



FYBER N.V.

**TERMS OF REFERENCE  
SELECTION & APPOINTMENT 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 5.4 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 Nomination 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 those By-Laws as Annex 1.

**1. COMPOSITION**

- 1.1 The Nomination Committee shall consist of at least 2 members. All members of the Nomination Committee must also be Supervisory Board members. More than half of the members of the Nomination Committee shall be independent within the meaning of clause 1.5 of the By-Laws of the Supervisory Board.<sup>1</sup>
- 1.2 The Chairman is a member in his capacity as such, and the chairman, of the Nomination Committee. The other member(s) of the Nomination Committee shall be appointed and may be replaced from their position at any time by the Supervisory Board.
- 1.3 The term of office of a member of the Nomination 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.
- 1.4 The Company Secretary, *if any*, shall act as secretary to the Nomination 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 Nomination Committee.

**2. DUTIES AND POWERS**

- 2.1 The Nomination Committee is within the Supervisory Board especially charged with the following:

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<sup>1</sup> Dutch Corporate Governance Code, best practice provision 2.3.4.

- (a) to draft selection criteria and appointment procedures for Supervisory Board members and Management Board members;<sup>2</sup>
  - (b) to assess at least once a year the size and composition of the Supervisory Board and the Management Board, and to make proposals for the Supervisory Board Profile;<sup>3</sup>
  - (c) to assess at least once a year the functioning of individual Supervisory Board members and Management Board members, and report their findings to the Supervisory Board;<sup>4</sup>
  - (d) to draft a plan for the succession of Management Board members and Supervisory Board members, that is aimed at retaining the balance in the requisite expertise, experience and diversity;<sup>5</sup>
  - (e) to make proposals for (re)appointments of Management Board members and Supervisory Board members;<sup>6</sup>
  - (f) to supervise the policy of the Management Board on the selection criteria and appointment procedures for senior management, including the members of the Executive Committee (if applicable);<sup>7</sup>
  - (g) to prepare the decision-making process of the Supervisory Board on the acceptance by a member of the Management Board of the membership of the supervisory board or of the position of non-executive director of a listed company; and
  - (h) to prepare the decision-making process of the Supervisory Board concerning any conflicts of interest that may arise in the acceptance by the Supervisory Board members of additional positions.
- 2.2 In the conduct of their duties referred to in Clause 2.1, the Nomination Committee takes the diversity policy of the Company in consideration.
- 2.3 When exercising its duties regarding the composition of the Supervisory Board, the Nomination Committee shall observe the criteria on the composition of the Supervisory Board as laid down in clause 1 of the By-Laws of the Supervisory Board.
- 2.4 The Nomination 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. MEETINGS**

- 3.1 The Nomination Committee shall meet as often as required for a proper functioning of the Nomination Committee. The Nomination Committee shall meet at least once a year. The meetings are as much as possible scheduled annually in advance. The Nomination Committee shall meet earlier if this is deemed necessary by the chairman of the Nomination Committee or two other members of the Nomination Committee.
- 3.2 Meetings of the Nomination Committee are in principle called by the Secretary of the Nomination Committee in consultation with the chairman of the Nomination Committee. Save

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<sup>2</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part i.

<sup>3</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part ii.

<sup>4</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part iii.

<sup>5</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part iv and best practice provision 2.2.4.

<sup>6</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part v.

<sup>7</sup> Dutch Corporate Governance Code, best practice provision 2.2.5, part vi.

in urgent cases, to be determined by the chairman of the Nomination Committee, the agenda for the meeting shall be sent at least seven working days before the meeting to all members of the Nomination Committee. To the extent possible, written explanations and/or other related documents will be enclosed for each item on the agenda.

- 3.3 Meetings of the Nomination Committee are generally held at the offices of the Company, but can also take place elsewhere. In addition, meetings of the Nomination Committee can be held by telephone or video conference provided that all participants to the meeting can hear each other simultaneously.
- 3.4 The chairman of the Nomination Committee shall set the agenda and chair the meeting of the Nomination Committee.
- 3.5 The Nomination Committee shall decide if and when the CEO should attend its meetings. In addition, the head of the HR department of the Company and/or independent experts may be invited to attend meetings of the Nomination Committee. Each member of the Supervisory Board may attend meetings of the Nomination Committee.
- 3.6 Each member of the Nomination 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 Nomination Committee shall have a casting vote.
- 3.7 The secretary of the Nomination Committee or any other person designated for such purpose by the chairman of the meeting shall draw up minutes of the meeting of the Nomination Committee.

#### **4. REPORTING TO THE SUPERVISORY BOARD**

- 4.1 The Nomination 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.
- 4.2 The Supervisory Board shall receive from the Nomination Committee a report of its deliberations and findings.<sup>8</sup> The reports of the meetings of the Nomination Committee shall be circulated as soon as possible after the meeting among all Supervisory Board members.
- 4.3 If requested, the chairman of the Nomination Committee shall at meetings of the Supervisory Board provide the Supervisory Board with further information on the outcome of the discussions of the Nomination Committee.
- 4.4 Every Supervisory Board member shall have unrestricted access to all records of the Nomination Committee.

#### **5. MISCELLANEOUS**

- 5.1 The chairman of the Nomination Committee (or one of the other Nomination Committee members) shall be available to answer questions regarding the Nomination Committee's activities at the annual General Meeting of Shareholders.
- 5.2 The Supervisory Board may occasionally decide not to comply with these terms of reference, subject to applicable law and regulations.

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<sup>8</sup> Dutch Corporate Governance Code, best practice provision 2.3.5.

- 5.3 The Nomination Committee shall review and reassess 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.
- 5.4 The Supervisory Board can at all times amend these terms of reference and/or revoke any powers granted by it to the Nomination Committee.
- 5.5 Clauses 25.4 to 25.7 inclusive of the By-Laws of the Supervisory Board apply by analogy to the Nomination 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 Nomination Committee or the chairman of the Nomination Committee.

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