



FYBER N.V.

**TERMS OF REFERENCE
AUDIT & CORPORATE GOVERNANCE COMMITTEE**

Adopted by the Supervisory Board on 30 January 2020

0. INTRODUCTION

- 0.1 These terms of reference have been drawn up by the Supervisory Board pursuant to clause 4.4 of the By-Laws of the Supervisory Board and best practice provision 2.3.3 of the Dutch Corporate Governance Code, subject to any deviations provided for in the comply-or-explain statement of the Company.
- 0.2 The Audit Committee is a standing committee of the Supervisory Board.
- 0.3 Certain capitalised or uncapitalised terms used but not defined in these terms of reference have the meanings given to them in the By-Laws of the Supervisory Board and the List of Definitions attached to these By-Laws as Annex 1.

1. COMPOSITION

- 1.1 The Audit Committee shall consist of at least 2 members. All members of the Audit Committee must also be Supervisory Board members. More than half of the members of the Audit Committee shall be independent within the meaning of clause 1.5 of the By-Laws of the Supervisory Board.¹
- 1.2 At least one member of the Audit Committee shall have competence in accounting or auditing.²
- 1.3 The members of the Audit Committee shall be appointed and may be replaced at any time by the Supervisory Board. The Supervisory Board shall appoint one of the members of the Audit Committee as chairman of the Audit Committee.³ The Audit Committee shall not be chaired by the Chairman or by a former Management Board member.⁴
- 1.4 The term of office of a member of the Audit Committee will generally not be set beforehand. It will, *inter alia*, depend on the composition of the Supervisory Board as a whole and that of other committees from time to time.
- 1.5 The Company Secretary, *if any*, shall act as secretary to the Audit Committee. The Company Secretary may delegate his duties, or parts thereof, under these terms of reference, to a deputy appointed by him in consultation with the chairman of the Audit Committee.

¹ Dutch Corporate Governance Code, best practice provision 2.3.4.

² Audit Committee Decree 2016, section 2(3).

³ Audit Committee Decree 2016, section 2(3).

⁴ Dutch Corporate Governance Code, best practice provision 2.3.4.

2. DUTIES AND POWERS

2.1 Working within the Supervisory Board, the Audit Committee is charged in particular with:⁵

- (a) the monitoring of the financial-accounting process and preparation of proposals to safeguard the integrity of said process;
- (b) the monitoring of the efficiency of the internal management system, the internal audit system and the risk management system with respect to financial reporting;
- (c) the monitoring of the statutory audit of the Annual Accounts and in particular the process of such audit (taking into account the review of the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten (AFM)*) in accordance with Section 26 EU-Regulation 537/2014);
- (d) the review and monitoring of the independence of the External Auditor, with a special focus on other services provided to the Company, in accordance with the External Auditor Independence Policy as referred to in Annex 6 of the By-Laws of the Supervisory Board; and
- (e) the adoption of a procedure for the selection of the External Auditor and the nomination for appointment of the external auditor with respect to the statutory audit of the Annual Accounts.

2.2 Working within the Supervisory Board, the Audit Committee is furthermore charged with:

- (a) the preparatory work for the Supervisory Board's decision-making regarding the supervision of the integrity and quality of the Company's financial reporting and the effectiveness of the Company's internal risk management and control systems. Among other things, it focuses on monitoring the Management Board with regard to:⁶
 - (i) relations with, and following up of comments by, the internal audit function and the External Auditor;
 - (ii) the financing of the Company;
 - (iii) the application of information and communication technology (ICT), including risks relating to cyber security; and
 - (iv) the Company's tax policy.
- (b) the preparation of meetings of the Supervisory Board with the Management Board where the Report of the Management Board, the Annual Accounts and the interim figures of the Company are discussed.

2.3 The following Annexes to these terms of reference contain further details on some of the duties of the Audit Committee described in Clause 2.1 and Clause 2.2:

Annex 1 – Supervision of the External Auditor and internal audit function;

Annex 2 – Supervision of financial reporting and publications;

⁵ Audit Committee Decree 2016, section 2(2) (b-f).

⁶ Dutch Corporate Governance Code, best practice provision 1.5.1.

Annex 3– Supervision of compliance with legislation and regulations;

Annex 4 – Financing and finance-related strategies;

Annex 5 – Information to be included in the report of the External Auditor; and

Annex 6 – Selection procedure regarding the External Auditor.

2.4 The Audit Committee is empowered to:

- (a) have discussions, either jointly or separately, with the Chairman, the CFO, the corporate controller, the treasurer and the internal audit function and the External Auditor; and
- (b) carry out views and retain for that purpose the services of internal and external experts it may designate, taking into account Clause 2.6.

2.5 Each member of the Audit Committee has access to all relevant books, records and offices of the Company and the authority to interview officers and employees of the Company to the extent necessary or useful for the proper performance of his duties. Members of the Audit Committee shall exercise this right in consultation with the chairman of the Audit Committee and the Company Secretary.

2.6 When performing its duties the Audit Committee may seek assistance or information from one or more experts appointed by it at a price agreed upon with the Audit Committee and the Company, which will be paid by the Company.

2.7 While the Audit Committee has the responsibilities and powers set forth in these terms of reference, it is not the duty of the Audit Committee to plan or conduct audits or to determine that the Annual Accounts and other reports and disclosures of the Company are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations.

2.8 The Audit Committee may only exercise such powers as are explicitly delegated to it by the Supervisory Board and may never exercise powers beyond those exercisable by the Supervisory Board as a whole.

3. DUTIES REGARDING THE EXTERNAL AUDITOR AND THE INTERNAL AUDIT FUNCTION

3.1 The Audit Committee shall advise the Supervisory Board regarding the External Auditor's nomination for appointment, reappointment or dismissal and shall prepare the selection of the External Auditor. During the aforementioned tasks the Audit Committee shall give due consideration to the Management Board's observations.⁷ Furthermore, the (preparation of the) selection of the External Auditor shall be in accordance with Section 16 EU-Regulation 537/2014, as reflected in **Annex 6**.

3.2 The Audit Committee shall submit a proposal to the Supervisory Board for the External Auditor's engagement to audit the Annual Accounts, taking into account the scope of the audit, the materiality to be used and remuneration for the audit. The Supervisory Board shall resolve on the engagement.⁸

⁷ Dutch Corporate Governance Code, best practice provision 1.6.1.

⁸ Dutch Corporate Governance Code, best practice provision 1.6.3.

- 3.3 The Audit Committee shall determine whether, and if so, how the External Auditor should be involved in the content and publication of financial reports of the Company other than the Annual Accounts.⁹
- 3.4 The Audit Committee shall request that the External Auditor include in his report the matters which the External Auditor wishes to bring to the attention of the Management Board and the Supervisory Board in relation to his audit of the Annual Accounts and the related audits, which in any event will include the matters listed in **Annex 5**.¹⁰
- 3.5 When drafting the internal audit plan, the internal audit function shall involve the Management Board, the External Auditor and the Audit Committee.¹¹
- 3.6 The internal audit function reports the essence of its audit results to the Audit Committee and shall inform the External Auditor thereof. The internal audit function shall have direct access to the External Auditor and the Audit Committee.¹²
- 3.7 The Company shall publish a press release, after consultation with the Audit Committee, in the event the early termination of the relationship with the External Auditor.¹³

4. MEETINGS

- 4.1 The Audit Committee shall meet as often as required for a proper functioning of the Audit Committee. The Audit Committee shall meet at least twice per year and additionally whenever one or more members have requested a meeting. The Audit Committee shall meet at least once a year with the External Auditor without the Management Board being present.¹⁴ The meetings are as much as possible scheduled annually in advance and are held as far as possible shortly before the meetings of the Supervisory Board.
- 4.2 Meetings of the Audit Committee are in principle called by the secretary of the Audit Committee in consultation with the chairman of the Audit Committee. Save in urgent cases, to be determined by the chairman of the Audit Committee, the agenda for the meeting shall be sent at least seven working days before the meeting to all members of the Audit Committee. To the extent possible, written explanations and/or other related documents will be enclosed for each item on the agenda.
- 4.3 Meetings of the Audit Committee are generally held at the offices of the Company, but can also take place elsewhere. In addition, meetings of the Audit Committee can be held by telephone or video conference provided that all participants to the meeting can hear each other simultaneously.
- 4.4 The chairman of the Audit Committee shall set the agenda and chair the meeting of the Audit Committee.
- 4.5 The head of the internal audit function, the External Auditor and the CFO shall attend the Audit Committee meetings, unless the Audit Committee decides otherwise. The Audit Committee shall decide if and when the CEO should attend its meetings.¹⁵ In addition, independent experts

⁹ Dutch Corporate Governance Code, best practice provision 1.7.3.

¹⁰ This obligation could also be included in the Management Board By-Laws. The obligation should in any case be included in the engagement letter to the auditor.

¹¹ Dutch Corporate Governance Code, best practice provision 1.3.3.

¹² Dutch Corporate Governance Code, best practice provision 1.3.4.

¹³ Dutch Corporate Governance Code, best practice provision 1.6.5.

¹⁴ Dutch Corporate Governance Code, best practice provision 1.7.4.

¹⁵ Dutch Corporate Governance Code, best practice provision 1.5.2.

may be invited to attend meetings of the Audit Committee. Each member of the Supervisory Board may attend meetings of the Audit Committee.

- 4.6 The Audit Committee may require any officer or employee of the Company, its external legal advisers or the External Auditor to attend a meeting of the Audit Committee or to consult with members or advisers of the Audit Committee.
- 4.7 Each member of the Audit Committee has the right to cast one vote. All resolutions must be adopted by an absolute majority of the votes cast. If there is a tie in voting, the chairman of the Audit Committee shall have a casting vote.
- 4.8 The secretary of the Audit Committee or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting of the Audit Committee.

5. REPORTING TO THE SUPERVISORY BOARD

- 5.1 The Audit Committee must inform the Supervisory Board in a clear and timely manner about the way it has used its powers and of major developments in the area of its responsibilities.
- 5.2 The Audit Committee shall report annually, and earlier if required, to the Supervisory Board on the functioning of and its dealings with the External Auditor.
- 5.3 The Audit Committee shall report to the Supervisory Board on its deliberations and findings. In this report attention shall in any event be paid to:¹⁶
 - (a) the methods used to assess the effectiveness of the design and operation of the internal risk management and control systems;
 - (b) the methods used to assess the effectiveness of the internal and external audit processes;
 - (c) material considerations concerning the financial reporting; and
 - (d) the way material risks and uncertainties referred to in the Report of the Management Board have been analysed and discussed, along with a description of the most important findings of the Audit Committee.
- 5.4 The Audit Committee informs the Supervisory Board of the result of the statutory audit of the Annual Accounts, with an explanation of the way in which the statutory audit contributes to the integrity of the financial reporting and the role of the Audit Committee in this process.¹⁷
- 5.5 The reports of meetings of the Audit Committee are distributed among all Supervisory Board members as soon as possible after the meeting concerned.
- 5.6 If requested, the chairman of the Audit Committee shall at meetings of the Supervisory Board provide the Supervisory Board with further information on the outcome of the discussions of the Audit Committee.
- 5.7 Every Supervisory Board member has unrestricted access to all records of the Audit Committee. A member of the Audit Committee shall exercise this right in consultation with the chairman of the Audit Committee and the Company Secretary.

¹⁶ Dutch Corporate Governance Code, best practice provision 1.5.3.

¹⁷ Audit Committee Decree 2016, section 2(2) (a).

6. MISCELLANEOUS

- 6.1 The chairman of the Audit Committee (or one of the other Audit Committee members) shall be available to answer questions regarding the Audit Committee's activities at the annual General Meeting of Shareholders.
- 6.2 The Supervisory Board may occasionally decide at its sole discretion not to comply with these terms of reference, subject to applicable law and regulations.
- 6.3 The Audit Committee shall review and re-assess the adequacy of these terms of reference annually, report its assessment to the Supervisory Board and recommend, where appropriate, any proposed changes to the Supervisory Board.
- 6.4 The Supervisory Board can at all times amend these terms of reference and/or revoke any powers delegated by it to the Audit Committee.
- 6.5 Clauses 25.4 to 25.7 inclusive of the By-Laws of the Supervisory Board apply by analogy to the Audit Committee, while for the application of these terms of reference the power of the Supervisory Board or the Chairman referred to in these Clauses is considered a power of the Audit Committee or the chairman of the Audit Committee.

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ANNEX 1

SUPERVISION OF THE EXTERNAL AUDITOR AND INTERNAL AUDIT FUNCTION

- (1) Assess and evaluate the External Auditor and the lead partner of the audit team of the External Auditor.
- (2) The Audit Committee will at least once a year, together with the Management Board, report to the Supervisory Board on the functioning of, and the developments in the relationship with the External Auditor.¹⁸ The report must address, inter alia, the independence of the External Auditor and whether the rotation of the External Auditor is required.
- (3) Obtain and review a report from the External Auditor (at least annually) regarding (i) the External Auditor's internal quality control procedures, (ii) any material issues raised by the most recent internal quality control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities within the preceding five months with respect to one or more independent audits carried out by the firm, (iii) any steps taken to deal with any such issues and (iv) all relationships between the External Auditor and the Company. Evaluate the qualifications, performance and independence of the External Auditor, including considering whether the External Auditor's quality controls are adequate, and taking into account the opinions of the Management Board and internal auditors.
- (4) At least every two years, the Audit Committee, together with the Management Board and the Supervisory Board, must comprehensively assess the performance of the External Auditor and the capacities in which the External Auditor operates. The most important conclusions emerging from this process will be communicated in the General Meeting dealing with the resolution to appoint the External Auditor.
- (5) Ensure the rotation of the lead (or co-ordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as well as the other members of the External Auditor, as required by law, regulation or the Company's auditor independence policy.
- (6) Review and discuss annually with the External Auditor, the regulations for the internal audit function and the Management Board the internal audit charter and the independence of the audit process (as prescribed by legislation or regulation and the Company's Auditor Independence Policy).
- (7) Meet with the External Auditor prior to the audit to discuss the planning, scope and staffing of the audit.
- (8) Review the reports most significant to the Management Board prepared by internal audit function and the Management Board's response.
- (9) Discuss with the External Auditor and the Management Board the internal audit function's responsibilities, budget and staffing and any recommended changes in the planned scope of the internal audit.
- (10) If there is no separate department for the internal audit function, the Audit Committee shall annually advise the Supervisory Board regarding the need for an internal audit department and whether adequate alternative measures have been taken. On the proposal of the Audit

¹⁸ Dutch Corporate Governance Code, best practice provision 1.6.1.

Committee, the Supervisory Board shall include the conclusions, along with any resulting recommendations and alternative measures, in the Report of the Supervisory Board.¹⁹

- (10) Annually discussing with the External Auditor:²⁰
- (a) the scope and materiality of the audit plan and the principal risks of the financial statements identified by the External Auditor in the audit plan; and
 - (b) based also on the documents from which the audit plan was developed, the findings and outcomes of the audit work on the financial statements and the management letter.

¹⁹ Dutch Corporate Governance Code, best practice provision 1.3.6.

²⁰ Dutch Corporate Governance Code, best practice provision 1.7.2.

ANNEX 2

SUPERVISION OF FINANCIAL REPORTING AND PUBLICATIONS

- (1) Review and discuss with the Management Board and the External Auditor the Annual Accounts and the Report of the Management Board, including disclosures made in management interviews, analyses and the like.
- (2) Review and discuss with the Management Board and the External Auditor the interim financial statements prior to their release, including the results of any review by the External Auditors of the interim financial statements.
- (3) Act as first point of contact for the External Auditor, if the External Auditor identifies any irregularities in the Company's financial reporting. In addition, the Audit Committee must be contacted by both the External Auditor and Management Board if there appears to be a difference of opinion or there is any disagreement regarding the audit.
- (4) Discuss with the Management Board and the External Auditor significant financial reporting issues and judgements made in connection with the preparation of the Company's financial statements, including the quality of earnings, significant deviations between planned and actual performance, any significant changes in the Company's selection or application of accounting principles, any issues as to the adequacy of the Company's internal controls and any special steps adopted in light of control deficiencies.
- (5) Review and discuss reports of the External Auditor on:
 - (c) all major elements of the accounting policies and the methods used;
 - (d) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with the Management Board or any member thereof, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the External Auditor; and
 - (e) other important written communications between the External Auditor and the Management Board or one of its members, e.g. management letters.
- (6) Discuss with the Management Board the Company's (i) earnings press releases, including the use of non-GAAP information and (ii) plans and policies of the Company with respect to comments on financial information and earnings guidance given by analysts and rating agencies.
- (7) [Discuss with the Management Board and the External Auditor the consequences of legislative or regulatory initiatives as well as of off-balance structures for the financial reporting by the Company.]
- (8) Discuss with the Management Board the Company's major financial risk exposures and the steps the Management Board has taken to monitor and control such exposures, including the Company's risk assessment and risk management policies.

ANNEX 3

SUPERVISION OF COMPLIANCE WITH LEGISLATION AND REGULATIONS

- (1) Obtain reports from the Management Board, the head of the internal audit function of the Company and the External Auditor to the effect that the Company and its Subsidiaries comply with the applicable legislation and regulations and the internal rules of the Company. Review reports on and intended disclosures on insider and affiliated party transactions. Advise the Supervisory Board on policy and procedures of the Company for compliance with applicable legislation and regulations.
- (2) Discuss with the Management Board and the External Auditor any correspondence with regulators or governmental agencies and any published reports which raise material issues regarding the Company's financial statements or accounting policies.
- (3) Discuss with the relevant persons in the legal department of the Company the legal issues that may materially affect the financial reports or the policy of the Company regarding its compliance with legislation and regulations.

ANNEX 4

FINANCING AND FINANCE-RELATED STRATEGIES

- (1) Review and discuss with the Management Board at least once a year the general financial strategy of the Company.
- (2) Review and discuss with the Management Board the financial policy and financial procedures of the Company, including its currency policies and procedures.

The discussions between the Audit Committee and the Management Board on the above issues shall take place prior to the discussions on these issues between the Supervisory Board and the Management Board.

ANNEX 5

LIST OF INFORMATION TO BE INCLUDED IN THE REPORT OF THE EXTERNAL AUDITOR²¹

Pursuant to Section 2:393, subsection 4 of the Dutch Civil Code, the report of the External Auditor shall contain the matters which the External Auditor wishes to bring to the attention of the Management Board and the Supervisory Board in relation to its audit of the Annual Accounts and the related audits.

The following examples can be given:

(A) With regard to the audit:

- information about matters of importance to the assessment of the independence of the External Auditor;
- information about the course of events during the audit and co-operation with internal auditors and/or any other external auditors, matters for discussion with the Management Board, a list of corrections that have not been made, etc.

(B) With regard to the financial figures:

- analyses of changes in shareholders' equity and results which do not appear in the information to be published and which, in the view of the External Auditor, contribute to an understanding of the financial position and results of the Company;
- comments regarding the processing of one-off items, the effects of estimates and the manner in which they have been arrived at, the choice of accounting policies when other choices were possible, and particular effects of such policies;
- comments on the quality of forecasts and budgets.

(C) With regard to the operation of the internal risk management and control systems (including the reliability and continuity of automated data processing) and the quality of the internal provision of information:

- points for improvement, gaps and quality assessments;
- comments about threats and risks to the Company and the manner in which they should be reported in the particulars to be published;
- compliance with articles of association, instructions, regulations, loan covenants, requirements of external supervisors, etc.

²¹ [previously: Dutch Corporate Governance Code, best practice provision V.4.3.]

ANNEX 6

SELECTION PROCEDURE REGARDING THE EXTERNAL AUDITOR²²

Unless it concerns the renewal of an audit engagement, the advise of the Audit Committee referred to in Clause 3.1 of these Terms shall be prepared following a selection procedure organised by the Company respecting the following criteria:

- (b) the Company shall be free to invite any audit firm to submit tenders for the provision of the statutory audit service on the condition that the cooling down period is respected and that the audit firm submitting a tender does not in any way precludes the participation in the selection procedure of firms which received less than 15 % of the total audit fees from public-interest entities in the Netherlands in the previous calendar year;
- (c) the Company shall prepare tender documents for the attention of the invited audit firms. Those tender documents shall allow them to understand the business of the Company and the type of statutory audit that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the Company to evaluate the proposals made by audit firms;
- (d) the Company shall be free to determine the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;
- (e) if the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten (AFM)*) requires audit firms to comply with certain quality standards, those standards shall be included in the tender documents;
- (f) the Company shall evaluate the proposals made by the audit firms in accordance with the selection criteria predefined in the tender documents. The Company shall prepare a report on the conclusions of the selection procedure, which shall be validated by the Audit Committee. The Company and the Audit Committee shall take into consideration any findings or conclusions of any inspection report on the applicant audit firm;
- (g) the Company shall be able to demonstrate, upon request, to the AFM that the selection procedure was conducted in a fair manner.

The Audit Committee is responsible for the selection procedure referred to in this annex.

²² Based on Section 16(3) EU-Regulation 537/2014. Pursuant to Section 16(4) public interest companies which meet the criteria referred to in Section 2(1) (f) and (t) Directive 2003/71/EC are not required to apply the selection procedure; it concerns companies that: (i) meet at least two of following three criteria: average number of employees during the financial year < 250, a total balance sheet not exceeding EUR 43,000,000, an annual net turnover not exceeding EUR 50,000,000; and (ii) an average market capitalisation of less than EUR 100,000,000 on the basis of end-year quotes for the previous 3 calendar years.