

**DATED 29 MARCH 2018**

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**RULES GOVERNING THE MANAGEMENT BOARD OF  
CURETIS N.V.**

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**Adopted by the Management Board on 29 March 2018**

**Approved by the Supervisory Board on 29 March 2018**

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## RULES GOVERNING THE MANAGEMENT BOARD OF CURETIS N.V.

### 1. Definitions and interpretation

1.1 In these Rules the following terms shall have the following meanings:

"**Annual Accounts**" means the annual accounts referred to in section 2:361 of the Dutch Civil Code (DCC);

"**Articles of Association**" means the articles of association of the Company;

"**Audit Committee**" means the audit committee of the Supervisory Board;

"**Code**" means the Dutch Corporate Governance Code (DCGC) of 8 December 2016 as published in the Dutch Government Gazette number 45259 dated 21 August 2017<sup>1</sup>;

"**Company**" means Curetis N.V., a public company under Dutch law, registered with the trade register under number 64302679;

"**Company Secretary**" means the company secretary of the Company;

"**Dependent Company**" means a dependent company of the Company as referred to in section 2:152 of the Dutch Civil Code;

"**General Meeting**" means the body of the Company consisting of the Shareholders, or a meeting of Shareholders;

"**Group Company**" means a legal person or partnership which is affiliated with the Company in a group as referred to in section 2:24b of the Dutch Civil Code;

"**Management Board**" means the management board of the Company;

"**Management Report**" means the management report referred to in section 2:391 of the Dutch Civil Code;

"**Managing Director**" means a managing director of the Company;

"**Participating Interest**" means a participating interest as referred to in section 2:24c of the Dutch Civil Code;

"**Rules**" means these rules governing the Management Board;

"**Shareholder**" means a holder of one or more shares in the share capital of the Company;

"**Subsidiary**" means a subsidiary as referred to in section 2:24a of the Dutch Civil Code;

"**Supervisory Board**" means the supervisory board of the Company;

"**Supervisory Director**" means a supervisory director of the Company;

"**Works Council**" means the works council of the business of the Company.

1.2 In these Rules references to Clauses are to clauses of these Rules, unless otherwise specified.

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<sup>1</sup> Dutch listed companies will be required to report on compliance with the new Code in a management report relating to a financial year which commences on or after 1 January 2017.

1.3 Headings of clauses and other headings in these Management Board Rules are inserted for ease of reference and do not form part of the Management Board Rules concerned for the purpose of interpretation.

## **2. Composition and expertise of the Management Board**

2.1 The Management Board shall consist of at least two Managing Directors. Their exact number to be determined by the Supervisory Board after consultation with the Management Board. If the number of Managing Directors in office should be less than two, the Management Board shall take immediate measures to increase the number of Managing Directors with due observance of the relevant provisions of the Articles of Association and these Management Board Rules.

2.2 The Management Board shall be composed such that the requisite expertise, background and competencies are available for it to carry out its duties properly.<sup>2</sup>

2.3 Each Managing Director shall have the specific expertise required for the fulfilment of his duties.<sup>3</sup>

## **3. Appointment, retirement, suspension and dismissal of Managing Directors**

3.1 Managing Directors shall be appointed in accordance with the relevant provisions of the Articles of Association.

3.2 A Managing Director shall be appointed for a period of not more than four years. A Managing Director shall be eligible for reappointed for a period of not more than four years at a time.<sup>4</sup>

3.3 The main elements of the agreement of a Managing Director with the Company shall be published on the Company's website in a transparent overview after the agreement has been entered into, but in any event no later than the date of the notice for the General Meeting at which the appointment of the Managing Director is proposed.<sup>5</sup>

3.4 A Managing Director shall retire early in the event of inadequate performance, structural incompatibility of interests or whenever otherwise required at the discretion of the Supervisory Board. In the event of early retirement of a Managing Director, the Company shall issue a press release mentioning the reasons for the departure.<sup>6</sup>

3.5 Managing Directors shall be suspended and dismissed in accordance with the relevant provisions of the Articles of Association.

## **4. Remuneration of Managing Directors**

4.1 The Company shall have a policy in the area of remuneration of the Management Board. The policy shall be adopted by the General Meeting. The remuneration policy shall at least include the matters described in sections 2:383c up to and including 2:383e of the Dutch Civil Code, as far as they apply to the Management Board.<sup>7</sup>

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<sup>2</sup> Principle 2.1 DCGC.

<sup>3</sup> Best practice provision 2.1.4 DCGC.

<sup>4</sup> Best practice provision 2.2.1 DCGC.

<sup>5</sup> Best practice provision 3.4.2 DCGC.

<sup>6</sup> Best practice provision 2.2.3 DCGC.

<sup>7</sup> Section 2:135 subsection 1 DCC.

4.2 The remuneration of Managing Directors shall be determined by the Supervisory Board with due observance of the policy referred to in Article 4.1 and article 18 of the Articles of Association.<sup>8</sup>

4.3 Apart from their remuneration, Managing Directors shall be reimbursed for all reasonable costs incurred in connection with their function, the reasonableness of such costs being assessed by the CEO (the reasonableness of costs incurred by the CEO is assessed by Chairman of the Supervisory Board). Any other expenses are only reimbursed, in whole or in part, if incurred with the consent of the CEO.

## 5. Other positions of Managing Directors

Managing Directors shall report any other positions they may have to the Supervisory Board in advance. The acceptance of the office of supervisory director by a Managing Director shall require the approval of the Supervisory Board.<sup>9</sup> A Managing Director may not concurrently serve as chairman of the supervisory board of a large company.

## 6. Duties, division of duties and responsibilities of the Management Board

6.1 Subject to the restrictions according to the Articles of Association and these Rules, the Management Board shall be charged with the management of the Company.<sup>10</sup> In fulfilling their duties the Managing Directors shall serve the interest of the Company and the business connected with it.<sup>11</sup> The Management Board shall perform its activities under the supervision of the Supervisory Board, but be responsible itself for the quality of its performance.

6.2 The duties of the Management Board shall include, without limitation:

- (a) the achievement of the Company's objects;
- (b) determining the strategic policy designed to achieve the Company's objects;
- (c) promoting the Company's results;
- (d) determining the strategy designed to achieve the long-term value creation of the Company and the business connected with it;<sup>12</sup>
- (e) identifying and managing the risks associated with the Company's strategy and activities;<sup>13</sup>
- (f) appointing the Company's executive internal auditor;<sup>14</sup>
- (g) ensuring the proper performance of the Company's internal audit function;<sup>15</sup>
- (h) appointing the Company Secretary;<sup>16</sup>

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<sup>8</sup> Principle 3.2 DCGC.

<sup>9</sup> Best practice provision 2.4.2 DCGC.

<sup>10</sup> Section 2:129 subsection 1 DCC.

<sup>11</sup> Section 2:129 subsection 5 DCC.

<sup>12</sup> Best practice provision 1.1.1 DCGC.

<sup>13</sup> Principle 1.2 DCGC.

<sup>14</sup> Best practice provision 1.3.1 DCGC.

<sup>15</sup> Best practice provision 1.3.1 DCGC.

<sup>16</sup> Best practice provision 2.3.10 DCGC.

- (i) setting up and maintaining internal procedures ensuring that the Management Board and the Supervisory Board are supplied in a timely manner with all relevant information;<sup>17</sup>
  - (j) setting up a procedure for reporting actual or alleged misconduct and irregularities within the Company and the business connected with it and adequately following up on such reports;<sup>18</sup>
  - (k) preparing the Company's financial reports;
  - (l) advising with regard to the appointment of the Company's external auditor;
  - (m) promoting good corporate governance of the Company;
  - (n) complying with the law, the Articles of Association, these Rules and the Code.
- 6.3 The Management Board shall determine the duties with which each Managing Director will be particularly charged. A division of duties shall require the approval of the Supervisory Board.
- 6.4 Each Managing Director shall be obliged vis-à-vis the Company to fulfil his duties properly. The duties of a Managing Director shall include all management duties which have not been assigned to one or more other Managing Directors by or pursuant to the Articles of Association or these Rules.<sup>19</sup>
- 6.5 The Managing Directors shall be collectively responsible for the general course of affairs of the Company and the business connected with it.<sup>20</sup>
- 6.6 The Management Board shall be responsible for promoting openness and accountability within the Management Board and between the Management Board and the Supervisory Board.<sup>21</sup>
- 6.7 The Managing Directors shall externally express concurring views with respect to important affairs, matters of principle and matters of general interest, with due observance of the responsibilities of the individual Managing Directors.
- 6.8 The Management Board shall ensure that the External Auditor can properly perform his audit work. External auditor shall discuss the draft audit plan with the Management Board before presenting it to the Audit Committee.
- 7. Chairman of the Management Board - CEO**
- 7.1 The Supervisory Board shall appoint from among the Managing Directors a chairman and grant him the title chief executive officer ("CEO").
- 7.2 The duties of the CEO shall include, without limitation:
- (a) ensuring the proper performance of the Management Board;
  - (b) ensuring that the Managing Directors are provided in a timely manner with all information required for the proper fulfilment of their duties;

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<sup>17</sup> Best practice provision 2.4.7 DCGC.

<sup>18</sup> Best practice provision 2.6.1 DCGC.

<sup>19</sup> Section 2:9 subsection 1 DCC.

<sup>20</sup> Section 2:9 subsection 2 DCC.

<sup>21</sup> Best practice provision 2.4.1 DCGC.

- (c) ensuring that there is sufficient time for discussion and decision-making by the Management Board;
- (d) preparing decision-making by the Management Board;
- (e) presiding over the meetings of the Management Board;
- (f) supervising the implementation of passed resolutions and determining whether further consultation within the Management Board on their implementation is required;
- (g) ensuring that the performance of the Management Board and the individual Managing Directors is evaluated at least once a year;
- (h) maintaining regular contact with the Supervisory Board and be their first contact;
- (i) overseeing and ensuring communications of the Management Board with the Supervisory Board;
- (j) maintaining regular contact with the management boards of Group Companies;
- (k) maintaining regular contact with the Works Council (if any);
- (l) ensuring that the Management Board maintains regular contact with the Company's internal audit function;
- (m) ensuring that the Management Board maintains regular contact with the Company's external auditor.

7.3 The CEO shall regularly consult with the chairman of the Supervisory Board.<sup>22</sup>

## **8. Company Secretary**

8.1 The Company shall have a Company Secretary. The Company Secretary shall support the Management Board and the Supervisory Board. The Company Secretary shall be responsible for ensuring that proper procedures are complied with and that the law, the Articles of Association, these Rules and the rules governing the Supervisory Board are duly observed.

8.2 The Company Secretary shall, whether or not on the recommendation of the Supervisory Board, be appointed and dismissed by the Management Board. A resolution to appoint or dismiss the Company Secretary is subject to the approval of the Supervisory Board.<sup>23</sup>

8.3 The Company Secretary shall facilitate the provision of information to the Management Board and shall support the CEO in organising the meetings of the Management Board.<sup>24</sup>

8.4 The Company Secretary may delegate his duties under these Management Board Rules, or parts thereof, to a deputy appointed by him in consultation with the CEO.

## **9. Meetings of the Management Board**

9.1 The Management Board shall in principle meet at least every two weeks and whenever a Managing Director considers appropriate.

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<sup>22</sup> Best practice provision 2.3.6 DCGC.

<sup>23</sup> Best practice provision 2.3.10 DCGC.

<sup>24</sup> Best practice provision 2.3.10 DCGC.

- 9.2 Meetings of the Management Board are in principle called by the Company Secretary on behalf of the CEO. Save in urgent cases to be determined by the CEO, the agenda for a meeting shall be sent to all Managing Directors at least one calendar day before the meeting. For each item on the agenda an explanation in writing shall be provided, where possible, or other related documentation will be attached
- 9.3 Meetings of the Management Board shall be held at the offices of the Company. A meeting of the Management Board may be held elsewhere, or via telephone or video conference, provided that all Managing Directors have consented to the place of the meeting.
- 9.4 The meeting of the Management Board shall be presided over by the CEO or, in his absence, the Managing Directors present at the meeting shall appoint one of them to be chairman. The Company Secretary shall keep minutes of the proceedings at the meeting. If the Company Secretary is absent, the chairman of the meeting shall designate the secretary. Minutes shall be adopted and in evidence of such adoption be signed by the chairman and the secretary of the meeting, provided that all Managing Directors agree with the contents thereof, or be adopted by the Management Board in a subsequent meeting; in the latter case the minutes shall in evidence of their adoption be signed by the chairman and the secretary of the meeting in which they are adopted.
- 9.5 The Managing Directors as well as the persons who are admitted by the Managing Directors present shall be authorised to attend the meeting.
- 9.6 A Managing Director may only be represented at a meeting by another Managing Director authorised in writing. The requirement of written form for the authorisation shall be met if the authorisation has been recorded electronically. The authorisation may only relate to the meeting specified therein. The existence of the authorisation must be proved satisfactorily to the chairman of the meeting of the Management Board
- 9.7 The Company Secretary shall attend the meetings of the Management Board, unless he is prevented from doing so on serious grounds or the Management Board has expressed the wish to meet without the presence of the Company Secretary.
- 9.8 Each Managing Director may participate in a meeting by electronic means of communication, provided that all Managing Directors participating in the meeting can hear each other simultaneously. A Managing Director so participating shall be deemed to be present at the meeting.

## **10. Decision-making of the Management Board**

- 10.1 Each Managing Director has one vote. All resolutions shall be adopted by an absolute majority of votes cast. The Managing Directors shall endeavour to achieve that resolutions are, as much as possible, adopted unanimously.
- 10.2 The chairman of the meeting of the Management Board shall determine the manner of voting.
- 10.3 In the event of a tie vote, the Supervisory Board shall decide.
- 10.4 In the event that one or more Managing Directors have a direct or indirect personal interest that conflicts with the interest of the Company and the business connected with it, they shall not be authorised to participate in the discussion and the decision-making process. In the event that all Managing Directors have or the only Managing Director has a direct or indirect personal interest



that conflicts with the interest of the Company and the business connected with it, the resolution shall be adopted by the Supervisory Board. If all Supervisory Directors are failing or if the resolution cannot be adopted by the Supervisory Board for the reason that all Supervisory Directors also have a direct or indirect personal interest that conflicts with the interest of the Company and the business connected with it, the resolution shall be adopted by the General Meeting.<sup>25</sup>

10.5 The Management Board may adopt resolutions without holding a meeting, provided that all Managing Directors have consented to this manner of adopting resolutions and the votes are cast in writing or by electronic means. Articles 10.1, 10.3 and 10.4 shall apply by analogy to the adoption of resolutions by the Management Board without holding a meeting.

## **11. Conflicts of interests**

11.1 Any form of conflict of interest between the Company and the Managing Directors shall be prevented.<sup>26</sup>

11.2 Managing Directors shall be alert to conflicts of interest and shall in any event refrain from:

- (a) competing with the Company;
- (b) demanding or accepting substantial gifts from the Company for themselves or their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree;
- (c) providing unjustified advantages to third parties at the Company's expense;
- (d) taking advantage of business opportunities to which the Company is entitled for themselves or for their spouse, registered partner or other life companion, foster child or relative by blood or marriage up to the second degree.<sup>27</sup>

11.3 A conflict of interest may exist if the Company intends to enter into a transaction with a legal person:

- (a) in which a Managing Director personally has a material financial interest; or
- (b) which has a managing director or supervisory director who is related under family law to a Managing Director.<sup>28</sup>

11.4 A Managing Director shall forthwith report any potential conflict of interest in a transaction that is of material significance to the Company or to such Managing Director to the chairman of the Supervisory Board and to the other Managing Directors. The Managing Director shall provide all information relevant to the conflict of interest, including the information relevant to the situation concerning his spouse, registered partner or other life companion, foster children and relatives by blood or marriage up to the second degree.<sup>29</sup>

11.5 The Supervisory Board shall determine without the presence of the Managing Director concerned whether the reported potential conflict of interest qualifies as a direct or indirect

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<sup>25</sup> Section 2:129 subsection 6 DCC.

<sup>26</sup> Principle 2.7 DCGC.

<sup>27</sup> Best practice provision 2.7.1 DCGC.

<sup>28</sup> Best practice provision 2.7.3 DCGC.

<sup>29</sup> Best practice provision 2.7.3 DCGC.

personal interest that conflicts with the interest of the Company and the business connected with it to which Article 10.4 applies.<sup>30</sup>

- 11.6 All transactions in which there are conflicts of interests with Managing Directors or Supervisory Directors shall be agreed on terms that are customary in the market. Resolutions to enter into transactions in which there are conflicts of interest with Managing Directors or Supervisory Directors that are of material significance to the Company or to the relevant Managing Directors or Supervisory Directors shall require the approval of the Supervisory Board. Such transactions shall be published in the Management Report, specifying the conflict of interest and stating that best practice provisions 2.7.3 and 2.7.4 of the Code have been complied with.<sup>31</sup>
- 11.7 All transactions between the Company and natural or legal persons holding at least ten percent of the shares in the share capital of the Company shall be agreed on terms that are customary in the market. Resolutions to enter into transactions with such persons that are of material significance to the Company or to such persons shall require the approval of the Supervisory Board. Such transactions shall be published in the Management Report, specifying the conflict of interest and stating that best practice provision 2.7.5 of the Code has been complied with.<sup>32</sup>
- 11.8 The Company shall not grant the Management Directors and Supervisory Directors any personal loans, guarantees or the like, unless in the ordinary course of business and on terms applicable to the personnel as a whole and after approval by the Supervisory Board. Loans shall not be forgiven.<sup>33</sup>
- 11.9 The Company does not impose any limitation on the right of a Managing Director to hold and trade in securities of companies other than the Company, except that the Managing Director will be obliged towards the Company to comply with all statutory requirements concerning such holding or trading.<sup>34</sup>

## **12. Approval of resolutions of the Management Board and instructions**

- 12.1 Resolutions of the Management Board with regard to an important change in the identity or character of the Company or the business connected with it are subject to the approval of the General Meeting, including in any case:
- (a) transfer of the business or almost the entire business to a third party;
  - (b) entry into or termination of a long-term cooperation by the Company or a Subsidiary thereof with another legal person or partnership or as a fully liable partner in a limited or general partnership, if such cooperation or termination thereof is of far-reaching significance to the Company;
  - (c) acquisition or disposal by the Company or a Subsidiary thereof of a participating interest in the capital of a company with a value of at least one-third of the amount of the assets as shown in the balance sheet with explanatory notes or, if the Company prepares a

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<sup>30</sup> Best practice provision 2.7.3 DCGC.

<sup>31</sup> Best practice provision 2.7.4 DCGC.

<sup>32</sup> Best practice provision 2.7.5 DCGC.

<sup>33</sup> Best practice provision 2.7.6 DCGC.

<sup>34</sup> Best practice provision 2.7.2 DCGC.

consolidated balance sheet, as shown in the consolidated balance sheet with explanatory notes, according to the most recently adopted Annual Accounts of the Company.<sup>35</sup>

12.2 Without prejudice to any other provision of these Rules with regard to approval of resolutions of the Management Board by the Supervisory Board, resolutions of the Management Board on the following matters are subject to the approval of the Supervisory Board:

- (a) issue and acquisition of Shares and debt instruments issued by the Company or of debt instruments issued by a limited partnership or general partnership of which the Company is a fully liable partner;
- (b) cooperation in the issue of depositary receipts for Shares;
- (c) application for admission of the debt instruments and depositary receipts referred to under (a) and (b) respectively to trading on a regulated market or a multilateral trading facility as referred to in section 1:1 of the Dutch Financial Supervision Act or a system from a non-member state similar to a regulated market or a multilateral trading facility or application for withdrawal of such admission;
- (d) entry into or termination of a long-term cooperation by the Company or a Dependent Company with another legal person or company or as a fully liable partner in a limited partnership or general partnership, if such cooperation or termination thereof is of far-reaching significance to the Company;
- (e) acquisition of a Participating Interest by the Company or a Dependent Company in the capital of another company with a value of at least one quarter of the amount of the issued share capital and the reserves of the Company as shown in its balance sheet with explanatory notes, as well as any far-reaching increase or decrease in the size of any such Participating Interest;
- (f) investments requiring an amount equal to at least one quarter of the issued share capital and the reserves of the Company as shown in its balance sheet with explanatory notes;
- (g) a proposal to amend the Articles of Association;
- (h) a proposal to enter into a merger or division within the meaning of title 2.7 of the Dutch Civil Code;
- (i) a proposal to dissolve the Company;
- (j) application for bankruptcy and for suspension of payments;
- (k) termination of the employment of a considerable number of employees of the Company or of a Dependent Company at the same time or within a short time span;
- (l) a far-reaching change in the working conditions of a considerable number of employees of the Company or of a Dependent Company;
- (m) a proposal to reduce the issued share capital.<sup>36</sup>

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<sup>35</sup> Section 2:107a subsection 1 DCC.

<sup>36</sup> Section 2:164 subsection 1 DCC.

12.3 Pursuant to article 20.3 of the Articles of Association the Supervisory Board may require resolutions of the Management Board to be subject to its approval, without prejudice to Articles 12.1 and 12.2. Such resolutions shall be clearly specified and be notified to the Management Board in writing. The requirement of written form for the notification shall be met if the notification has been recorded electronically.<sup>37</sup>

### **13. Further training and education for Managing Directors**

The Management Board shall annually conduct a review to identify any aspects in respect of which Managing Directors require further training or education during their term of office.<sup>38</sup>

### **14. Evaluation of the performance of the Management Board<sup>39</sup>**

At least once a year, the Management Board shall evaluate its own performance as a whole and that of the individual Managing Directors.

### **15. Long-term value creation**

15.1 The Management Board shall be responsible for the continuity of the Company and the business connected with it. The Management Board shall focus on long-term value creation for the Company and the business connected with it and shall consider the interests of the stakeholders which are relevant in this context.<sup>40</sup>

15.2 The Management Board shall develop a view on long-term value creation by the Company and the business connected with it and shall formulate a strategy in line with this. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy. When developing the strategy, the following shall in any event be taken into account:

- (a) the implementation and feasibility of the strategy;
- (b) the business model applied by the Company and the market in which the Company and the business connected with it operate;
- (c) opportunities and risks for the Company;
- (d) the Company's operational and financial goals and their impact on its future position in relevant markets;
- (e) the interests of the stakeholders;
- (f) any other aspects relevant to the Company and the business connected with it, such as the environment, social and employee-related matters, the chain within which the business operates, respect for human rights and fighting corruption and bribery.<sup>41</sup>

15.3 The Management Board shall in due time involve the Supervisory Board when formulating the strategy for realising long-term value creation. The Management Board shall report on the strategy and the explanatory notes thereto to the Supervisory Board.<sup>42</sup>

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<sup>37</sup> Section 2:129 subsection 3 DCC.

<sup>38</sup> Best practice provision 2.4.6 DCGC.

<sup>39</sup> Best practice provision 2.2.7 DCGC.

<sup>40</sup> Principle 1.1 DCGC.

<sup>41</sup> Best practice provision 1.1.1 DCGC.

<sup>42</sup> Best practice provision 1.1.2 DCGC.

15.4 The Management Board shall explain in the Management Report its view on long-term value creation and on the strategy for its realisation and explain how a contribution was made to long-term value creation in the last financial year. In doing so, the Management Board shall report on both the short-term and long-term developments.<sup>43</sup>

## **16. Risk assessment**

16.1 The Management Board shall be responsible for identifying and managing the risks associated with the strategy and activities of the Company and the business connected with it.<sup>44</sup>

16.2 The Management Board shall identify and analyse the risks associated with the strategy and activities of the Company and the business connected with it. It shall be responsible for determining the risk appetite and shall determine what measures will be taken to address the risks.<sup>45</sup>

16.3 Based on the risk assessment, the Management Board shall design, implement and maintain adequate internal risk management and control systems.<sup>46</sup> To the extent relevant, these systems shall be integrated into the work processes within the Company and the business connected with it and shall be known to those whose work they are relevant to.<sup>47</sup>

16.4 The Management Board shall monitor the operation of the internal risk management and control systems and shall carry out a systematic assessment of their design and effectiveness at least once a year. Such monitoring shall cover all material control measures relating to strategic, operational, compliance and reporting risks. In doing so, account shall be taken of, amongst other things, observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the external auditor. Where necessary, improvements shall be made to internal risk management and control systems.<sup>48</sup>

## **17. Internal audit function**

17.1 The internal audit function shall be charged with assessing the design and the operation of the internal risk management and control systems. The Management Board shall be responsible for the internal audit function.<sup>49</sup>

17.2 The Management Board shall appoint and dismiss the executive internal auditor. Both the appointment and the dismissal of the executive internal auditor shall be submitted to the Supervisory Board for approval together with a recommendation of the Audit Committee.<sup>50</sup>

17.3 The internal audit function should have sufficient resources to execute the internal audit plan and have access to information that is important for the performance of its work. The internal

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<sup>43</sup> Best practice provision 1.1.4 DCGC.

<sup>44</sup> Principle 1.2 DCGC. Also see sec. 2:391 subsection 1 DCC, sec. 3a Decree on the content of management reports, sec. 5:25 subsection 2 DFSA and RJ 400, paragraph 110c Annual Reporting Guidelines.

<sup>45</sup> Best practice provision 1.2.1 DCGC.

<sup>46</sup> See [www.coso.org](http://www.coso.org).

<sup>47</sup> Best practice provision 1.2.2 DCGC.

<sup>48</sup> Best practice provision 1.2.3 DCGC.

<sup>49</sup> Principle 1.3 DCGC.

<sup>50</sup> Best practice provision 1.3.1 DCGC.

audit function should have direct access to the Audit Committee and the external auditor. Records should be kept of how the Audit Committee is informed by the internal audit function.<sup>51</sup>

17.4 The Management Board shall annually assess the manner in which the internal audit function fulfils its duties, taking into account the view of the Audit Committee.<sup>52</sup>

## **18. Risk management accountability**

18.1 The Management Board shall be accountable for the effectiveness of the design and the operation of the internal risk management and control systems.<sup>53</sup>

18.2 The Management Board shall discuss the effectiveness of the design and operation of the internal risk management and control systems referred to in Articles 16.2 up to and including 16.4 with the Audit Committee and shall report to the Supervisory Board on this.<sup>54</sup>

18.3 The Management Board shall report in the Management Report on:

- (a) the execution of the risk assessment; the Management Board shall describe the principal risks the Company is facing in relation to its risk appetite, such as strategic, operational, compliance and reporting risks;
- (b) the design and operation of the internal risk management and control systems during the last financial year;
- (c) any significant failings in the internal risk management and control systems which have been identified in the financial year, any significant changes made to such systems and any envisaged significant improvements of such systems, along with a confirmation that these issues have been discussed with the Audit Committee and the Supervisory Board;
- (d) the sensitivity of the Company's results to material changes in external factors.<sup>55</sup>

18.4 The Management Board shall state in the Management Report with clear substantiation that:

- (a) the Management Report provides sufficient insights into any failings in the effectiveness of the internal risk management and control systems;
- (b) the aforementioned systems provide reasonable assurance that the financial reporting does not contain any material inaccuracies;
- (c) based on the current state of affairs, it is justified that the financial reporting is prepared on a going concern basis;
- (d) the Management Report mentions the material risks and uncertainties that are relevant to the expectation that the Company will be able to continue in operation over a period of at least twelve months following preparation of the Management Report.<sup>56</sup>

## **19. Culture**

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<sup>51</sup> Best practice provision 1.3.4 DCGC.

<sup>52</sup> Best practice provision 1.3.2 DCGC.

<sup>53</sup> Principle 1.4 DCGC.

<sup>54</sup> Best practice provision 1.4.1 DCGC.

<sup>55</sup> Best practice provision 1.4.2 DCGC.

<sup>56</sup> Best practice provision 1.4.3 DCGC.

- 19.1 The Management Board shall be responsible for creating a culture aimed at long-term value creation for the Company and the business connected with it.<sup>57</sup>
- 19.2 The Management Board shall adopt values for the Company and the business connected with it contributing to a culture focused on long-term value creation and shall discuss these with the Supervisory Board. The Management Board shall be responsible for incorporating and maintaining the values within the Company and the business connected with it. The Management Board shall take into account, amongst other things:
- (a) the strategy and the business model;
  - (b) the environment in which the business operates;
  - (c) the existing culture within the business and whether it is desirable to implement any changes to this.

The Management Board shall encourage behaviour that is in line with the values and shall promote these values through leading by example.<sup>58</sup>

- 19.3 The Management Board shall draw up a code of conduct and monitor the effectiveness and compliance with such code by itself and the employees of the Company. The Management Board shall inform the Supervisory Board of its findings and observations relating to effectiveness and compliance. The code of conduct shall be published on the Company's website.<sup>59</sup>
- 19.4 Conduct and culture in the Company and the business connected with it shall also be discussed in the consultations between the Management Board, the Supervisory Board and the Works Council.<sup>60</sup>
- 19.5 The Management Board shall explain in the Management Report:
- (a) the values and how they are incorporated in the Company and the business connected with it;
  - (b) the effectiveness of and compliance with the code of conduct.<sup>61</sup>

## **20. Misconduct and irregularities**

- 20.1 The Management Board shall be alert to indications of actual or alleged misconduct or irregularities within the Company and the business connected with it.<sup>62</sup>
- 20.2 The Management Board shall set up a procedure for reporting actual or alleged misconduct or irregularities within the Company and the business connected with it. The procedure shall be published on the Company's website. The Management Board shall ensure that employees have the possibility to file a report without jeopardising their legal position.<sup>63</sup>

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<sup>57</sup> Principle 2.5 DCGC.

<sup>58</sup> Best practice provision 2.5.1 DCGC.

<sup>59</sup> Best practice provision 2.5.2 DCGC.

<sup>60</sup> Best practice provision 2.5.3 DCGC.

<sup>61</sup> Best practice provision 2.5.4 DCGC.

<sup>62</sup> Principle 2.6 DCGC.

<sup>63</sup> Best practice provision 2.6.1 DCGC.

20.3 The Management Board shall forthwith inform the chairman of the Supervisory Board of any signs of actual or alleged material misconduct and irregularities within the Company and the business connected with it.<sup>64</sup>

## **21. Takeover situations**

21.1 In the event of a takeover bid for the shares in the share capital of the Company or for depositary receipts thereof, in the event of a private bid for a business unit or a Participating Interest of the Company the value of which exceeds the threshold referred to in section 2:107a subsection 1 part c of the Dutch Civil Code, or in the event of other far-reaching changes in the Company's structure, the Management Board shall ensure that the stakeholder interests concerned are carefully weighed and that any conflict of interest for Supervisory Directors or Managing Directors is prevented. The Management Board shall be guided in its actions by the interests of the Company and the business connected with it.<sup>65</sup>

21.2 When a takeover bid for the shares in the share capital of the Company or for depositary receipts thereof is prepared, in the event of a private bid for a business unit or a Participating Interest of the Company the value of which exceeds the threshold referred to in section 2:107a subsection 1 part c of the Dutch Civil Code, or in the event of any other far-reaching change in the Company's structure, the Management Board shall ensure that the Supervisory Board is timely and closely involved in the takeover process or the change in the structure.<sup>66</sup>

21.3 If a takeover bid has been announced or made for the shares in the share capital of the Company or for depositary receipts thereof and the Management Board receives a request from a competing third party bidder to inspect the Company's records, the Management Board shall forthwith discuss such request with the Supervisory Board.<sup>67</sup>

21.4 If a private bid for a business unit or a Participating Interest of the Company the value of which exceeds the threshold referred to in section 2:107a subsection 1 part c of the Dutch Civil Code has been made public, the Management Board shall as soon as possible make public its position on the bid and the reasons for this position.<sup>68</sup>

## **22. Provision of information**

22.1 The Company shall formulate an outline policy on bilateral contacts with Shareholders and shall publish this policy on its website.<sup>69</sup>

22.2 Analyst meetings, analyst presentations, presentations to institutional and other investors and press conferences shall be announced in advance on the Company's website and by means of press releases. Analyst meetings and presentations to investors shall not take place shortly before the publication of the regular financial information. All Shareholders shall be able to follow these meetings and presentations at the same time by means of webcasting, telephone or otherwise. After the meetings, the presentations shall be published on the Company's website.<sup>70</sup>

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<sup>64</sup> Best practice provision 2.6.2 DCGC.

<sup>65</sup> Principle 2.8 DCGC.

<sup>66</sup> Best practice provision 2.8.1 DCGC.

<sup>67</sup> Best practice provision 2.8.2 DCGC.

<sup>68</sup> Best practice provision 2.8.3 DCGC.

<sup>69</sup> Best practice provision 4.2.2 DCGC.

<sup>70</sup> Best practice provision 4.2.3 DCGC.



- 22.3 The Company shall publish and update any information relevant to the Shareholders which it is required to publish or file pursuant to corporate law and securities law applicable to it in a separate section of the Company's website.<sup>71</sup>
- 22.4 The contacts between the Management Board on the one hand and the press and financial analysts on the other hand shall be handled and structured carefully and with due observance of the applicable laws and regulations. The Company shall refrain from performing any act which may affect the independence of analysts in relation to the Company and vice versa.<sup>72</sup>
- 22.5 The Management Board shall outline in the Management Report all existing or potentially available anti-takeover measures relating to the Company indicating under what circumstances and by whom such anti-takeover measures may likely be used.<sup>73</sup>

### **23. Relationship with the Supervisory Board**

- 23.1 The Management Board shall in due time provide the Supervisory Board with the information it needs to carry out its duties.<sup>74</sup>
- 23.2 At least once a year the Management Board shall inform the Supervisory Board in writing in respect of the principles of the strategic policy, the general and financial risks and the management and control system of the Company.<sup>75</sup>
- 23.3 The Management Board shall provide the Supervisory Board with the following reports in a timely manner:
- (a) each month, a report with detailed information on, among other things, material investments, major organisational issues, regulatory developments and other relevant issues;
  - (b) each month, a report with detailed information on the financial situation and development of the Company and its Subsidiaries; and
  - (c) such other information as the Supervisory Board deems necessary from time to time, which will be drafted in the format agreed upon from time to time between the Management Board and the Supervisory Board.
- 23.4 The Managing Directors shall attend the meetings of the Supervisory Board, if invited to do so, and they shall provide in such meetings all information required by the Supervisory Board.

### **24. Relationship with the General Meeting**

- 24.1 The Managing Directors shall attend the General Meetings, unless they are prevented from doing so on serious grounds or the General Meeting has expressed the wish to meet without the presence of the Management Board or one or more Managing Directors.
- 24.2 If the Management Board invokes a response time as referred to in best practice provision 4.1.7 of the Code, this shall be a reasonable period not exceeding 180 days, calculated from the

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<sup>71</sup> Best practice provision 4.2.4 DCGC.

<sup>72</sup> Best practice provision 4.2.5 DCGC.

<sup>73</sup> Best practice provision 4.2.6 DCGC.

<sup>74</sup> Section 2:141 subsection 1 DCC.

<sup>75</sup> Section 2:141 subsection 2 DCC.

moment the Management Board is informed by one or more Shareholders of their intention to put an item on the agenda to the day of the General Meeting at which the item is to be discussed. The Management Board shall use the response time for further deliberation and constructive consultation, in any event with the relevant Shareholder or Shareholders, and shall explore the alternatives. At the end of the response time, the Management Board shall report on such consultation and exploration to the General Meeting. The response time may be invoked only once for any given General Meeting and shall not apply to an item in respect of which the response time had been previously invoked, or to meetings where a Shareholder holds at least three-fourths of the issued share capital as a consequence of a successful public bid.<sup>76</sup>

- 24.3 The Management Board shall ensure that the General Meeting is adequately provided with information.<sup>77</sup>
- 24.4 The Supervisory Board shall provide the General Meeting with all required information, unless this is incompatible with a major interest of the Company.<sup>78</sup> If the Management Board, when invoking a major interest of the Company, does not provide the General Meeting with all required information, the reasons for such invocation must be given.<sup>79</sup>
- 24.5 The Company shall give Shareholders and other persons entitled to vote the possibility to issue voting proxies or voting instructions, respectively, to an independent third party prior to the General Meeting.<sup>80</sup>

## **25. Relationship with the Works Council**

- 25.1 The Managing Directors shall jointly determine who will consult with the Works Council.<sup>81</sup>
- 25.2 If a proposal of the Management Board requires both the approval of the Supervisory Board and the advice of the Works Council and the proposal is first submitted to the Supervisory Board for approval, the Management Board shall request the Supervisory Board to grant the approval subject to a positive or non-negative advice of the Works Council.

## **26. Compliance with the Code**

- 26.1 The broad outline of the Company's corporate governance shall be stated each year in a separate chapter of the Management Report or published on the Company's website, also on the basis of the principles mentioned in the Code. The Company shall also explicitly state to what extent it complies with the principles and best practice provisions contained in the Code and where it does not do so, why and to what extent it deviates from the same.<sup>82</sup>
- 26.2 The explanation upon deviation from the Code shall in any event include:
- (a) how the Company deviated from the principle or the best practice provision;
  - (b) the reasons for the deviation;

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<sup>76</sup> Best practice provision 4.1.7 DCGC.

<sup>77</sup> Principle 4.2 DCGC.

<sup>78</sup> Section 2:107 subsection 2 DCC.

<sup>79</sup> Best practice provision 4.2.1 DCGC.

<sup>80</sup> Best practice provision 4.3.2 DCGC.

<sup>81</sup> Section 23 subsection 4 DWCA.

<sup>82</sup> Compliance with the Code.

- (c) where deviation is of a temporary nature and continues for more than one financial year, an indication of when the Company expects to conform with the principle or the best practice provision again;
- (d) where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the purpose of the principle or the best practice provision or a clarification of how the measure contributes to good corporate governance of the Company.<sup>83</sup>

## **27. Confidentiality**

Managing Directors shall treat all information and documentation acquired within the framework of their position as Managing Director with the necessary discretion and, in the case of classified information, with appropriate secrecy. Classified information shall not be disclosed outside the Management Board, made public or otherwise made available to third parties, even after resignation from the Management Board, unless it has been made public by the Company or it has been established that the information is already in the public domain. Staff members of the Company who have a need to know in view of their activities for the Company may be informed. A Managing Director shall not in any way whatsoever utilise the information referred to above for his personal benefit.

## **28. Miscellaneous**

- 28.1 These Rules have been drawn up pursuant to article 19.2 of the Articles of Association and are complementary to the rules and regulations from time to time applicable to the Management Board under Dutch law, applicable EU regulations or the Articles of Association.
- 28.2 Where these Rules are inconsistent with Dutch law or the Articles of Association, Dutch law or the Articles of Association shall prevail and where these Rules are consistent with Dutch law but inconsistent with the Articles of Association, Dutch law shall prevail.
- 28.3 If one or more provisions of these Rules are or become invalid, this shall not affect the validity of the remaining provisions. The Management Board shall replace the invalid provisions by those which are valid and the effect of which, given the contents and purpose of these Rules, is to the greatest extent possible similar to that of the invalid provisions.
- 28.4 On 29 March 2018 the Managing Directors confirmed in writing that they will comply with and be bound by the obligations arising from these Rules to the extent they apply to the Management Board and the Managing Directors.
- 28.5 Upon appointment of a new Managing Director the Management Board will cause the Managing Director concerned to confirm in writing that he will comply with and be bound by the obligations arising from these Rules to the extent they apply to the Management Board and the Managing Directors.
- 28.6 With prior approval of the Supervisory Board the Management Board may occasionally decide that one or more provisions of these Rules need not to be applied.

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<sup>83</sup> Compliance with the Code.

- 28.7 These Rules may only be amended by resolution of the Management Board to that effect. A resolution to amend these Rules shall require the approval of the Supervisory Board.
- 28.8 In case of uncertainty or difference of opinion on how a provision of these Management Board Rules should be interpreted, the opinion of the Chairman of the Supervisory Board shall be decisive.
- 28.9 These Rules shall be governed by and construed in accordance with Dutch law.
- 28.10 All disputes arising out of or in connection with these Rules, including disputes concerning the existence and validity thereof, shall be exclusively resolved by the competent courts in Amsterdam, the Netherlands, save for an appeal to the Supreme Court in The Hague, the Netherlands.