

**JDE PEET'S N.V.**

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**COMPARE DRAFT  
SETTLEMENT ARTICLES OF  
ASSOCIATION VS DRAFT  
DELISTING ARTICLES OF  
ASSOCIATION**

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## ARTICLES OF ASSOCIATION.

### CHAPTER 1. DEFINITIONS.

#### Article 1. Definitions and Construction.

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

**Board** means the board (*het bestuur*) of the Company.

**Chairperson** means the chairperson of the Board.

**Class Meetings** means meetings of the holders of Ordinary Shares or Shares B.

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

**Chairperson means the chair of the Board.**

**Director** means a member of the Board and refers to both an Executive Director and a Non-Executive Director.

**Director A** means a member of the Board and refers to both an Executive Director A and a Non-Executive Director A.

**Director B** means a member of the Board and refers to both an Executive Director B and a Non-Executive Director B.

**Euroclear Netherlands** means ~~Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V., trading under the name Euroclear Nederland, being a central depositary as referred to in the Dutch Securities Giro Act.~~

**Executive Director** means a Director appointed as Executive Director in accordance with Article 14.1.

**Executive Director A** means an Executive Director appointed as Executive Director A in accordance with Article 14.1.

**Executive Director B** means an Executive Director appointed as Executive Director B in accordance with Article 14.1.

**External Auditor** has the meaning ascribed to that term in Article 25.1.

**General Meeting** or **General Meeting of Shareholders** means the corporate body of the Company consisting of those in whom as Shareholder or otherwise the voting rights on Shares are vested or a meeting of such persons (or their representatives) and other persons entitled to attend the General Meeting of Shareholders.

**1.2 Giro system** means ~~each giro system in a country where the shares are traded from time to time;~~

**Non-Executive Director** means a Director appointed as Non-Executive Director in accordance with Article 14.1.

**Non-Executive Director A** means a Non-Executive Director appointed as Non-Executive Director A in accordance with Article 14.1.

**Non-Executive Director B** means a Non-Executive Director appointed as Non-Executive Director B in accordance with Article 14.1.

**Share** means a share in the capital of the Company. Unless the contrary is apparent, this includes each Ordinary Share and each Share B.

**Ordinary Share** means an ordinary share in the capital of the Company.

**Share B** means a share with the designation B in the capital of the Company.

**Shareholder** means a holder of one or more Shares. ~~This includes a person holding co-ownership rights with regard to Shares included in the Statutory Giro System.~~

~~**Statutory Giro System** means the giro system as referred to in the Dutch Securities Giro Act (Wet giraal effectenverkeer).~~

1.3 In addition, certain terms not used outside the scope of a particular Article are defined in the Article concerned.

1.4 References in these Articles of Association to the meeting of holders of Shares of a particular class will be understood to mean the corporate body of the Company consisting of the holders of Shares of the relevant class or (as the case may be) a meeting of holders of Shares of the relevant class (or their representatives) and other persons entitled to attend such meetings.

1.5 ~~1.3~~ A message **in writing** means a message transmitted by letter, by telecopier, by e-mail or by any other means of electronic communication provided the relevant message or document is legible and reproducible, and the term **written** is to be construed accordingly.

1.6 ~~1.4~~ References to **Articles** refer to articles which are part of these Articles of Association, except where expressly indicated otherwise.

1.7 ~~1.5~~ Unless the context requires otherwise, words and expressions contained and not otherwise defined in these Articles of Association bear the same meaning as in the Dutch Civil Code.

Also, unless otherwise indicated, references in these Articles of Association to the law are references to provisions of Dutch law as it reads from time to time.

## **CHAPTER 2. NAME, OFFICIAL SEAT AND OBJECTS.**

### **Article 2. Name and Official Seat.**

2.1 The Company's name is: JDE Peet's B.V.

~~JDE Peet's N.V.~~

2.2 The official seat of the Company is in Amsterdam, the Netherlands.

### **Article 3. Objects.**

The objects of the Company are:

- (a) the development, manufacturing, marketing, distribution and sales of coffee and tea products; including machines related thereto;
- (b) to incorporate, to participate in any manner whatsoever, to manage, to supervise, to cooperate with, to acquire, to maintain, to dispose of, to transfer or to administer in any other manner whatsoever all sorts of participations and interests in businesses, legal

- entities and companies as well as to enter into joint ventures;
- (c) to finance businesses, legal entities and companies;
- (d) to borrow, to lend and to raise funds, to participate in all sorts of financial transactions, including the issue of bonds, promissory notes or other securities, to invest in securities in the widest sense of the word, and to enter into agreements in connection with the foregoing;
- (e) to grant guarantees, to bind the Company and to grant security over the assets of the Company for the benefit of legal entities and companies with which the Company forms a group and for the benefit of third parties;
- (f) to advise and to render services to legal entities and companies with which the Company forms a group and to third parties;
- (g) to acquire, to administer, to operate, to encumber, to dispose of and to transfer moveable assets and real property and any right to or interest therein;
- (h) to trade in currencies, securities and financial assets in general;
- (i) to obtain, to exploit, to dispose of and to transfer patents and other industrial and intellectual property rights, to obtain and to grant licenses, sub-licenses and similar rights of whatever name and description and, if necessary, to protect the rights derived from patents and other industrial and intellectual property rights, licenses, sub-licenses and similar rights against infringements by third parties;
- (j) to carry out all sorts of industrial, financial and commercial activities, including the import, export, purchase, sale, distribution and marketing of products and raw materials;<sup>‡</sup>

and all matters related or conducive to the above, with the objects to be given their most expansive possible interpretation. In pursuing its objects, the Company shall also take into account the interests of the legal entities and companies with which it forms a group.

### **CHAPTER 3. SHARE CAPITAL AND SHARES.**

#### **Article 4. Authorised Capital and Shares.**

- 4.1 The authorised capital of the Company amounts to ten million euro (EUR 10,000,000).  
4.1.1 The authorised capital consists of one billion (1,000,000,000) Shares,  
having Each Share has a nominal value of one eurocent (EUR 0.01) each.  
4.2 All Shares will be registered Shares. No share certificates will be issued.  
4.3 Separate share premium reserves, profit reserves and other reserves shall be maintained for the Ordinary Shares and Shares B. Distributions from these reserves are governed by the provisions of Article 27.  
4.4 The Ordinary Shares are numbered from 1 onwards and the Shares B are numbered from B1 onwards.

#### **Article 5. Register of Shareholders.**

5.1 The Company must keep a register of shareholders. The register may consist of various parts which may be kept in different places and each may be kept in more than one copy and in more than one place as determined by the Board.

~~5.2 Shares included in the Statutory Giro System will be registered in the name of Euroclear Netherlands or an intermediary (as referred to in the Dutch Securities Giro Act). Holders of Shares that are not included in the Statutory Giro System, as well as each usufructuary and each pledgee of such Shares, are obliged to furnish their names and addresses and further such information as the law prescribes or the Board considers necessary to the Company in writing; these will be recorded in the register of shareholders. The Board will supply anyone recorded in the register on request and free of charge with an extract from the register relating to his or her right to Shares.~~

5.2 ~~5.3~~ The register will be kept up to date. The Board will set rules with respect to the signing of registrations and entries in the register of shareholders.

5.3 ~~5.4~~ Section 2:85~~194~~ of the Dutch Civil Code applies to the register of shareholders.

#### **Article 6. Resolution to Issue Shares; Conditions of Issuance.**

6.1 ~~Shares may be issued pursuant to a resolution of the General Meeting. This competence concerns all non-issued Shares of the Company's authorised capital, except insofar as the competence to issue Shares is vested in the Board in accordance with Article 6.2 hereof.~~

~~6.2 Shares may be issued pursuant to a resolution of the Board, if and insofar as the Board is designated to do so by the General Meeting. Such designation can be made each time for a maximum period of five years and can be extended each time for a maximum period of five years. A designation must determine the number of Shares which may be issued pursuant to a resolution of the Board. If so included in the resolution, a resolution of the General Meeting to designate the Board as a corporate body of the Company authorised to issue Shares can only be withdrawn at the proposal of the Board.~~

~~6.3 A resolution of the General Meeting to issue Shares or to designate the Board as the corporate body of the Company authorised to do so can only be adopted at the proposal of the Board.~~

6.2 ~~6.4~~ If so decided by the ~~corporate body authorised to issue Shares~~General Meeting, Shares can be issued at the expense of any reserve.

6.3 ~~6.5~~ The foregoing provisions of this Article 6 apply by analogy to the granting of rights to subscribe for Shares.

6.4 ~~6.6~~ The ~~corporate body of the Company resolving to issue Shares~~General Meeting must determine the issue price and the other conditions of issuance.

#### **Article 7. Pre-emptive Rights.**

7.1 Upon the issuance of Shares, each Shareholder will have pre-emptive rights in proportion to the aggregate nominal value of his Shares. A Shareholder will not have pre-emptive rights in respect of Shares issued ~~against a non-cash contribution. Nor will the Shareholder have pre-emptive rights in respect of Shares issued to~~

- employees of the Company or of a group company (*groepsmaatschappij*).
- 7.2 Prior to each individual issuance of Shares, pre-emptive rights may be restricted or excluded by a resolution of the General Meeting. ~~However, with respect to an issue of Shares pursuant to a resolution of the Board, the pre-emptive rights can be restricted or excluded pursuant to a resolution of the Board if and insofar as the Board is designated to do so by the General Meeting. The provisions of Articles 6.1 and 6.2 apply by analogy.~~
- ~~7.3 A resolution of the General Meeting to restrict or exclude the pre-emptive rights or to designate the Board as a corporate body of the Company authorised to do so can only be adopted at the proposal of the Board.~~
- 7.3 ~~7.4~~ If a proposal is made to the General Meeting to restrict or exclude pre-emptive rights, the reason for such proposal and the choice of the intended issue price must be set forth in the proposal in writing.
- ~~7.5 A resolution of the General Meeting to restrict or exclude pre-emptive rights or to designate the Board as the corporate body of the Company authorised to do so requires a majority of not less than two thirds of the votes validly cast, if less than one half of the Company's issued capital is represented at the meeting.~~
- 7.4 ~~7.6~~ When rights are granted to subscribe for Shares, Shareholders will have pre-emptive rights in respect thereof; the foregoing provisions of this Article 7 apply by analogy. Shareholders will have no pre-emptive rights in respect of Shares issued to a person exercising a right to subscribe for Shares previously granted.
- Article 8. Payment on Shares.**
- ~~8.1 Upon issuance of a Share, the full nominal value thereof must be paid up, as well as the amount of the share premium if the Share is subscribed for at a higher price, without prejudice to the provisions of section 2:80 subsection 2 of the Dutch Civil Code.~~
- 8.1 ~~8.2~~ Payment for a Share must be made in cash insofar as no contribution in any other form has been agreed on.
- 8.2 ~~8.3~~ The Board is authorised to enter into legal acts relating to non-cash contributions and the other legal acts referred to in section 2:~~94~~<sup>204</sup> of the Dutch Civil Code without the prior approval of the General Meeting.
- ~~8.4 Payments for Shares and non-cash contributions are furthermore subject to the provisions of sections 2:80, 2:80a, 2:80b and 2:94b of the Dutch Civil Code.~~
- Article 9. Treasury Shares.**
- 9.1 When issuing Shares, neither the Company nor its subsidiaries may subscribe for its own Shares.
- 9.2 The Company is entitled to acquire its own fully paid-up Shares, ~~or depository receipts for Shares~~, with due observance of the relevant statutory provisions.
- ~~9.3 Acquisition for valuable consideration is permitted only if the General Meeting has authorised the Board to do so. Such authorization will be valid for a period not~~

~~exceeding eighteen (18) months. The General Meeting must determine in the authorization the number of Shares or depositary receipts for Shares which may be acquired, the manner in which they may be acquired and the limits within which the price must be set.~~

~~9.4 The Company may, without authorization by the General Meeting, acquire its own Shares for the purpose of transferring such Shares to employees of the Company or of a group company (groepsmaatschappij) under a scheme applicable to such employees, provided such Shares are quoted on the price list of a stock exchange.~~

~~9.5 Article 9.3 does not apply to Shares or depositary receipts for Shares which the Company acquires by universal succession in title.~~

9.3 ~~9.6~~ No voting rights may be exercised with respect to any Share held by the Company or by a subsidiary (*dochtermaatschappij*), or any Share for which the Company or a subsidiary (*dochtermaatschappij*) holds the depositary receipts. No distributions or other payments will be made on Shares which the Company holds in its own share capital.

9.4 ~~9.7~~ The Company is authorised to alienate Shares held by the Company, or depositary receipts for Shares, pursuant to a resolution of the Board.

~~9.8 Treasury Shares and depositary receipts for Shares are furthermore subject to the provisions of sections 2:89a, 2:95, 2:98, 2:98a, 2:98b, 2:98c, 2:98d and 2:118 of the Dutch Civil Code.~~

## **Article 10. Reduction of the Issued Capital.**

10.1 The General Meeting may resolve to reduce the Company's issued capital:

- (a) by cancellation of (a class of) Shares; or
- (b) by reducing the nominal value of Shares by amendment of these Articles of Association.

10.2 Such resolution will indicate the Shares to which the resolution relates, as well as the provisions for the implementation of such resolution.

~~10.3 A resolution to cancel Shares can only relate to Shares held by the Company itself or of which it holds the depositary receipts.~~

10.3 ~~10.4~~ Reduction of the nominal value of the Shares without repayment and without release from the obligation to pay up the Shares shall take place proportionately. The requirement of proportion may be deviated from with the consent of all Shareholders concerned.

10.4 ~~10.5~~ Partial repayment on Shares or release from the obligation to make payments will only be possible for the purpose of execution of a resolution to reduce the nominal value of the Shares. Such repayment or release shall take place with regard to all Shares.

~~10.6 A reduction of the issued capital of the Company is furthermore subject to the provisions of sections 2:99 and 2:100 of the Dutch Civil Code.~~

## **Article 11. Transfer of Shares.**

~~11.1 The transfer of rights a Shareholder holds with regard to Shares included in the Statutory Giro System must take place in accordance with the provisions of the Dutch Securities Giro Act.~~

11.1 No restriction as referred to in section 2:195 paragraph 1 of the Dutch Civil Code is applicable on the transfer of Shares.

~~11.2 The transfer of Shares not included in the Statutory Giro System requires an instrument intended for such purpose and, save when the Company itself is a party to such legal act, the written acknowledgement by the Company of the transfer. The acknowledgement must be made in the instrument or by a dated statement of acknowledgement on the instrument or on a copy or extract thereof and signed as a true copy by a civil law notary or the transferor. Official service of such instrument or such copy or extract on the Company is considered to have the same effect as an acknowledgement.~~a Share, or the transfer or waiver of a limited right to a Share, requires a deed which has been executed before a civil-law notary practising in the Netherlands and to which all persons involved are a party.

~~11.3 A transfer of Shares from the Statutory Giro System is subject to the restrictions of the Dutch Securities Giro Act and is further subject to approval of the Board.~~

#### **Article 12. Usufruct, Pledge and Depositary Receipts with respect to Shares.**

12.1 A Shareholder will have the right to vote in respect of Shares on which a right of usufruct or a right of pledge is established, unless such has been determined otherwise upon the creation of such right. A Shareholder who is not entitled to vote and a usufructuary or pledgee who is entitled to vote will have the rights conferred by Dutch law to holders of depositary receipts.

~~12.1 The provisions of Articles 11.1 and 11.2 apply by analogy to the creation or transfer of a right of usufruct in Shares. Whether the voting rights attached to the Shares on which a right of usufruct is created, are vested in the Shareholder or the usufructuary, is determined in accordance with section 2:88 of the Dutch Civil Code. Shareholders, with or without voting rights, and the usufructuary with voting rights are entitled to attend the General Meeting of Shareholders. A usufructuary without voting rights is not entitled to attend the General Meeting of Shareholders.~~

~~12.2 The provisions of Articles 11.1 and 11.2 also apply by analogy to the pledging of Shares. Shares may also be pledged as an undisclosed pledge: in such case, section 3:239 of the Dutch Civil Code applies by analogy. No voting rights and/or the right to attend the General Meeting of Shareholders accrue to the pledgee of Shares.~~

12.2 12.3 Holders of depositary receipts for Shares are not entitled to attend the General Meeting of Shareholders and do not have the other rights which the Dutch Civil Code confers upon depositary receipts ~~issued with the cooperation of the Company, unless the Company explicitly grants one or more of these rights by a resolution to that effect by the Board.~~

#### **CHAPTER 4. THE BOARD.**

### **Article 13. Composition of the Board.**

- 13.1 The Board comprises of (i) one or more Executive Directors A and/or one or more Executive Directors B and (ii) one or more Non-Executive Directors A and/or one or more Non-Executive Directors B. The total number of Directors, as well as the number of Executive Directors A, Executive Directors B, Non-Executive Directors A and Non-Executive Directors B, is determined by the General Meeting of Shareholders.
- 13.2 Only individuals can be Non-Executive Directors.

### **Article 14. Appointment, Suspension and Removal of Directors.**

- 14.1 Directors will be appointed by the General Meeting of Shareholders. Directors will be appointed either as an Executive Director A, an Executive Director B, a Non-Executive Director A or a Non-Executive Director B.
- 14.2 At a General Meeting of Shareholders, votes in respect of the appointment of a Director can only be cast for candidates named in the agenda of the meeting or explanatory notes thereto.
- 14.3 A proposal to appoint a Director will state the candidate's age and the positions he holds or has held, insofar as these are relevant for the performance of the duties of a Director. The proposal must state the reasons on which it is based.
- 14.4 A proposal to appoint a Director will also state the candidate's term of office. A Director who ceases this term of office is immediately eligible for reappointment.
- 14.5 Each Director may be suspended or removed by the General Meeting of Shareholders at any time. An Executive Director may also be suspended by the Board. A suspension by the Board may at any time be discontinued by the General Meeting of Shareholders.
- 14.6 Any suspension may be extended one or more times, but may not last longer than three months in the aggregate. If, at the end of that period, no decision has been taken on termination of the suspension or on removal, the suspension will end.

### **Article 15. Remuneration of Directors.**

~~15.1 The Company must have a policy with respect to the remuneration of Directors. This policy is each Director shall be~~ determined by the General Meeting ~~with a simple majority of the votes validly cast without any quorum being required.~~

~~15.2 The authority to establish remuneration and other terms of service for Directors is vested in the Board, with due observance of the remuneration policy referred to in Article 15.1 and applicable provisions of law. The Executive Directors may not participate in the discussion and decision making process of the Board with respect to the remuneration of Executive Directors.~~

~~15.3 The Board shall submit to the General Meeting of Shareholders for approval plans to issue Shares or to grant rights to subscribe for Shares to Directors. The plans shall at least indicate the number of Shares and the rights to subscribe for Shares that may be allotted to Directors and the criteria that shall apply to the allotment or any change thereto.~~

~~15.4 The absence of approvals required pursuant to Article 15.3 will not affect the authority of the Board or its members to represent the Company.~~

~~15.5 Directors are entitled to an indemnity from the Company and D&O insurance (as defined in Article 23.3), in accordance with Article 23.~~

#### **Article 16. General Duties of the Board.**

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

16.2 Each Director is responsible for the general course of affairs.

#### **Article 17. Allocation of Duties within the Board; Company Secretary.**

17.1 The duty of the Non-Executive Directors is to supervise the performance of duties by the Executive Directors as well as the general course of affairs of the Company and the business connected with it. The Non-Executive Directors are also charged with the duties assigned to them pursuant to the law and these Articles of Association.

17.2 The Board may grant titles, including the title of Chief Executive Officer and Chairperson, to Directors. The title of Chairperson will only be granted to Non-Executive Directors. The title of Chief Executive Officer will only be granted to Executive Directors.

17.3 The specific duties of the Directors, if any, will be laid down by the Board in writing.

17.4 To the extent permitted by law, the Board may assign and delegate such duties and powers to individual Directors and/or committees. This may also include a delegation of resolution-making power, provided this is laid down in writing. A Director to whom and a committee to which powers of the Board are delegated, ~~—~~ must comply with the rules set in relation thereto by the Board.

17.5 The Board appoints a company secretary and is authorised to replace such person at any time. The company secretary does not have to be a member of the Board. The company secretary holds the duties and powers vested in such role pursuant to these Articles of Association or a resolution of the Board. In absence of the company secretary, his or her duties and powers are exercised by a deputy.

#### **Article 18. Representation.**

18.1 The Board is authorised to represent the Company. In the event that one or more Directors A and one or more Directors B have been appointed, a Director A acting jointly with a Director B are authorised to represent the Company. In the event that no Director B has been appointed, each Director A is authorised to represent the Company acting solely. In any event, when appointed, a Director B is always authorised to represent the Company acting solely.

18.2 The Board may appoint persons with general or limited power of representation. Each of these officers may represent the Company subject to the limitations relating to his

power. Their titles shall be determined by the Board.

#### **Article 19. Meetings; Decision-making Process.**

- 19.1 The Board meets as often as deemed desirable by the Chairperson or when requested by at least three (3) Directors. The notice will be given by the company secretary. The meeting is chaired by the Chairperson or in his absence by any Director elected by the Directors present. Minutes of the proceedings at the meeting must be kept.
- 19.2 Board resolutions are adopted by an absolute majority of more than half of the votes validly cast. In the event that more Directors A than Directors B have been appointed, the Directors B present or represented jointly are entitled to cast a number of votes equal to the aggregate number of votes of the Directors A present or represented. If only Directors A or only Directors B have been appointed, each Director present or represented has the right to cast one vote. If there is a tie in voting, the Director having the title of Chairperson has a decisive vote. The Board may designate types of resolutions which are subject to more stringent requirements deviating from the foregoing. These types of resolutions and the nature of the deviation must be clearly specified and laid down in writing.
- 19.3 Board resolutions are adopted in a meeting held in the Netherlands. Decisions taken at a meeting of the Board will only be valid if the majority of the Directors – who are then in office, who are not suspended and who do not have a conflict of interest as defined in Article 20.1 – is present or represented at the meeting. In the event that both Directors A and Directors B have been appointed, resolutions of the Board can only be adopted in a meeting where at least one Director A and one Director B are present or represented.  
~~The Board may designate types of resolutions which are subject to more stringent requirements deviating from the foregoing. These types of resolutions and the nature of the deviation must be clearly specified and laid down in writing.~~
- 19.4 By way of exception, meetings of the Board may also be held by telephone or video conference, provided that these meetings of the Board are initiated in the Netherlands and that all Directors participating in such meeting are able to communicate with each other simultaneously, and provided, further, that key resolutions of the Board shall be adopted in a meeting held in the Netherlands. Participation in a meeting held in any of the above ways shall constitute presence at such meeting.
- 19.5 By way of exception, the Board may also adopt resolutions without holding a meeting. For adoption of a resolution other than at a meeting, it is required that the proposal is submitted to all Directors then in office without a conflict of interest as defined in Article 20.1, they have been given the opportunity to express their opinion on the proposed resolution, none of them has objected to the relevant manner of adopting resolutions and such majority of the Directors as required pursuant to Article 19.2 has

expressly declared to be in favour of the resolutions thus adopted in writing.

~~19.6 Third parties may rely on a written declaration by the Chairperson or the company secretary concerning resolutions adopted by the Board or a committee thereof. Where it concerns a resolution adopted by a committee, third parties may also rely on a written declaration by the chairperson of such committee.~~

19.6 ~~19.7~~ In Board meetings and with respect to the adoption of Board resolutions, a Director may be represented only by another Director, authorized in writing. At each meeting a Director may not act as representative for more than one other Director.

19.7 ~~19.8~~ The Board may establish additional rules regarding its working methods and decision-making process.

## **Article 20. Conflicts of Interests.**

- 20.1 A Director having a conflict of interests as referred to in Article 20.2 or an interest which may have the appearance of such a conflict of interests (both a (potential) conflict of interests) must declare the nature and extent of that interest to the other Directors.
- 20.2 A Director may not participate in deliberating or decision-making within the Board, if with respect to the matter concerned such Director has a direct or indirect personal interest that conflicts with the interests of the Company and the business connected with it. This prohibition does not apply if the conflict of interests exists for all Directors.
- 20.3 A conflict of interests as referred to in Article 20.2 only exists if in the situation at hand the Director must be deemed to be unable to serve the interests of the Company and the business connected with it with the required level of integrity and objectivity. If a transaction is proposed in which apart from the Company also an affiliate of the Company has an interest, then the mere fact that a Director holds any office or other function with the affiliate concerned or another affiliate, whether or not it is remunerated, does not mean that a conflict of interests as referred to in Article 20.2 exists.
- 20.4 The Director who in connection with a (potential) conflict of interests does not exercise certain duties and powers will insofar be regarded as a Director who is unable to perform his duties (*belet*).
- 20.5 A (potential) conflict of interests does not affect the authority concerning representation of the Company set forth in Article 18.1.

## **Article 21. Vacancies and Inability to Act.**

- 21.1 For each vacant seat on the Board, the Board can determine that it will be temporarily occupied by a person (a stand-in) designated by the Board. Persons that can be designated as such include former Directors (irrespective of the reason why they are no longer Directors).
- 21.2 If and as long as one or more seats on the Board are vacant, the management of the Company will be temporarily entrusted to the person or persons who (whether as a

- stand-in or not) do occupy a seat in the Board.
- 21.3 If the seats of one or more Executive Directors are vacant, the Board may temporarily entrust duties and powers of an Executive Director to a Non-Executive Director.
- 21.4 When determining to which extent Board members are present or represented, consent to a manner of adopting resolutions, or vote, stand-ins will be ~~taken into account~~counted in and no account will be taken of vacant seats for which no stand-in has been designated.
- 21.5 For the purpose of this Article 21, the seat of a Director who is unable to perform his duties (*belet*) will be treated as a vacant seat.

## **Article 22. Approval of Board Resolutions.**

- ~~22.1 The Board requires the approval of the General Meeting for resolutions entailing a significant change in the identity or character of the Company or its business, in any case concerning:~~
- ~~(a) the transfer of (nearly) the entire business of the Company to a third party;~~
- ~~(b) entering into or terminating a long term cooperation between the Company or a subsidiary (*dochtermaatschappij*) and another legal entity or company or as a fully liable partner in a limited partnership or general partnership, if such cooperation or termination is of fundamental importance for the Company;~~
- ~~(c) acquiring or disposing of a participation in the capital of a company if the value of such participation is at least one third of the sum of the assets of the Company according to its balance sheet and explanatory notes or, if the Company prepares a consolidated balance sheet, its consolidated balance sheet and explanatory notes according to the last adopted annual accounts of the Company, by the Company or a subsidiary (*dochtermaatschappij*).~~

~~22.2 The General Meeting is entitled to require other resolutions of the Board to be subject to its approval. Such resolutions must be clearly specified and notified to the Board in writing.~~

~~22.3 The absence of approvals required pursuant to Articles 22.1 and/or 22.2 will not affect the authority of the Board or its members to represent the Company.~~

## **Article 23. Indemnity and Insurance.**

- ~~23.1 To the extent permissible by law, the Company will indemnify and hold harmless each Director, both former members and members currently in office (each of them, for the purpose of this Article 23 only, an **Indemnified Person**), against any and all liabilities, claims, judgments, fines and penalties (**Claims**) incurred by the Indemnified Person as a result of any expected, pending or completed action, investigation or other proceeding, whether civil, criminal or administrative (each, a **Legal Action**), of or initiated by any party other than the Company itself or a group company (*groepsmaatschappij*) thereof, in relation to any acts or omissions in or related to his capacity as an Indemnified Person. Claims will include derivative actions of or initiated by the Company or a group company (*groepsmaatschappij*) thereof against the Indemnified Person and (recourse) claims by the Company itself or a group company (*groepsmaatschappij*) thereof for payments of claims by third parties if the Indemnified Person will be held personally liable therefore.~~

- ~~23.2 The Indemnified Person will not be indemnified with respect to Claims in so far as they relate to the gaining in fact of personal profits, advantages or remuneration to which he was not legally entitled, or if the Indemnified Person has been adjudged to be liable for wilful misconduct (*opzet*) or intentional recklessness (*bewuste roekeloosheid*).~~
- ~~23.3 The Company or its affiliates will provide for and bear the cost of adequate insurance covering Claimsclaims against sitting and former Directors (**D&O insurance**).~~
- ~~23.4 Any expenses (including reasonable attorneys' fees and litigation costs) (collectively, Expenses) incurred by the Indemnified Person in connection with any Legal Action will be settled or reimbursed by the Company, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such Expenses if a competent court in an irrevocable judgment has determined that he is not entitled to be indemnified. Expenses will be deemed to include any tax liability which the Indemnified Person may be subject to as a result of his indemnification.~~
- ~~23.5 Also in case of a Legal Action against the Indemnified Person by the Company itself or its group companies (*groepsmaatschappijen*), the Company will settle or reimburse to the Indemnified Person his reasonable attorneys' fees and litigation costs, but only upon receipt of a written undertaking by that Indemnified Person that he will repay such fees and costs if a competent court in an irrevocable judgment has resolved the Legal Action in favour of the Company or the relevant group company (*groepsmaatschappij*) rather than the Indemnified Person.~~
- ~~23.6 The Indemnified Person may not admit any personal financial liability vis à vis third parties, nor enter into any settlement agreement, without the Company's prior written authorisation. The Company and the Indemnified Person will use all reasonable endeavours to cooperate with a view to agreeing on the defence of any Claims, but in the event that the Company and the Indemnified Person fail to reach such agreement, the Indemnified Person will comply with all directions given by the Company in its sole discretion, in order to be entitled to the indemnity contemplated by this Article 23.~~
- ~~23.7 The indemnity contemplated by this Article 23 does not apply to the extent Claims and Expenses are reimbursed by insurers.~~
- ~~23.8 This Article 23 can be amended without the consent of the Indemnified Persons as such. However, the provisions set forth herein nevertheless continues to apply to Claims and/or Expenses incurred in relation to the acts or omissions by the Indemnified Person during the periods in which this clause was in effect.~~

## CHAPTER 5. ANNUAL ACCOUNTS; PROFITS AND DISTRIBUTIONS.

### Article 24. Financial Year and Annual Accounts.

- 24.1 The Company's financial year is the calendar year.
- 24.2 Annually, not later than ~~four~~five (45) months after the end of the financial year, the Board must prepare annual accounts and deposit the same for inspection by the Shareholders and other persons entitled to attend the General Meeting of Shareholders at the Company's office. Within the same period, the Board must also deposit the board report for inspection by the Shareholders and other persons entitled to attend the General Meeting of Shareholders.
- 24.3 The annual accounts must be signed by the Directors. If the signature of one or more of

them is missing, this will be stated and reasons for this omission will be given.

- 24.4 The Company must ensure that the annual accounts, the board report, and the information to be added by virtue of the law are kept at its office as of the day on which notice of the annual General Meeting of Shareholders is given. Shareholders and other persons entitled to attend the General Meeting of Shareholders may inspect the documents at that place and obtain a copy free of charge.
- 24.5 The annual accounts, the board report and the information to be added by virtue of the law are furthermore subject to the provisions of Book 2, Title 9, of the Dutch Civil Code.
- 24.6 The language of the annual accounts and the board report will be English.

#### **Article 25. External Auditor.**

- 25.1 ~~The~~If required by Dutch law, the General Meeting of Shareholders will commission an organization in which certified public accountants cooperate, as referred to in section 2:393 subsection 1 of the Dutch Civil Code (an **External Auditor**) to examine the annual accounts drawn up by the Board in accordance with the provisions of section 2:393 subsection 3 of the Dutch Civil Code. If the General Meeting of Shareholders fails to commission the External Auditor, the commission will be made by the Board.
  - 25.2 The External Auditor is entitled to inspect all of the Company's books and documents and is prohibited from divulging anything shown or communicated to it regarding the Company's affairs except insofar as required to fulfil its mandate. Its fee is chargeable to the Company.
- ~~25.3 The External Auditor will present a report on its examination to the Board. In this it will address at a minimum its findings concerning the reliability and continuity of the automated data processing system.~~
- ~~25.4 The External Auditor will report on the results of its examination, in an auditor's statement, regarding the accuracy of the annual accounts.~~
- ~~25.5 The annual accounts cannot be adopted if the General Meeting has not been able to review the auditor's statement from the External Auditor, which statement must have been added to the annual accounts, unless the information to be added to the annual accounts states a legal reason why the statement has not been provided.~~

#### **Article 26. Adoption of the Annual Accounts and Release from Liability.**

- 26.1 The annual accounts will be submitted to the General Meeting for adoption.
- 26.2 At the General Meeting of Shareholders at which it is resolved to adopt the annual accounts, it will be separately proposed that the Directors be released from liability for their respective duties, insofar as the exercise of such duties is reflected in the annual accounts or otherwise disclosed to the General Meeting prior to the adoption of the annual accounts.

#### **Article 27. Reserves, Profits and Distributions.**

- 27.1 After adoption of the annual accounts, the Board may decide that the profits realised during a financial year are used to increase and/or form reserves.

- 27.2 The profits remaining after application of Article 27.1 shall be put at the disposal of the General Meeting. ~~A proposal to pay a dividend shall be dealt with as a separate agenda item at the General Meeting of Shareholders.~~
- 27.3 A Class Meeting is, with the prior approval of the Board, authorized to make distributions from a share premium reserve, profit reserve or other reserve attached to the Shares of such respective class.
- 27.4 The Board may resolve, without consent of individual Shareholders being required, that all or part of a distribution, instead of being made in cash, shall be made in kind.
- 27.5 The Board shall refrain from determining any distribution if it knows or should reasonably foresee that the Company will be unable to continue to pay its short-term debts after the distribution.
- ~~27.3 The General Meeting may furthermore resolve to make interim distributions, distributions at the expense of the Company's distributable reserves and distributions in-kind. With respect to interim distributions, compliance with Article 27.4 must be evidenced by an interim statement of assets signed by the Board.~~
- ~~27.4 Distributions may be made only insofar as the Company's equity exceeds the amount of the paid in and called up part of the issued capital, increased by the reserves which must be kept by virtue of the law or these Articles of Association.~~
- ~~27.5 All distributions may be made in another currency than Euro.~~

#### **Article 28. Payment of and Entitlement to Distributions.**

- 28.1 Dividends and other distributions pursuant to Article 27 will be made payable ~~pursuant to a resolution of at a date determined by~~ the Board ~~within four weeks after adoption, unless the Board sets another date for payment.~~
- 28.2 A claim of a Shareholder for payment of a distribution shall be barred after five years have elapsed after the day of payment.
- ~~28.3 For all dividends and other distributions in respect of Shares included in the Statutory Giro System the Company will be discharged from all obligations towards the relevant Shareholders by placing those dividends or other distributions at the disposal of, or in accordance with the regulations of, Euroclear Netherlands.~~

#### **CHAPTER 6. THE GENERAL MEETING.**

#### **Article 29. Annual and Extraordinary General Meetings of Shareholders.**

- 29.1 Each year, though not later than in the month of June, a General Meeting of Shareholders will be held.
- 29.2 Other General Meetings of Shareholders will be held whenever the Board deems such to be necessary or upon the request of a Shareholder holding more than seventy-five percent (75%) of the issued capital of the Company, ~~without prejudice to the provisions of Sections 2:108a, 2:110, 2:111 and 2:112 of the Dutch Civil Code.~~

#### **Article 30. Notice and Agenda of Meetings.**

- 30.1 Notice of General Meetings of Shareholders will be given by ~~the Board a Director~~ or a Shareholder holding more than seventy-five percent (75%) of the issued capital of the

- Company in accordance with the applicable provisions of the Articles of Association and Dutch law.
- 30.2 ~~Notice of the~~The notice convening a meeting ~~must shall~~ be given ~~with due observance of the statutory requirements~~within the time limits set thereto by Dutch law.
- 30.3 The notice ~~of the~~convening a meeting ~~will shall~~ state: the subjects to be considered and the other information required by Dutch law and the Articles of Association.
- ~~(a) the subjects to be dealt with;~~  
If persons with meeting rights represent, jointly or individually, at least one percent (1%) of the issued capital, have asked in writing to add one or more items to the agenda of a General Meeting, such item(s) will be incorporated in the notice convening the General Meeting, provided that:
- (a) the Company has received the request no later than on the thirtieth (30th) day before the day of the General Meeting; and
- (b) ~~venue and time of the meeting;~~ addressing the items at the General Meeting will not be contrary to the substantial interests of the Company.
- ~~(c) the requirements for admittance to the meeting as described in Articles 34.2 and 34.3, as well as the information referred to in Article 35.3 (if applicable); and~~
- ~~(d) the address of the Company's website, and such other information as may be required by the law.~~
- ~~30.4 Further communications which must be made to the General Meeting pursuant to the law or these Articles of Association can be made by including such communications either in the notice, or in a document which is deposited at the Company's office for inspection, provided a reference thereto is made in the notice itself.~~
- ~~30.5 Shareholders and/or other persons entitled to attend the General Meeting of Shareholders, who, alone or jointly, meet the requirements set forth in section 2:114a subsection 2 of the Dutch Civil Code will have the right to request the Board to place items on the agenda of the General Meeting of Shareholders, provided the reasons for the request must be stated in such request and the request must be received by the Chairperson in writing at least sixty (60) calendar days before the date of the General Meeting of Shareholders.~~
- ~~30.6 The notice will be given in the manner stated in Article 36.~~
- Article 31. Venue of Meetings.**
- General Meetings of Shareholders can be held in Amsterdam, Utrecht, Haarlemmermeer (including Schiphol Airport) or Joure (municipality De Friese Meren), at the choice of those who call the meeting.
- Article 32. Chairperson of the Meeting.**
- 32.1 The General Meetings of Shareholders will be chaired by the Chairperson or in his absence by the Director or in the absence of the Chairperson by any Director elected by the Directors present. In case of absence of the aforesaid Directors the Board will appoint another Director to chair the meeting. The chairperson of the meeting will have all the powers he may deem required to ensure the proper and orderly functioning of the

General Meeting of Shareholders.

- 32.2 If the chairpersonship of the meeting is not provided for in accordance with Article 32.1, the meeting will itself elect a chairperson, provided that so long as such election has not taken place, the chairpersonship will be held by a Board member designated for that purpose by the Directors present at the meeting.

### **Article 33. Minutes.**

- 33.1 Minutes will be kept of the proceedings at the General Meeting of Shareholders by, or under supervision of, the company secretary, which will be adopted by the chairperson of the meeting and the company secretary and will be signed by them as evidence thereof.
- 33.2 However, the chairperson of the meeting may determine that notarial minutes will be prepared of the proceedings of the meeting. In that case the co-signature of the chairperson of the meeting will be sufficient.

### **Article 34. Rights at Meetings and Admittance.**

- 34.1 Each Shareholder and each other person entitled to attend the General Meeting of Shareholders is authorised to attend, to speak at, and to the extent applicable, to exercise his voting rights in the General Meeting of Shareholders. They may be represented by a proxy holder authorised in writing.

~~34.2 For each General Meeting of Shareholders a statutory record date will be applied, in order to determine in which persons voting rights are vested and which persons are entitled to attend the General Meeting of Shareholders. The record date is the twenty-eighth day before the relevant General Meeting. The manner in which persons entitled to attend the General Meeting of Shareholders can register and exercise their rights will be set out in the notice convening the meeting.~~

34.2 ~~34.3~~ A person entitled to attend the General Meeting of Shareholders or his proxy will only be admitted to the meeting if he has notified the Company of his intention to attend the meeting in writing at the address and by the date specified in the notice of meeting. The proxy is also required to produce written evidence of his mandate.

34.3 ~~34.4~~ The Board is authorised to determine that the voting rights and the right to attend the General Meeting of Shareholders can be exercised by using an electronic means of communication. If so decided, it will be required that each person entitled to attend the General Meeting of Shareholders, or his proxy holder, can be identified through the electronic means of communication, follow the discussions in the meeting and, to the extent applicable, exercise the voting right. The Board may also determine that the electronic means of communication used must allow each person entitled to attend the General Meeting of Shareholders or his proxy holder to participate in the discussions.

34.4 ~~34.5~~ The Board may determine further conditions to the use of electronic means of communication as referred to in Article ~~34.4~~34.3, provided such conditions are reasonable and necessary for the identification of persons entitled to attend the General

Meeting of Shareholders and the reliability and safety of the communication. Such further conditions will be set out in the notice of the meeting. The foregoing does, however, not restrict the authority of the chairperson of the meeting to take such action as he deems fit in the interest of the meeting being conducted in an orderly fashion. Any non or malfunctioning of the means of electronic communication used is at the risk of the persons entitled to attend the General Meeting of Shareholders using the same.

34.5

~~34.6~~ The company secretary will arrange for the keeping of an attendance list in respect of each General Meeting of Shareholders. The attendance list will contain in respect of each person with voting rights present or represented: his name, the number of votes that can be exercised by such person and, if applicable, the name of his representative. The attendance list will furthermore contain the aforementioned information in respect of persons with voting rights who participate in the meeting in accordance with Article ~~34.4~~<sup>34.3</sup> or which have cast their votes in the manner referred to in Article 35.3. The chairperson of the meeting can decide that also the name and other information about other people present will be recorded in the attendance list. The Company is authorised to apply such verification procedures as it reasonably deems necessary to establish the identity of the persons entitled to attend the General Meeting of Shareholders and, where applicable, the identity and authority of representatives.

34.6

~~34.7~~ The Directors will have the right to attend the General Meeting of Shareholders in person and to address the meeting. They will have the right to give advice in the meeting. Also, the external auditor of the Company is authorised to attend and address the General Meetings of Shareholders.

34.7

~~34.8~~ The chairperson of the meeting will decide upon the admittance to the meeting of persons other than those aforementioned in this Article 34.

34.8

~~34.9~~ The official language of the General Meetings of Shareholders will be English.

34.9

~~34.10~~ Shareholders may also adopt resolutions without convening a General Meeting, provided that all persons with meeting rights consent to this decision-making process. This consent may be given by electronic means.

The votes shall be cast in writing or by use of electronic means. This requirement is also met if the resolution is recorded in writing or electronically, stating the voting method of each person entitled to vote.

Prior to the decision-making process, the Directors shall have the opportunity to give advice.

**Article 35. Voting Rights and Adoption of Resolutions.**

35.1 Each Share confers the right to cast one vote.

35.2 At the General Meeting of Shareholders, all resolutions must be adopted by a simple majority of the votes validly cast without a quorum being required, except in those cases

- in which the law or these Articles of Association require a greater majority or the requirement of a quorum. If there is a tie in voting, the proposal will thus be rejected.
- 35.3 The Board may determine that votes cast prior to the General Meeting of Shareholders by electronic means of communication or by mail, are equated with votes cast at the time of the General Meeting. ~~Such votes may not be cast before the record date referred to in Article 34.2.~~ Without prejudice to the provisions of Article 34 the notice convening the General Meeting of Shareholders must state how Shareholders may exercise their rights prior to the meeting.
- 35.4 Blank and invalid votes will be regarded as not having been cast.
- 35.5 The chairperson of the meeting will decide whether and to what extent votes are taken orally, in writing, electronically or by acclamation.
- 35.6 When determining how many votes are cast by Shareholders, how many Shareholders are present or represented, or what portion of the Company's issued capital is represented, no account will be taken of Shares for which no votes can be cast pursuant to these Articles of Association or the law.

### **Article 36. Meetings of Holders of Shares of a particular class.**

- 36.1 Class Meetings will be held whenever the Board calls such meetings. The provisions of Article 30.2 through Article 35 apply by analogy, except as provided otherwise in this Article 36.
- 36.2 All resolutions of a Class Meeting will be adopted by a simple majority of the votes validly cast on Shares of the relevant class, without a quorum being required. If there is a tie in voting, the proposal will thus be rejected. Also, if at such Class Meeting all outstanding Shares of the relevant class are represented, valid resolutions can be passed if the provisions of Article 36.1 have not been observed, provided they are passed unanimously.
- 36.3 If the General Meeting adopts a resolution for the validity or implementation of which the consent of a Class Meeting is required, and if, when that resolution is made in the General Meeting, the majority referred to in Article 36.2 votes for the proposal concerned, the consent of the relevant Class Meeting is thus given.

### **Article 37. Article 36. Notices and Announcements.**

- 37.1 36.1 Notice of General Meetings of Shareholders will be given in accordance with the requirements of law ~~and the requirements of regulation applicable to the Company pursuant to the listing of its Shares on the relevant stock exchange in a country.~~
- 37.2 36.2 The Board may determine that Shareholders and other persons entitled to attend the General Meeting of Shareholders will be given notice of meetings exclusively by announcement on the website of the Company and/or through other means of electronic public announcement, to the extent in accordance with Article 36.137.1.

37.3 ~~36.3~~ The foregoing provisions of this Article ~~36~~37 apply by analogy to other announcements, notices and notifications to Shareholders and other persons entitled to attend the General Meeting of Shareholders.

## CHAPTER 7. MISCELLANEOUS.

### **Article 37. Dispute Resolution.**

~~37.1 To the extent permitted by law, the courts of the Netherlands have jurisdiction in all matters relating to the internal organisation of the Company, including disputes between the Company and its Shareholders and Directors as such.~~

~~37.2 The provisions of this Article 37 with respect to Shareholders and Directors also apply with respect to persons which hold or have held rights towards the Company to acquire Shares, former Shareholders, persons which hold or have held the right to attend the General Meeting of Shareholders other than as a Shareholder, former Directors and other persons holding or having held any position pursuant to an appointment or designation made in accordance with these Articles of Association.~~

### **Article 38. Amendment of Articles of Association.**

38.1 The General Meeting may resolve to amend the Articles of Association. Any proposal thereto must be stated in the notice of the General Meeting of Shareholders.

38.2 In the event of a proposal to the General Meeting of Shareholders to amend the Articles of Association, a copy of such proposal containing the verbatim text of the proposed amendment will be deposited at the Company's office, for inspection by Shareholders and other persons entitled to attend the General Meeting of Shareholders, until the end of the meeting. Furthermore, a copy of the proposal will be made available free of charge to Shareholders and other persons entitled to attend the General Meeting of Shareholders from the day it was deposited until the day of the meeting.

### **Article 39. Dissolution and Liquidation.**

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

39.2 In the event of the dissolution of the Company by resolution of the General Meeting, the Directors will be charged with effecting the liquidation of the Company's affairs without prejudice to the provisions of section 2:23 subsection 2 of the Dutch Civil Code.

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

~~39.4 The balance of the Company's assets after payment of all debts and the costs of the liquidation shall be equally distributed to the Shareholders. All distributions shall be made in proportion to the number of Shares held by each Shareholder.~~

39.4 From the liquidation surplus, first the amounts of the share premium reserves, profit reserves and other reserves shall be distributed to holders of Ordinary Shares and/or Shares B, as the case may be, for which such reserves are maintained. If the amount available for distribution is lower than the aggregate of the aforementioned reserves, the

amounts to be distributed shall be decreased in proportion of the amounts of the aforementioned reserves. The remainder shall be distributed to Shareholders and other parties entitled thereto in proportion to their respective rights.

- 39.5 After liquidation, the Company's books and documents shall remain in the possession of the person designated for this purpose by the liquidators of the Company for the period prescribed by law.
- 39.6 The liquidation is otherwise subject to the provisions of Title 1, Book 22.1 of the Dutch Civil Code.

### **Final statements**

Finally, the appearing person declared that by and through the execution of this deed of amendment [number of shares held by the Offeror on the moment of execution of this deed of conversion and amendment - at least 95% of the issued share capital] of the Ordinary Shares issued prior to the execution of this deed is converted into [number of shares held by the Offeror on the moment of execution of this deed of conversion and amendment - at least 95% of the issued share capital] Shares B, numbered B1 up to and including B [number of shares held by the Offeror on the moment of execution of this deed of amendment] and [percentage of shares held by the Offeror on the moment of execution of this deed of conversion and amendment - at least 95%] of the reserves will be allocated to the respective reserve attached to the Shares B. For the avoidance of doubt, the remainder of the Shares issued prior to the execution of this deed remain Ordinary Shares and are deemed to be numbered 1 up to and including [number of shares not held by the Offeror on the moment of execution of this deed of conversion and amendment - being less than 5%] and a [percentage of shares not held by the Offeror on the moment of execution of this deed of conversion and amendment - less than 5%] will be allocated to the respective reserve attached to the Ordinary Shares.

Furthermore the appearing person declared that the amount of the issued share capital of the company on the date of this deed upon taking effect of the current conversion and amendment of the Articles of Association, amounts to [amount of issued share capital at the moment of execution of this deed of conversion and amendment], consisting of [number of shares not held by the Offeror on the moment of execution of this deed of conversion and amendment - being less than 5%] Ordinary Shares and [number of shares held by the Offeror on the moment of execution of this deed of conversion and amendment - at least 95% of the issued share capital] Shares B.

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