dutch Corporate Governance Code, Principle III.3.

<sup>6</sup> Dutch Corporate Governance Code, Principle III.3.

<sup>7</sup> Dutch Corporate Governance Code, Principle III.3.

<sup>8</sup> Dutch Corporate Governance Code, best practice provision III.3.2.

<sup>9</sup> Dutch Corporate Governance Code, best practice provision III.2.1.

- 1.4 A Supervisory Board member is deemed independent if the following criteria of dependence do not apply to him. These criteria are that the Supervisory Board member concerned, his spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree:
- (a) has been an employee or member of the Managing Board of the Company or an Affiliate in the five years prior to their appointment as Supervisory Board member;
  - (b) receives personal financial compensation from the Company, or an Affiliate, other than the compensation received for the work performed as a Supervisory Board member and in so far as this is not keeping with the ordinary business operations;
  - (c) has had an important business relationship with the Company or an Affiliate in the year prior to the appointment;
  - (d) is a member of the managing board of a company in which a member of the Managing Board is a supervisory board member;
  - (e) holds at least ten per cent of the shares in the Company's capital (including shares held by natural or legal persons that cooperate with the individual concerned under an express, tacit, oral or written agreement);
  - (f) is a member of the managing board or supervisory board, or a representative in some other way, of a legal entity which holds at least ten per cent of the shares in the Company's capital, unless such entity is a member of the Group; or
  - (g) has temporarily managed the Company during the previous twelve months due to vacant seats on the Managing Board, or because Managing Board members were unable to perform their duties.<sup>10</sup>

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

- 2.1 The members of the Supervisory Board are appointed by the General Meeting of Shareholders. The Supervisory Board nominates one or more candidates for appointment.
- 2.2 A nomination or recommendation to the General Meeting of Shareholders to appoint a Supervisory Board member shall state the candidate's age, his profession, the amount of the shares he holds in the Company's capital and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Supervisory Board member. Furthermore, the legal entities of whose supervisory boards he is also a member of must be listed; if those include legal entities which belong to the same group, reference to that group is sufficient. The recommendation or nomination for appointment or reappointment shall state the reasons on which it is based.<sup>11</sup>
- 2.3 Any nomination or recommendation by the Supervisory Board for appointment or reappointment of a Supervisory Board member must be in accordance with clause 1 of these Regulations, including the Supervisory Board Profile. In case of reappointment, account must be taken of the candidate's past performance as a Supervisory Board member. A Supervisory Board member is reappointed only after careful consideration.<sup>12</sup>

<sup>10</sup> Dutch Corporate Governance Code, best practice provision III 2.2.

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

<sup>12</sup> Dutch Corporate Governance Code, Principle III.3; Section 2:142 Dutch Civil Code

- 2.4 A person may be appointed to the Supervisory Board for a maximum of three 4-year terms.<sup>13</sup>
- 2.5 Supervisory Board members shall retire periodically in accordance with a rotation plan to be drawn up by the Supervisory Board in order to avoid, as far as possible, a situation in which many Supervisory Board members retire at the same time.<sup>14</sup> The current rotation plan is attached as Annex III. The Supervisory Board may at any time amend the rotation plan. Amendments to the rotation plan, however, do not permit a sitting member of the Supervisory Board to remain in office for a longer period than appointed for, or allow that he be asked to retire before his term has expired. The rotation plan is available on written demand to the Company (for the attention of the Company Secretary) and is posted on the Company's website.<sup>15</sup>
- 2.6 A Supervisory Board member shall retire early in the event of inadequate performance, structural incompatibility of interests, and in any other instances where deemed necessary by the Supervisory Board.<sup>16</sup>
- 2.7 A Supervisory Board member who is temporarily charged with the managing of the Company when seats on the Managing Board are vacant or Managing Board members are unable to fulfil their duties, shall resign from the Supervisory Board.<sup>17</sup>

### 3. Chairman and Vice-Chairman

- 3.1 The Supervisory Board shall elect a Chairman and a Vice-Chairman from among its members. The Chairman shall not be a former member of the Managing Board.<sup>18</sup>
- 3.2 The Vice-Chairman replaces, and assumes the powers and duties of, the Chairman in the latter's absence. The Vice-Chairman acts as a contact for the individual members of the Supervisory Board and the Managing Board on the performance of the Chairman of the Supervisory Board<sup>19</sup>.
- 3.3 The Chairman of the Supervisory Board is primarily responsible for the functioning of the Supervisory Board and its Committees. He shall act as the spokesman of the Supervisory Board and is the main contact for the CEO/Chairman of the Managing Board and the Managing Board as a whole. The CEO/Chairman of the Managing Board and the Chairman of the Supervisory Board shall meet on a regular basis. As a general rule, the Chairman of the Supervisory Board presides over General Meetings of Shareholders.<sup>20</sup>
- 3.4 Without prejudice to the generality of clause 3.3, the Chairman shall see to it that:<sup>21</sup>
- (a) Supervisory Board members, when appointed, follow the induction programme and, as needed, additional education or training programmes;
  - (b) the Supervisory Board members receive all information necessary for the proper performance of their duties in a timely manner;

<sup>13</sup> Dutch Corporate Governance Code, best practice provision III.3.5.

<sup>14</sup> Dutch Corporate Governance Code, best practice provision III.3.6.

<sup>15</sup> Dutch Corporate Governance Code, best practice provision III.3.6.

<sup>16</sup> Dutch Corporate Governance Code, best practice provision III.1.4.

<sup>17</sup> Dutch Corporate Governance Code, best practice provision III.6.7.

<sup>18</sup> Dutch Corporate Governance Code, best practice provision III.4.2.

<sup>19</sup> Dutch Corporate Governance Code, best practice provision III.4.4.

<sup>20</sup> See Dutch Corporate Governance Code, Principle III.4.

<sup>21</sup> Dutch Corporate Governance Code, best practice provision II.4.1.

- (c) there is sufficient time for consultation and decision-making by the Supervisory Board;
  - (d) the Committees function properly;
  - (e) the performance of the Managing Board members and the Supervisory Board members is assessed at least once a year;
  - (f) the Supervisory Board elects a Vice-Chairman; and
  - (g) the Supervisory Board has proper contact with the Managing Board.
- 3.5 In addition, the Chairman is primarily responsible for:
- (a) ensuring the proper discharge by the Supervisory Board of its duties;
  - (b) determining the agenda of Supervisory Board meetings and chairing such meetings;
  - (c) consulting with external advisors appointed by the Supervisory Board;
  - (d) addressing issues related to the performance of individual Supervisory Board members; and
  - (e) addressing internal disputes and conflicts of interest concerning individual Supervisory Board members and the possible resignation of such members as a result.

#### 4. Company Secretary<sup>22</sup>

- 4.1 The Supervisory Board is supported by the Company Secretary, who is appointed in accordance with the provisions of clause 4 of the Regulations of the Managing Board.
- 4.2 All Supervisory Board members have access to the advice and services of the Company Secretary.
- 4.3 The Company Secretary sees to it that correct Supervisory Board procedures are followed and that the obligations of the Supervisory Board under the law, as well as the Company's articles of association are complied with. The Company Secretary shall support the Chairman of the Supervisory Board in the organisation of the affairs of the Supervisory Board (information, agenda, reporting of meetings, evaluation, training programme, etc.). The Company Secretary is as such also the secretary of the Supervisory Board.
- 4.4 The Company Secretary may delegate his duties under these Regulations, or parts thereof, to a deputy appointed by him in consultation with the Chairman of the Supervisory Board.
- 4.5 The Company Secretary also performs activities for the Managing Board, as provided for in the Regulations of the Managing Board.

#### 5. Committees

- 5.1 The Supervisory Board may appoint standing and/or ad hoc Committees from among its members, which are charged with tasks specified by the Supervisory Board. The composition of any Committee is determined by the Supervisory Board. The Supervisory Board shall, in any event, establish an Audit Committee, a Nomination Committee and a Remuneration Committee.<sup>23</sup>

<sup>22</sup> Dutch Corporate Governance Code, best practice provision III.4.3.

<sup>23</sup> Dutch Corporate Governance Code, Principle III.5.

- 5.2 The Supervisory Board remains collectively responsible for decisions prepared by Committees from among its members. A Committee may only exercise such powers as are explicitly attributed or delegated to it and may never exercise powers beyond those exercisable by the Supervisory Board as a whole.
- 5.3 Each Committee must inform the Supervisory Board in a clear and timely way of the manner in which it has used delegated authority and of any major development in the area of its responsibilities. All Supervisory Board members have unrestricted access to all Committee meetings and records. The Supervisory Board shall, within the term specified in the Charter of the Committee concerned, receive a report from each Committee of its deliberations and findings.<sup>24</sup>
- 5.4 The Supervisory Board shall establish Charter for each Committee and may amend these Charters at any time. The Charter shall indicate the role and responsibilities of the Committee concerned, its composition and the manner in which it performs its duties. The Charter of a Committee may provide that a maximum of one member of the Committee concerned may not be independent within the meaning of clause 1.4 of these Regulations.<sup>25</sup> The Charter of a Committee may contain more detailed rules on the composition of the Committee concerned.
- 5.5 The Charters and the composition of the Committees are posted on the Company's website.<sup>26</sup>
- 5.6 The Supervisory Board as a rule has no "delegated Supervisory Board member" (*gedelegeerd commissaris*). Under special circumstances, however, the Supervisory Board may resolve to appoint a "delegated Supervisory Board member", in which case best practice provision III.6.6 of the Dutch Corporate Governance Code shall apply in full.

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<sup>24</sup> Dutch Corporate Governance Code, best practice provision III.5.3.

<sup>25</sup> Dutch Corporate Governance Code, best practice provision III.5.1.

<sup>26</sup> Dutch Corporate Governance Code, best practice provision III.5.1.

## CHAPTER II

### DUTIES AND POWERS

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

- 6.1 The Supervisory Board is charged with the supervision of the Managing Board, the general course of affairs of the Company and the business connected with it. The Supervisory Board assists the Managing Board with advice whether or not requested.<sup>27</sup> The responsibility for the proper performance of its duties is vested collectively in the Supervisory Board.
- 6.2 In performing its duties the Supervisory Board shall act in accordance with the interests of the Company and the business connected with it, taking into consideration the interests of the Company's stakeholders. The Supervisory Board shall also have due regard for corporate social responsibility issues that are relevant to the Company.<sup>28</sup> Supervisory Board members shall perform their duties without mandate and independent of any interest in the business of the Company. They should not support one interest without regard to the other interests involved.
- 6.3 The Supervisory Board is responsible for the quality of its own performance.<sup>29</sup>
- 6.4 The Supervisory Board members shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, without jeopardising the responsibilities of individual Supervisory Board members.
- 6.5 The Managing Board shall of its own accord and in a timely manner provide the Supervisory Board and its members and Committees with the information needed to function and to discharge their duties properly. The information will as much as possible be provided in writing.
- 6.6 If a takeover bid for shares in the Company is being prepared, the Managing Board shall ensure that the Supervisory Board is involved timely and closely in the acquisition process.<sup>30</sup>
- 6.7 If a takeover bid has been announced or made and the Managing Board receives a request from a third competing bidder for information regarding the Company, the Managing Board shall discuss such request without delay with the Supervisory Board.<sup>31</sup>
- 6.8 The Supervisory Board and its individual members each has responsibility for obtaining all information from the Managing Board and the External Auditor needed to enable them to carry out their duties properly as a supervisory body. If deemed necessary by the Supervisory Board, it may obtain information from officers and external advisers of the Company. The Company shall provide the necessary means for this purpose. The Supervisory Board may require that certain officers and external advisers attend its meetings.<sup>32</sup>
- 6.9 Each member of the Supervisory Board has access to the books, records and offices of the Company in so far as required or as is useful for the proper performance of his duties. The Supervisory Board member shall exercise this

<sup>27</sup> Section 2:140 Dutch Civil Code; Dutch Corporate Governance Code, Principle III.1.

<sup>28</sup> Section 2:140 Dutch Civil Code; Dutch Corporate Governance Code, Principle III.1.

<sup>29</sup> Dutch Corporate Governance Code, Principle III.1.

<sup>30</sup> Dutch Corporate Governance Code, best practice provisions II.1.10.

<sup>31</sup> Dutch Corporate Governance Code, best practice provisions II.1.11

<sup>32</sup> Dutch Corporate Governance Code, best practice provision III.1.9.

right in consultation with the Chairman of the Supervisory Board and the Company Secretary.

- 6.10 The Supervisory Board may in exercising its duties and after consultation with the CEO/Chairman of the Managing Board, seek the assistance or advice of one or more experts at a price agreed upon with the Supervisory Board, which is to be paid by the Company.

## 7. Duties regarding the Activities of the Managing Board Members

- 7.1 The supervision of the Managing Board by the Supervisory Board shall include: (i) achievement of the Company's objectives; (ii) the strategy and risks inherent in the business activities; (iii) the structure and operation of the internal risk managing and control systems; (iv) the financial reporting process; (v) compliance with legislation and regulations; (vi) the relation with the shareholders of the Company; and (vii) the corporate social responsibility issues that are relevant to the Company.<sup>33</sup>

- 7.2 The Supervisory Board supervises the financial reporting in accordance with clause 10 of these Regulations.

- 7.3 The Supervisory Board shall discuss the corporate strategy and the main risks of the business, the result of the evaluation and assessment by the Managing Board of the structure and operation of the internal risk managing and control systems, as well as any significant changes thereto at least once a year.<sup>34</sup>

- 7.4 The following resolutions of the Managing Board are subject to the approval of the Supervisory Board:

- (a) determining the operational and financial objectives of the Company;<sup>35</sup>
- (b) determining and amending the strategy designed to achieve the objectives;<sup>36</sup>
- (c) determining and amending the parameters to be applied in relation to the strategy (for example in respect of the financial ratios);<sup>37</sup>
- (d) the corporate social responsibility issues that are relevant to the Company; and
- (e) the resolutions listed in Annex IV.

- 7.5 The Managing Board shall provide the Supervisory Board with the following reports in a timely manner:

- for each meeting, a report with information on, among other things, mergers and acquisitions, material developments, major organisational issues, regulatory developments and other relevant issues; and
- for each meeting and quarterly, a report with detailed information on the financial situation and development of the Group,

which will be drafted in the format agreed upon from time to time between the Managing Board and the Supervisory Board.

<sup>33</sup> Dutch Corporate Governance Code, best practice provision III.1.6.

<sup>34</sup> Dutch Corporate Governance Code, best practice provision III.1.8; see also Section 2:141 Dutch Civil Code .

<sup>35</sup> Dutch Corporate Governance Code, best practice provision II.1.2.

<sup>36</sup> Dutch Corporate Governance Code, best practice provision II.1.2.

<sup>37</sup> Dutch Corporate Governance Code, best practice provision II.1.2.

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

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

- (a) the selection and nomination of members of the Managing Board,<sup>38</sup> the submission of proposals for the remuneration policy for members of the Managing Board to the General Meeting of Shareholders, the determination of the remuneration (in accordance with said remuneration policy) and the contractual employment conditions of Managing Board members;<sup>39</sup>
- (b) determination of the number of Managing Board members, the designation of the CEO/Chairman and if applicable Vice-Chairman of the Managing Board, approving (or proposing, where appropriate) of changes to the division of tasks within the Managing Board or of the Regulations of the Managing Board<sup>40</sup> and the review and assessment of the functioning of the Managing Board and its individual members; the approval of additional positions of the Managing Board to the extent required under the Regulations of the Managing Board;<sup>41</sup> and
- (c) to address conflict of interest issues between the Company and members of the Managing Board.<sup>42</sup>

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

- (a) the selection and nomination of members of the Supervisory Board (the appointment is made by the General Meeting of Shareholders) and proposals to the General Meeting of Shareholders for the remuneration of members of the Supervisory Board;
- (b) the determination of the number of Supervisory Board members, the appointment of a Chairman and Vice-Chairman of the Supervisory Board, the establishment of Committees and defining their role, the evaluation and assessment of the functioning of the Supervisory Board, its Committees and the individual members of the Supervisory Board (including an evaluation of the Supervisory Board Profile and the induction, education and training programme); the approval of other positions of Supervisory Board members to the extent required under clause 21 of these Regulations; and
- (c) to address conflict of interest issues between the Company and members of the Supervisory Board.<sup>43</sup>

8.3 At least once a year the Supervisory Board shall, without the Managing Board being present, discuss its own functioning, and that of its individual members, and the conclusions that must be drawn on the basis thereof. The desired profile, composition and competence of the Supervisory Board shall also be discussed. At least once a year the Supervisory Board shall also, without the Managing Board being present, discuss the functioning of the Managing Board as a body and the functioning of its individual members, and the conclusions that must be drawn on the basis thereof.<sup>44</sup>

<sup>38</sup> See also clause 1.1 of the Regulations Supervisory Board and the Charter Nomination and Remuneration committee.

<sup>39</sup> See also clause 12 of these Regulations, the Charter of the Nomination and Remuneration Committee and clause 16 of the Managing Board Regulations.

<sup>40</sup> See also clause 1 of the Regulations Managing Board.

<sup>41</sup> See also clause 17 of the Regulations Managing Board.

<sup>42</sup> See also clause 15 of the Regulations Managing Board; Dutch Corporate Governance Code, best practice provision III.6.5.

<sup>43</sup> See also clause 23 of these Regulations.

<sup>44</sup> Dutch Corporate Governance Code, best practice provision III.1.7.

## 9. Certain other Duties of the Supervisory Board

- 9.1 The other duties of the Supervisory Board include:
- (a) duties regarding the External Auditor as described in clause 11 of these Regulations and the Charter of the Audit Committee;
  - (b) the handling of complaints about alleged irregularities regarding the functioning of members of the Managing Board;<sup>45</sup>
  - (c) the taking of measures for the temporary managing of the Company if a member of the Managing Board is absent or prevented from performing his duties;
  - (d) other duties the Supervisory Board is charged with under legislation, the Company's articles of association, these Regulations, the Charter of a Committee or the Regulations of the Managing Board.
- 9.2 The Supervisory Board shall draw up a report to be included in the annual statement of the Company) describing its activities in the financial year concerned and containing the specific statements and information listed in Annex V.<sup>46</sup>
- 9.3 The Supervisory Board and the Managing Board are jointly responsible for the corporate governance structure of the Company, compliance with the Dutch Corporate Governance Code and any other applicable legislation and regulations.<sup>47</sup>

## 10. Supervision of Financial Reporting

- 10.1 The Supervisory Board supervises compliance with internal procedures established by the Managing Board for the preparation and publication of the Annual Report, the Annual Accounts, the quarterly and half-yearly figures and ad hoc financial information.<sup>48</sup> The Supervisory Board also supervises the establishment and maintenance of internal control mechanisms for external financial reporting as described in clause 7.1 of the Regulations of the Managing Board.<sup>49</sup>
- 10.2 The Audit Committee shall regularly, and in any event as soon as possible, provide the Supervisory Board with reports on the Annual Report, the Annual Accounts, and the quarterly and half-yearly figures, which will then be discussed at a meeting of the Supervisory Board. The Annual Accounts and the Annual Report for the year just ended shall be discussed in a meeting with the Supervisory Board within five months of this year end. The half-yearly and quarterly accounts of the Company for the respective period just ended shall be discussed in a meeting of the Managing Board with the Supervisory Board.
- 10.3 The External Auditor shall in any event attend the part of the meeting of the Supervisory Board at which the report of the External Auditor with respect to the audit of the Annual Accounts is discussed, and at which a decision will be taken on the adoption of the Annual Accounts. The External Auditor shall receive the financial information underlying the adoption of the quarterly and/or half-yearly figures, and other interim financial reports, and shall be given the opportunity to respond to all information.<sup>50</sup> The External Auditor shall report his

<sup>45</sup> See also clause 5.7 Regulations Managing Board; Dutch Corporate Governance Code, best practice provision II.1.6.

<sup>46</sup> Dutch Corporate Governance Code, best practice provision III.1.2.

<sup>47</sup> Dutch Corporate Governance Code, Principe I.

<sup>48</sup> Dutch Corporate Governance Code, best practice provision V.1.1.

<sup>49</sup> Dutch Corporate Governance Code, best practice provision V.1.3.

<sup>50</sup> Dutch Corporate Governance Code, best practice provision V.4.1.

findings in relation to the audit of the Annual Accounts to the Managing Board and the Supervisory Board simultaneously.<sup>51</sup>

10.4 The line of contact between the Supervisory Board and the External Auditor is in principle through the Chairman of the Audit Committee of the Supervisory Board. The Audit Committee is the first contact for the External Auditor if any irregularities in the contents of the financial reports are discovered.<sup>52</sup>

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

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

11.1 The External Auditor shall be appointed by the General Meeting of Shareholders. The Supervisory Board nominates a candidate for this appointment to the General Meeting of Shareholders and may recommend replacement of the External Auditor. The Managing Board and the Audit Committee shall both advise the Supervisory Board in this regard.<sup>53</sup>

11.2 The remuneration of the External Auditor, and instructions to the External Auditor to provide non-audit services, shall be approved by the Supervisory Board on the recommendation of the Audit Committee, and after consultation with the Managing Board.<sup>54</sup>

11.3 The Managing Board and the Audit Committee shall report their dealings with the External Auditor to the Supervisory Board on an annual basis, including their assessment of the External Auditor's independence (for example, the desirability of rotating the responsible partners of the External Auditor and the desirability of the External Auditor providing both auditing and non-audit services to the Company). The Supervisory Board shall take this into account when deciding its nomination to the General Meeting of Shareholders for the appointment of an External Auditor.<sup>55</sup>

11.4 At least once every four years the Managing Board and the Audit Committee shall conduct a thorough evaluation and assessment of the functioning of the External Auditor in the various entities and capacities in which the External Auditor acts. The main conclusions of this assessment are communicated to the General Meeting of Shareholders.<sup>56</sup>

11.5 Conflicts of interest and potential conflicts of interest between the External Auditor and the Company shall be resolved in accordance with the policy laid down in Annex 6 or, to the extent not dealt with in this Annex, in the manner determined by the Supervisory Board at the recommendation of the Audit Committee. Managing Board members and Supervisory Board members must inform the chairman of the Audit Committee of issues that may compromise the required independence of the External Auditor or that may give rise to a conflict of interest or a potential conflict of interest between the External Auditor and the Company, when brought to their attention.<sup>57</sup>

<sup>51</sup> Dutch Corporate Governance Code, Principle V.4.

<sup>52</sup> Dutch Corporate Governance Code, best practice provision III.5.5.

<sup>53</sup> Dutch Corporate Governance Code, Principle V.2.

<sup>54</sup> Dutch Corporate Governance Code, Principle V.2.

<sup>55</sup> Dutch Corporate Governance Code, best practice provision V.2.2.

<sup>56</sup> Dutch Corporate Governance Code, best practice provision V.2.3.

<sup>57</sup> Dutch Corporate Governance Code, best practice provision III.6.5.

- 11.6 When appointed, the External Auditor is requested to state explicitly to the Company that he has been informed of: (i) the Company's policy as laid down in clause 11.5 and Annex 6; and (ii) other matters provided for in the Managing Board Regulations, these Regulations and the Charter of the Audit Committee, that he agrees with and will co-operate fully with their implementation.

## 12. Remuneration of Managing Board Members

- 12.1 The Supervisory Board shall be responsible for the remuneration structure of the Managing Board. This remuneration structure, including severance payment, shall be simple and transparent. It shall promote the interests of the Company in the mid to long term.<sup>58</sup>
- 12.2 Before drawing up the remuneration policy and prior to determining the remuneration of individual members of the Managing Board, the Supervisory Board shall analyse the possible results of the variable remuneration components and how they may affect the remuneration of the members of the Managing Board. The Supervisory Board shall determine the level and structure of the remuneration of the members of the Managing Board by reference to the scenario analyses carried out and with due regard for the pay differentials within the organisation. In determining the level and structure of the remuneration of the members of the Managing Board, the Supervisory Board shall take into account, among other things, the trend in results, the share price performance and non-financial indicators that are relevant for the long term objectives of the Company, with due regard to the risks that variable remuneration implies for the organisation.<sup>59</sup>
- 12.3 The Remuneration Committee shall annually on behalf of the Supervisory Board prepare a Remuneration Report, which contains an account of the manner in which the remuneration policy has been implemented in the past financial year, as well as an overview of the remuneration policy for Managing Board members planned by the Supervisory Board for the next financial year and subsequent years.<sup>60</sup> The Remuneration Report is posted on the Company's website.<sup>61</sup>
- 12.4 The remuneration policy planned for the next financial year and subsequent years as specified in the Remuneration Report shall be submitted to the General Meeting of Shareholders for adoption.<sup>62</sup> Every change to the remuneration policy shall also be submitted to the General Meeting of Shareholders for its approval. Schemes whereby Managing Board members are remunerated in the form of shares or rights to subscribe for shares, and major changes to such schemes, shall be submitted to the General Meeting of Shareholders for approval.
- 12.5 The Supervisory Board shall determine the remuneration of the individual Managing Board members on a proposal by the Nomination and Remuneration Committee, within the scope of the remuneration policy adopted by the General Meeting of Shareholders.<sup>63</sup>
- 12.6 The Supervisory Board shall have the power to adjust upwards or downwards the value of a variable remuneration component conditionally awarded in a particular financial year if in its opinion such value produces an unfair result due

<sup>58</sup> Dutch Corporate Governance Code, Principle II.2

<sup>59</sup> Dutch Corporate Governance Code, best practice provisions II.2.1 to II.2.3.

<sup>60</sup> Dutch Corporate Governance Code, best practice provision II.2.9; see also best practice provision 16.4 of these Regulations.

<sup>61</sup> Dutch Corporate Governance Code, best practice provision II.2.13

<sup>62</sup> Dutch Corporate Governance Code, II.2 (2nd Principle); Section 2:135 Dutch Civil Code.

<sup>63</sup> Dutch Corporate Governance Code, II.2 (2nd Principle); Section 2:135 Dutch Civil Code.

to extraordinary circumstances in the period in which the performance criteria determined beforehand are or should be realised.<sup>64</sup>

- 12.7 The Supervisory Board shall have the power to claim back from the Managing Board member the variable remuneration component granted on the basis of incorrect (financial) information (claw back clause).<sup>65</sup>
- 12.8 The main features of the contract of a Managing Board member with the Company for appointments as from January 1, 2004 shall after its conclusion be published on the Company's website at the latest at the date of the notice concerning an annual general meeting of shareholders at which the appointment of the member of the Managing Board concerned shall be proposed. The features disclosed are in any event the amount of the fixed salary, the structure and amount of the variable remuneration component, any redundancy scheme and/or severance pay agreed, any conditions of a change of control clause in the contract with the member of the Managing Board concerned and any other remuneration components promised to the member of the Managing Board, pension arrangements and performance criteria to be applied.<sup>66</sup>
- 12.9 If a Managing Board member or former Managing Board member is paid severance pay or other special compensation during a given financial year, an account and explanation of this remuneration or compensation must be included in the Remuneration Report.<sup>67</sup>

### 13. Relation with the Shareholders

- 13.1 Where appropriate, the Supervisory Board shall provide all shareholders and other parties in the financial markets with equal and simultaneous information about matters that may influence the share price.<sup>68</sup>
- 13.2 The Managing Board and the Supervisory Board shall provide the General Meeting of Shareholders in time with all information that it requires for the exercise of its powers.<sup>69</sup>
- 13.3 The Managing Board and the Supervisory Board shall endeavour to procure that the General Meeting of Shareholders is provided with all requested information, unless this would be contrary to an overriding interest of the Company. If the Managing Board or the Supervisory Board invoke an overriding interest, they must give reasons.<sup>70</sup>
- 13.4 A proposal for approval or authorisation by the General Meeting of Shareholders shall be explained in writing. The Managing 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>71</sup>
- 13.5 The Managing Board and the Supervisory Board ensure compliance with all applicable legislation and regulations with respects to the rights of the General Meeting of Shareholders and the related rights of individual shareholders.
- 13.6 If one or more shareholders intend to request that an item be put on the agenda which may lead to a change of strategy of the Company, such as the dismissal of one or more members of the Managing Board or the Supervisory Board, the

<sup>64</sup> Dutch Corporate Governance Code, best practice provision II.2.10

<sup>65</sup> Dutch Corporate Governance Code, best practice provision II.2.11

<sup>66</sup> Dutch Corporate Governance Code, best practice provision II.2.11.

<sup>67</sup> Dutch Corporate Governance Code, best practice provision II.2.12.

<sup>68</sup> Dutch Corporate Governance Code, Principe IV.3.

<sup>69</sup> Dutch Corporate Governance Code, Principe IV.3.

<sup>70</sup> Dutch Corporate Governance Code, best practice provision IV.3.5.

<sup>71</sup> Dutch Corporate Governance Code, best practice provision IV.3.8.

Managing Board shall respond to such request within a reasonable period of time (*the response time*). The response time shall not exceed 180 days, calculated as from the date on which the Managing 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 discussed. The Managing Board shall use this response time for consultations, constructive negotiations and to explore alternatives, in any case with the shareholders concerned. The Supervisory Board shall supervise this.<sup>72</sup>

- 13.7 The members of the Supervisory Board shall be present at the General Meetings of Shareholders, unless they are unable to attend for important reasons.
- 13.8 The General Meetings of Shareholders are presided over by the Chairman of the Supervisory Board or, in his absence, the Vice-Chairman of the Supervisory Board. The Supervisory Board may designate someone else to preside over the meeting.
- 13.9 The Supervisory Board shall endeavour that a report of the General Meeting of Shareholders is made available to the shareholders of the Company by publication on the Company's website no later than three months after the end of the meeting, following which the shareholders have another three months in which to respond to the report. The report is then adopted in the manner provided for in the Company's articles of association,<sup>73</sup> by the Chairman and the Secretary of the meeting. The provisions of this clause 13.9 may be disregarded if a notarial deed is drawn up of the minutes of the proceedings. After adoption the report is posted as soon as possible on the Company's website, in any case before the end of the first next held General Meeting of Shareholders. Also, resolutions adopted by the General Meeting of Shareholders are posted on the Company's website as soon as possible after the meeting, in any event before the end of the first next held General meeting of Shareholders.
- 13.10 A resolution of the General Meeting of Shareholders may be disclosed externally through a statement from the Chairman of the Supervisory Board or the Company Secretary.
- 13.11 The Supervisory Board and the Managing Board shall procure that each substantial change to the corporate governance structure of the Company, or the compliance of the Company with the Dutch Corporate Governance Code, is submitted to the General Meeting of Shareholders for discussion under a separate agenda item.<sup>74</sup>
- 13.12 The Supervisory Board sees to it that the responsible partner (certifying auditor) of the firm of the External Auditor is present at the General Meeting of Shareholders and that he can address the meeting. The External Auditor may be questioned by the General Meeting of Shareholders in relation to his statement on the fairness of the annual accounts.<sup>75</sup>

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<sup>72</sup> Dutch Corporate Governance Code, best practice provision II.1.9 and IV.4.4.

<sup>73</sup> Dutch Corporate Governance Code, best practice provision IV.3.10.

<sup>74</sup> Dutch Corporate Governance Code, best practice provision I.2.

<sup>75</sup> Dutch Corporate Governance Code, best practice provision V.2.1.

## CHAPTER III

### SUPERVISORY BOARD MEETINGS; DECISION-MAKING

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

- 14.1 The Supervisory Board shall meet as often as deemed necessary for the proper functioning of the Supervisory Board. The Supervisory Board shall meet at least 5 times a year. Meetings shall be scheduled annually as much as possible in advance. The Supervisory Board shall also meet earlier than scheduled if this is deemed necessary by the Chairman of the Supervisory Board, two other members of the Supervisory Board, or the Managing Board.
- 14.2 Meetings of the Supervisory Board are in principle called by the Company Secretary, in consultation with the Chairman. Save in urgent cases to be determined by the Chairman the agenda for a meeting shall be sent to all Supervisory Board members at least five calendar days before the meeting. For each item on the agenda an explanation in writing shall be provided, where possible, and/or other related documentation will be attached. The Chairman shall in principle consult on the content of the agenda with the CEO/Chairman of the Managing Board prior to convening the meeting.
- 14.3 Each Supervisory Board member, the CEO/Chairman of the Managing Board, and the Managing Board collectively, has the right to request that an item be placed on the agenda for a Supervisory Board meeting.
- 14.4 Supervisory Board meetings are generally held at the offices of the Company, but may also take place elsewhere. In addition, meetings of the Supervisory Board may be held by conference call, video conference or by any other means of communication, provided all participants can communicate with each other simultaneously.

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

- 15.1 The members of the Managing Board shall attend as many of the Supervisory Board meetings as possible, to the extent the Supervisory Board does not indicate that it wishes to meet alone.
- 15.2 A Supervisory Board member may be represented at Supervisory Board meetings by another Supervisory Board member holding a proxy in writing. The existence of such authorisation must be proved satisfactorily to the chairman of the meeting.
- 15.3 If a Supervisory Board member is frequently absent from Supervisory Board meetings he shall be called to account for this by the Chairman.<sup>76</sup>
- 15.4 The admittance to the meeting of persons other than Supervisory Board members, the Company Secretary and - if invited - members of the Managing Board shall be decided by majority vote of the Supervisory Board members present at the meeting.

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

- 16.1 Supervisory Board meetings are presided over by the Chairman of the Supervisory Board or, in his absence, the Vice-Chairman. If both are absent, one of the other Supervisory Board members, designated by a majority of votes cast by the Supervisory Board members present at the meeting, shall preside.

<sup>76</sup> Dutch Corporate Governance Code, best practice provision III.1.5.

- 16.2 The Company Secretary or any other person designated for such purpose by the chairman of the meeting shall draw up a report on the proceedings at the meeting. The report should provide insight into the decision-making process at the meeting. The report shall be adopted by the Supervisory Board at the next meeting.

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

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

## CHAPTER IV

### OTHER PROVISIONS

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

- 18.1 A Supervisory Board member shall immediately report any conflict of interest or potential conflict of interest that is of material significance to any member of the Group and/or to him to the Chairman of the Supervisory Board and shall provide all relevant information, including information concerning his spouse, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree. The Supervisory Board member concerned shall not take part in the assessment by the Supervisory Board of whether a conflict of interest exists.<sup>77</sup>
- 18.2 A conflict of interest exists, in any event, if any member of the Group intends to enter into a transaction with a legal entity: (i) in which a Supervisory Board member personally has a material financial interest; (ii) in which a managing board member who has a relationship under family law with a Supervisory Board member;<sup>78</sup> or (iii) in which a Supervisory Board member has a managerial or supervisory position.<sup>79</sup>
- 18.3 A Supervisory Board member shall not take part in any discussion or decision-making that involves a subject or transaction in relation to which he has a conflict of interest with any member of the Group.<sup>80</sup>
- 18.4 All transactions in which there are conflicts of interest with Supervisory Board members shall be agreed on terms that are customary for arm's-length transactions in the branch of business in which the Group operates. Decisions to enter into transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the any member of the Group and/or to the relevant Supervisory Board members require the approval of the Supervisory Board.<sup>81</sup>

#### 19. Remuneration of Supervisory Board Members

- 19.1 The remuneration of the Supervisory Board members is determined by the General Meeting of Shareholders. The Supervisory Board shall from time to time submit proposals on its remuneration to the General Meeting of Shareholders. If a Supervisory Board member is required to charge VAT on his fees, this will be paid by the Company.
- 19.2 The remuneration of a Supervisory Board member may not depend on the results of the Company.<sup>82</sup> A Supervisory Board member shall not be granted any shares and/or rights to shares in the Company's capital by way of remuneration.<sup>83</sup>
- 19.3 Apart from their remuneration, Supervisory Board members shall be reimbursed for all reasonable costs incurred in connection with their attendance of meetings, the reasonableness of such costs being assessed by the Chairman of the Supervisory Board (costs incurred by the Chairman of the Supervisory Board

<sup>77</sup> Dutch Corporate Governance Code, best practice provision III.6.1.

<sup>78</sup> A relationship under family law exists between a child, its parents and their blood relatives (Section 1:197 Dutch Civil Code).

<sup>79</sup> Dutch Corporate Governance Code, best practice provision III.6.1 (continued).

<sup>80</sup> Dutch Corporate Governance Code, best practice provision III.6.2.

<sup>81</sup> Dutch Corporate Governance Code, best practice provision III.6.3.

<sup>82</sup> Dutch Corporate Governance Code, Principle III.7.

<sup>83</sup> Dutch Corporate Governance Code, best practice provision III.7.1.

are assessed by the Vice-Chairman). Any other expenses are only reimbursed, in whole or in part, if incurred with the consent of the Chairman or the Company Secretary on his behalf (or if it concerns the Chairman, the Vice-Chairman or the Company Secretary on his behalf).

19.4 No member of the Group shall grant personal loans, guarantees or the like to Supervisory Board members, save as part of its usual business operations. Loans are not remitted.<sup>84</sup>

## 20. Induction Programme, Ongoing Training and Education<sup>85</sup>

20.1 Upon appointment, a Supervisory Board member shall follow an induction programme that covers general financial, social and legal affairs, financial reporting by the Company, any specific aspects unique to the Company and its business activities, and the responsibilities of a Supervisory Board member.

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

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

## 21. Other Positions

21.1 Members of the Supervisory Board shall limit the number and nature of their other positions so as to ensure due performance of their duties as members of the Supervisory Board. They will hold no more than five memberships of supervisory boards in Dutch listed companies, with a chairmanship counted twice.<sup>86</sup>

21.2 Supervisory Board members must inform the Chairman of the Supervisory Board and the Company Secretary of their other positions which may be of importance to the Company or the performance of their duties before accepting such positions. If the Chairman determines that there is a risk of a conflict of interest, the matter shall be discussed by the Supervisory Board in accordance with clause 18 of these Regulations. The Company Secretary shall keep a list of the outside positions concerned of each Supervisory Board member.

## 22. Holding and Trading Securities

22.1 Any shareholding in the Company by Supervisory Board members is for the purpose of long-term investment.<sup>87</sup>

22.2 Supervisory Board members are bound to the DSM-Rules concerning Inside Information of the Company regarding securities of the Company and other securities referred to in those rules. The DSM-Rules concerning Inside Information are posted on the Company's website.

22.3 With respect to the ownership of and transactions with any securities Supervisory Board members must at all times comply with all Dutch and foreign statutory provisions and regulations applicable thereto.

22.4 The Supervisory Board shall draw up regulations governing ownership of and transactions in securities held by Supervisory Board members, other than those issued by the Company.

<sup>84</sup> Dutch Corporate Governance Code, best practice provision III.7.4; Article 13(k) of the US Exchange Act.

<sup>85</sup> Dutch Corporate Governance Code, best practice provision III.3.3.

<sup>86</sup> Dutch Corporate Governance Code, best practice provision III.3.4.

<sup>87</sup> Dutch Corporate Governance Code, best practice provision III.7.2.

23. Confidentiality

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

24. Miscellaneous

- 24.1 **Acceptance by Supervisory Board members.** Anyone who is appointed as a Supervisory Board member must, upon assuming office, declare in writing to the Company that he accepts and agrees to the contents of these Regulations and pledge to the Company that he will comply with the provisions of these Regulations.
- 24.2 **Occasional non-compliance.** Subject to applicable law and regulation, the Supervisory Board may occasionally decide at its sole discretion not to comply with these Regulations. Any material non-compliance with these Regulations shall be mentioned in the Annual Supervisory Board Report.
- 24.3 **Amendment.** These Regulations may be amended by the Supervisory Board at its sole discretion without prior notification. Prior to amendment of these Regulations the Managing Board shall be consulted.
- 24.4 **Interpretation.** In case of uncertainty or difference of opinion on how a provision of these Regulations should be interpreted, the opinion of the Chairman of the Supervisory Board shall be decisive.
- 24.5 **Governing law and jurisdiction.** These Regulations 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 Regulations (including any dispute regarding the existence, validity or termination of these rules).
- 24.6 **Complementarily to Dutch law and Articles of Association.** These Regulations are complementary to the provisions governing the Supervisory Board as contained in Dutch law, other applicable Dutch, or EU regulations and the Company's articles of association. Where these Regulations are inconsistent with Dutch law, other applicable Dutch or EU rules and regulations or the Company's articles of association, the latter shall prevail. Where these Regulations are consistent with the Company's articles of association but inconsistent with Dutch law or other applicable Dutch or EU rules and regulations, the latter shall prevail.
- 24.7 **Partial invalidity.** If one or more provisions of these Regulations are or become invalid, this shall not affect the validity of the remaining provisions. The Supervisory Board may replace the invalid provisions by provisions which are valid and the effect of which, given the contents and purpose of these Regulations is, to the greatest extent possible, similar to that of the invalid provisions.

\* \* \* \* \*



ANNEXES

ANNEX

I. LIST OF DEFINITIONS

1. In the Regulations of the Managing Board and the Supervisory Board, the following terms have the following meanings:

**Affiliate** means an entity in which the Company owns directly or indirectly 50% or more of the capital and voting rights.

**Annual Accounts** means the annual accounts of the Group as referred to in Section 2:101 of the Dutch Civil Code.

**Annual Report** means the annual report of the Group drawn up by the Managing Board, as referred to in Section 2:101 of the Dutch Civil Code.

**Audit Committee** means the committee designated as such in clause 5 of the Regulations of the Supervisory Board.

**Regulations** means the by laws of the Managing Board or the Regulations of the Supervisory Board, depending on the context, including the annexes belonging thereto.

**Committee** means, as regards the Supervisory Board, each committee of the Supervisory Board as referred to in clause 5 of the Regulations of the Supervisory Board.

**Company** means Koninklijke DSM N.V..

**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** means the Company and its Subsidiaries and other Affiliates.

**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.

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

**Nomination Committee** means the committee designated as such in clause 5 of the Regulations of the Supervisory Board.

**Remuneration Committee** means the committee designated as such in clause 5 of the Regulations 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 of the Supervisory Board.

**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 Regulations of the Supervisory Board.

2. Save where the context dictates otherwise, in the Regulations of the Managing Board and the Supervisory Board:
  - (a) words and expressions expressed in the singular form also include the plural form, and vice versa;
  - (b) words and expressions expressed in the masculine form also include the feminine form; and
  - (c) a reference to a statutory provision counts as a reference to this statutory provision including all amendments, additions and replacing legislation that may apply from time to time.
3. Headings of clauses and other headings in the Regulations of the Managing Board and the Supervisory Board are inserted for ease of reference and do not form part of the Regulations concerned for the purpose of interpretation.

## ANNEX

### II. SUPERVISORY BOARD PROFILE

#### A. General

The composition and qualities of the Board as a whole should be in keeping with the company's size, portfolio, nature, culture and geographical spread and its status as a listed company.

The composition should be as varied as possible taking into account

- gender
- age
- nationality / cultural background
- experience
- active employment

In the Board should be present (international) knowledge and experience in the following fields:

- general management
- finance / accounting
- strategy
- marketing / sales
- manufacturing
- research & development / technology
- safety & environment
- sustainability
- emerging economies
- personnel & organization
- information technology
- legal affairs
- public affairs
- the company's business (life sciences & material sciences / (bio)chemicals)

## B. Individual members of the Supervisory Board

Individual members should be prepared and willing to fulfill the role as member of the Supervisory Board according to the Dutch Law, the Dutch Corporate Governance Code, the Company's Articles of Association and the DSM Supervisory Board Regulations.

At the moment of his/her appointment each member should subscribe to the DSM Code of Business Conduct, each member should fit in the overall Board composition described above, and should not have a conflicting interest with the company.

Members should represent the following qualities:

- integrity
- able to operate independently and critically vis-à-vis the other members and the Managing Board members
- an open eye for the interests of the company and its various stakeholders
- aware of global trends in society (economic, social, environmental)
- a social antenna/an antenna for inter-personal dynamics
- proven success/prominence in society
- analytical and critical but solution-oriented
- having enough time available to fulfill his task adequately
- prepared to be evaluated periodically
- willing to accept to sit on Supervisory Board committees
- willing to follow induction and training programs
- fluent in the English language

## C. Procedures

On the occasion of each appointment and re-appointment of a Supervisory Board member this profile will have to be respected.

Every year the Nomination Committee will evaluate whether the actual situation reflects the desired, diverse composition of the Board and the desired qualities of each individual, and will report its findings to the Board.

To the extent that the actual situation differs from the diversity of composition aimed for in this profile, the Board must account for such discrepancy in the Annual Report of the company, and indicate how and within what period it expects to achieve this aim.

This profile is to be renewed every 5 years by the Nomination Committee. The Committee will report its findings to the Board.

\* \* \*

ANNEX

III. ROTATION PLAN SUPERVISORY BOARD

NAME	DATE FIRST APPOINTMENT	TERM EXPIRES	RE-APPOINTMENT POSSIBLE
P. Hochuli	2005	2013	Yes
C. Sonder	2005	2013	Yes
T. de Swaan	2006	2014	Yes
R. Routs	2010	2014	Yes
P. van der Meer Mohr	2011	2015	Yes
E. Kist	2004	2016	No
V. Haynes	2012	2016	Yes
E. Kennedy	2012	2016	Yes

ANNEX

IV. LIST OF APPROVAL SUPERVISORY BOARD

The approval of the Supervisory Board is required for:

- (a) the allocation of duties of the Managing Board to individual members of the Managing Board;<sup>88</sup>
- (b) all transactions between any member of the Group and natural or legal persons who hold at least 10% of the shares in the Company that are of material significance to the Group and/or such persons;<sup>89</sup>
- (c) a resolution on the operational and financial aims of the Group, the strategy designed to achieve the aims, and the parameters to be applied in relation to the strategy;<sup>90</sup>
- (d) all transactions in which there are conflicts of interest with Managing Board members that are of material significance to the Group and/or the relevant Managing Board members;<sup>91</sup>
- (e) all transactions in which there are conflicts of interest with Supervisory Board members that are of material significance to the Group and/or the relevant Supervisory Board members;<sup>92</sup>
- (f) the appointment and dismissal of the Company's secretary;<sup>93</sup>
- (g) all transactions by any member of the Group regarding acquisition, divesture or joint venture projects with an invested capital (plus goodwill) of € 30 million<sup>94</sup>;
- (h) the annual capital budget of the Group and semi-annual revision of such budget. Investment projects not included in the Capital Budget and acquisitions/divestments of assets are submitted if they exceed € 30 million<sup>94</sup>;
- (i) any investment projects of any member of the Group not included in the capital budget and acquisitions/divestments of assets in excess of € 30 million<sup>94</sup>;
- (j) lay-offs by any member of the Group in excess of 250 persons within a 12 month period; the Supervisory Board will be informed on lay-offs by any member of the Group of 100 to 250 persons within a 12 month period<sup>95</sup>;
- (k) the corporate Annual Strategic Review (ASR);
- (l) the annual financing plan of the Group (and semi-annual revision of such plan);
- (m) guarantees concerning non-consolidated companies if the value exceeds € 30 million\*.

<sup>88</sup> Managing Board Regulations, clause 1.5.

<sup>89</sup> Managing Board Regulations, clause 5.8.

<sup>90</sup> Managing Board Regulations, clause 6.1.

<sup>91</sup> Managing Board Regulations, clause 15.5.

<sup>92</sup> Supervisory Board Regulations, clause 18.4.

<sup>93</sup> Managing Board Regulations, clause 4.1.

<sup>94</sup> Threshold to be increased to € 60 million if undertaken by an entity in which the Group owns 50% of the capital and voting rights.

<sup>95</sup> Threshold to be increased to 500 persons resp. to 200-500 persons in case of lay-offs by an entity in which the Group owns 50% of the capital and voting rights.

## ANNEX

### V. LIST OF INFORMATION TO BE INCLUDED IN THE SUPERVISORY BOARD REPORT

- (1) a reference to the discussions on the corporate strategy and main business risks, and the result of the assessment by the Managing Board of the structure and operation of the internal risk managing and control systems, as well as any significant changes thereto, which were held by the Supervisory Board in the year under review;<sup>96</sup>
- (2) a list of the Supervisory Board members who have often been absent from Supervisory Board meetings;<sup>97</sup>
- (3) a statement that in the opinion of the Supervisory Board clause 1.3(f) of the Regulations of the Supervisory Board have been satisfied and which member of the Supervisory Board, if present, should not be deemed independent;<sup>98</sup>
- (4) a reference was described in clause 8.3 of the Regulations of the Supervisory Board as to how the evaluation of the Supervisory Board, the Committee and the individual members of the Supervisory Board was conducted ;<sup>99</sup>
- (5) a reference to the Supervisory Board resolutions pursuant to clauses 24.2 and 24.3 of the Regulations of the Supervisory Board, to the extent of material significance;
- (6) for each Committee: a report on how it has performed its duties;<sup>100</sup> details of its existence, its composition, number of meetings and the main issues discussed;<sup>101</sup>
- (7) the following information on each Supervisory Board member:<sup>102</sup> (i) gender; (ii) age ; (iii) profession; (iv) chief position; (v) nationality; (vi) other positions, to the extent relevant for the performance of his duties as member of the Supervisory Board; (vii) date of initial appointment and term of appointment; (viii) securities held in the Company; (ix) details of agreements under which benefits are derived on termination of membership of the Supervisory Board or any other position at the Company;
- (8) the principal points of the Remuneration Report on the remuneration policy of the Company, as prepared by the Remuneration Committee<sup>103</sup> and
- (9) an account with respect to the diversity objectives.<sup>104</sup>

<sup>96</sup> Dutch Corporate Governance Code, best practice provision III.1.8.

<sup>97</sup> Dutch Corporate Governance Code, best practice provision III.1.5.

<sup>98</sup> Dutch Corporate Governance Code, best practice provision III.2.3.

<sup>99</sup> Dutch Corporate Governance Code, best practice provision III.1.7.

<sup>100</sup> Dutch Corporate Governance Code, Principle III.5.

<sup>101</sup> Dutch Corporate Governance Code, best practice provision III.5.2.

<sup>102</sup> Dutch Corporate Governance Code, best practice provision III.1.3.

<sup>103</sup> Dutch Corporate Governance Code, II.2 (2<sup>nd</sup> Principle).

<sup>104</sup> Dutch Corporate Governance Code, best practice provision III.3.1.

## ANNEX

### VI. POLICY REGARDING INDEPENDENT EXTERNAL AUDITOR

The policy set out below was adopted by the Supervisory Board on September 8, 2004, on a proposal of the Audit Committee and after consultation with the Managing Board.

#### 1. Policy

The Company and its Subsidiaries use the services of the External Auditor to the extent this does not prejudice the independence of the External Auditor.

#### 2. Charter

The External Auditor must be independent within the meaning of the Recommendation of the European Commission of 16 May 2002 regarding the independence of auditors in the EU charged with statutory audits, and the Further Regulations on the independence of auditors of the NIVRA (NIVRA Regulations). These regulations are based on the principles that: (i) the external auditor must be independent from the client audited, both in mind as in appearance; and (ii) an external auditor is someone who is able, in the light of all relevant facts and circumstances, to form an objective and impartial opinion on all matters that fall within the scope of his assignment.

Under the NIVRA Regulations an external auditor is not allowed to perform a statutory audit if he has financial, commercial, employment or other ties with the client that in the opinion of a reasonable and properly informed third party expert compromise the auditor's independence.

The Company may require from the external auditor that he maintains the right balance between effectiveness and efficiency, e.g. audit costs, risk managing, independence and reliability.

The Audit Committee sees to it that the external auditor complies with the relevant provisions of the NIVRA Regulations and the above Charter, and may request more detailed explanations and written confirmations from the external auditor that these provisions are followed.

#### 3. Approval of work

In addition to the audit work, the external auditor of the Company may also carry out non-audit work, to the extent allowed under applicable legislation and regulations and the internal procedures of the Company.

All audit and non-audit work (including fees and conditions) carried out by the external auditor for the Company are subject to the remuneration and instructions approved by the Supervisory Board on the recommendation of the Audit Committee and after consultation with the Managing Board.

#### 4. Work

##### A. Audit work

Audit work is the audit of the annual financial reports of the Company, the assessment of interim financial reports that are disclosed, services that are traditionally provided by the external auditor and that are related to filings and obligations under legislation or regulations, and services that only the external auditor as such can reasonably provide.

The External Auditor does not need to go through a tender process for each individual engagement.

#### **B. Non-audit work**

For non-audit work of the External Auditor, the Supervisory Board shall on the proposal of the Audit Committee set one or more financial thresholds. For non-audit work by the external auditor that is expected to exceed these thresholds, a tender process approved by the Audit Committee must be followed.

When assessing a request for the approval of non-audit work, the Audit Committee shall see to it that the prohibitions and restrictions set by NIVRA shall be observed with respect to the following categories of services, and if so desired more information regarding this compliance will be requested from the External Auditor:

- (a) services
- (b) design and implementation of financial information systems;
- (c) valuation services;
- (d) internal control services;
- (e) legal services; and
- (f) intermediary services for the recruitment of senior staff for client.

For further explanation whether certain activities should be considered audit work or non-audit work and whether certain non-audit activities fall under any of the categories listed above, the head of the operational audit department should be contacted who, when in doubt, will consult the chairman of the Audit Committee.

#### **5. Rotation of partners responsible for audit work**

In order to prevent that the external auditor and the Company become too close, the number of years a person may be part of the audit team of the External Auditor, is capped.

Partners of the audit team of the Company who are charged with essential audit tasks must be replaced at most 7 years after the start of their involvement. The partners of the audit team of the Company charged with essential tasks who have been replaced are not allowed to work on a new assignment for the Company until at least 2 years have expired from the date of their replacement.

The Audit Committee shall also supervise the risks of dependency of other members of the audit team of the Company who are involved with the audit for a significant period. The Audit Committee shall consult the responsible partner of the external auditor regularly on safeguards set up by the external auditor to assess the risk of dependency and to reduce it to an acceptable minimum level.

#### **6. Appointment of the External Auditor**

The External Auditor shall be appointed in accordance with clause 11 of the Regulations of the Supervisory Board. If the decision is taken to call in the services of another External Auditor, the tender process approved by the Audit Committee shall be followed.

#### **7. Staff transfer restrictions**

The Company and the External Auditor shall agree on a policy regarding the restriction of staff transfers from the Company and its group to the organisation of the External Auditor and vice versa, taking into account all relevant legislation and regulations. This policy is subject to the approval of the Supervisory Board.