

**SWIFT User Handbook**

# **Corporate Rules**

**September 2003 Edition**

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# Preface

*Corporate Rules* is a module of the corporate and legal section of the *SWIFT User Handbook*, and contains information about the workings of SWIFT as a company.

The September 2002 edition of *Corporate Rules* was re-written to better reflect SWIFT's role in the financial community.

**Note:**     *The two parts of the By-laws, the Articles of Association, and the General Terms and Conditions, form Appendices A and B of this document.*

## **Changes since the last edition**

This September 2003 edition contains minor cosmetic changes throughout, and an update to *Article 14* of the *By-laws, Articles of Association*.



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# Chapter 1

## Introduction

### 1.1 Scope

This book contains information about the working of SWIFT as a Company. It gives some general information as well as the current eligibility criteria to become a customer of SWIFT (further referred to as SWIFT User).

### 1.2 A SWIFT Overview

An industry-owned organisation, SWIFT has, for over a quarter of a century, played a mission-critical role in ensuring the continuity and integrity of the world's financial messaging system.

SWIFT supplies highly secure and reliable messaging services to over 7,000 financial institutions in almost 200 countries, handling a daily message volume in excess of 7 million. SWIFT employs 1,600 people world-wide.

SWIFT links banks, broker-dealers, investment managers, stock exchanges, depositories, trustees, payment systems, clearing systems, settlement systems, banks' corporate customers, etc. All these institutions must comply with the SWIFT eligibility criteria.

SWIFT is also the messaging hub for numerous domestic and cross-border clearing and settlement systems (so-called market infrastructures). In payments, SWIFT supports more than 30 systems, varying in size from 500 to over 120,000 payments per day. In securities, 10 major systems use SWIFT messaging to support their clearing and settlement activities.

With a reputation grounded in security and reliability, SWIFT is broadening and deepening its foundations and bringing new value to its community with SWIFTNet, a messaging service based on IP technologies. The SWIFTNet portfolio of services extends SWIFT's core capabilities with secure interactive communication and file transfer.

SWIFT's value proposition lays in:

#### **Cost effectiveness**

- Single window access to financial institutions and their market infrastructures
- Concentrated message flows
- Shared and re-usable messaging platform
- High scalability at low cost
- Open standards supporting automation and straight-through processing

#### **Risk management**

- Network resilience through duplication of equipment and lines
- Network security through authentication, intrusion detection, traffic segregation and encryption
- Reduced operating risk through the enablement of straight through processing (message standards, education, vendor support, tools for monitoring and for process improvement)

#### **Settlement risk**

- SWIFT does not hold accounts for its institutions and, therefore, does not directly contribute to settlement risk. Its messaging services, however, are designed to assist the account holding institutions in controlling settlement risk. For example, the FIN Copy services enable payment messages to be partially copied to a central system for settlement, or other form of authorisation.

#### **Business continuity**

- SWIFT has shown leadership in business continuity with close to 100% availability year after year. This is achieved by investing in redundancy, eliminating single points of failure (systems, network and facilities) and developing contingency plans. External auditors and central banks of the G-10 countries, represented by the Committee on Payment and Settlement Systems (CPSS), monitor our business continuity plans.

The SWIFT network operates world-wide 24 hours a day.

## **1.3 Governance at SWIFT**

SWIFT is a co-operative society under Belgian law and is owned and controlled by its members. It has a Board of up to 25 Directors who are responsible for overseeing and governing the company.

Because SWIFT's shareholders represent a broad international base, best practice from several countries has influenced the Company's governance. The Board has six committees with delegated decision powers: Audit and Finance, Banking and Payments, Compensation, Securities, Standards, Technology and Production.

The Audit and Finance Committee (AFC) has six Board Directors and is a governance and oversight body for systems security, internal control and financial policy. The Committee meets four to five times per year with the Executive, the Director of Audit and Risk Assurance and external auditors to review systems security, accounting policy, reporting, compliance, auditing and control matters, as well as the evolution of the balance sheet, subsidiaries and financial projections. The AFC has delegated powers from the Board in these matters.

SWIFT has two separate mandates for external audit. To ensure objectivity, the mandates of the external auditors, as well as their remuneration, are decided by the AFC. Given the sensitivity to external auditors performing consultancy work for Management, the AFC also reviews annually the respective spending and trends.

Ernst & Young, Brussels, holds the Financial Audit mandate for a renewable period of three years, starting from the year 2000 financial reporting.

Ernst & Young LLP, New York, holds the Security Audit mandate for four years, with effect from 1 January 2002.

SWIFT is committed to an open and constructive dialogue with oversight authorities. Oversight on SWIFT is based on a special arrangement by the central banks of the G10 countries, represented by the Committee on Payment and Settlement Systems (CPSS). Under this arrangement, the National Bank of Belgium, the central bank of the country in which SWIFT's headquarters are located, acts as lead overseer of SWIFT, supported by the central banks of the G10. The issues discussed can include all topics related to systemic risk, security and availability.

In some instances, central banks performing oversight may also be operators of market infrastructures, and thus, customers of SWIFT. SWIFT is conscious of the need to separate marketing from oversight and the fact that oversight does not grant approval or certification.

## 1.4 Compliance Statement

Given its importance in the financial community, SWIFT takes its role in the global fight against money laundering or other illegal activities extremely seriously. It is SWIFT's policy that its services should not be used to facilitate illegal activities. Users are urged to take all reasonable steps to prevent any misuse of the SWIFT system. It has a history of co-operation in good faith with authorities such as treasury departments, central banks, law enforcement agencies and appropriate international organisations, such as the Financial Action Task Force (FATF),<sup>1</sup> in their efforts to combat abuse of the financial system for illegal activities.

The challenge facing the financial industry is to implement measures that prevent illegal behaviour without penalising the efficient processing of legitimate financial transactions. SWIFT is fully committed to doing its part to address this challenge and remains committed to its policy of co-operation to fight money laundering, and illegal activities within the scope of its activity.

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1. *The FATF is an inter-governmental body, which develops and promotes policies to combat money-laundering. The FATF monitors progress in building effective anti-money laundering systems, it reviews laundering techniques, and it promotes the adoption and implementation of money-laundering counter-measures in non-member countries.*



## **Chapter 2**

# **SWIFT User Categories**

### **2.1 Joining SWIFT**

A condition preceding the usage of SWIFT's services is that a company wishing to join SWIFT needs to register with SWIFT and become an authorised SWIFT User. SWIFT has defined a number of SWIFT User Categories (see *Sections 2.2 and 2.3*).

SWIFT today offers different messaging services and as the case may be these messaging services can be used as a standalone offering to access another SWIFT service, or to access a SWIFT service operated/managed by a third party, that is a Service Administrator.

A Service Administrator is a specific SWIFT User that administers and operates a service through the access of SWIFT messaging services for a group of selected SWIFT Users, typically in the case of payments or securities systems (Market Infrastructures) or Member Administered Closed User Groups.

Any company applying for SWIFT membership will need to comply with the eligibility criteria as approved by the shareholders of the Company at their General Meeting. These eligibility criteria are complemented by specific local criteria in the country of application.

A description of the different SWIFT User Categories is given below and is split into two parts:

- a) Categories of SWIFT Users for services fully administered by SWIFT
- b) Categories of SWIFT Users for services administered by a Service Administrator

### **2.2 Categories of SWIFT Users for Services fully administered by SWIFT**

#### **2.2.1 Shareholders (Members)**

##### **2.2.1.1 Banks**

Any organisation may be considered for admission to membership in the Company which, in the opinion of the Board of Directors, is involved in the same type of business as the Members, and which is involved in international financial message transmission (see *Article 8 of the By-laws, Articles of Association*).

The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group (see *Chapter 3, Section 3.4, National Member Groups*), if there is any (see *Clause 5 of the By-laws, General Terms and Conditions*).

**Note:** *Offshore banks will need to submit reference letters from 3 of the top 200 shareholders prior to submitting their application to the Board of Directors.*

### **2.2.1.2 Brokers and Dealers in Securities and Related Financial Instruments, and Investment Management Institutions**

Entities that meet the criteria of eligibility as participants in the category of Brokers/Dealers and Investment Management Institutions, provided that they also meet the following conditions:

1. the entities are fully licenced by an appropriate national authority to engage, as their main activities, in:
  - a) trading for the account of unrelated third-party customers in transferable securities; or
  - b) underwriting or participating in securities issues for customers and providing of services related to such issues; or
  - c) managing portfolio for unrelated third-party customers and providing related adviceand
2. the entities are adequately regulated and effectively supervised by appropriate governmental or quasi-governmental bodies to minimise systemic risk (which includes regulation of capital adequacy) and other risks that could affect the viability of SWIFT or the integrity or security of the SWIFT network or the stability of financial markets.

**Note:** *Brokers and Dealers in Securities and Related Financial Instruments, and Investment Management Institutions not fulfilling the above criteria may fall in the category of Participants (see Section 2.2.2.4).*

## **2.2.2 Non-Shareholders**

### **2.2.2.1 Non-Shareholding Members**

A Non-shareholding member is an organisation which complies with the eligibility criteria of a Shareholder (Member) (see *Section 2.2.1*), and which either chooses not to or is itself prevented from becoming a Shareholder (Member).

As soon as its usage of the network based revenue in the Company would give the Non-shareholding member an entitlement to 5 shares at the next re-allocation of shares organised by the Company, it will have to become a Shareholder (Member) and buy the number of allocated shares (unless prohibited by law or charter - in such a case, this should be specified at the time of application). A share re-allocation takes place at least every three years.

The Non-shareholding member shall have the same usage of the services of the company as a Shareholder (Member).

#### **2.2.2.2 Sub-Members**

Sub-members, as defined in *Clause 1 of the By-laws, General Terms and Conditions*, are organisations more than 50 percent directly or 100 percent indirectly owned by a Shareholder (Member), with full management control, which meet the criteria set forth in the first paragraph of *Article 8 of the By-laws, Articles of Association* (see *Section 2.2.1.1, Banks*).

The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group, if there is any (see *Clause 5 of the By-laws, General Terms and Conditions*).

#### **2.2.2.3 Participants**

Any organisation may be permitted to make use of specific services of the Company as Participant, provided it complies with the criteria of eligibility of a category of Participants as set forth by the General Meeting of the Company. Participants shall not be entitled to shares in the capital of the Company (see *Article 8 of the By-laws, Articles of Association*).

The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group, if there is any (see *Clause 5 of the By-laws, General Terms and Conditions*).

The Board of Directors shall, within the limits defined by the General Meeting, define the contractual terms and conditions applicable to each approved category of Participants.

The categories of Participants currently accepted on SWIFT are:

- Brokers and Dealers in Securities and Related Financial Instruments
- Central Depositories and Clearing Institutions
- Fund Administrators
- Investment Management Institutions (including Insurance Companies and Government Institutions)
- Money Brokers
- Non-shareholding Financial Institutions
- Payment System Participants
- Recognized Exchanges for Securities and Related Financial Instruments

- Registrars and Transfer Agents
- Representative Offices
- Securities Electronic Trade Confirmation (ETC) Service Providers
- Securities Market Infrastructure System Participants
- Securities Proxy Voting Agency
- Service Participants within Member Administered Closed User Groups
- Subsidiary Providers of Custody and Nominee Services
- Trading Institutions
- Travellers Cheques Issuers
- Treasury Counterparty
- Treasury ETC Service Providers
- Trust or Fiduciary Services Companies

#### **2.2.2.4 Brokers and Dealers in Securities and Related Financial Instruments**

Brokers and dealers in securities and related financial instruments are institutions engaged in underwriting and/or dealing in securities and related instruments which are:

- Authorised by at least one regulatory agency which is itself recognised by a competent national or other government under whose jurisdiction it finds itself, and are subject to the regulations established by the regulatory agency(ies);

and/or

- Are authorised to trade on a Recognised Exchange, which must, as defined below:
  - a) provide facilities and establish rules for the purpose of allowing orderly trading of debt securities, equity securities, derivatives or other financial instruments;
  - b) ensure that all participants continuously adhere to established financial and other qualifications for market participation;
  - c) grant exclusive access to trading to participants of the exchange or participants of other recognised exchanges;
  - d) establish rules and regulations governing the trading and financial activities of participants in general, and the trading of individual instruments;
  - e) maintain a publicly accessible list of financial instruments which may be traded through its facilities and ensuring that the issuer of such instruments complies with any regulatory, financial and other qualifications for such trading; and
  - f) be recognised by at least one competent regulatory agency, and be subject to the regulations applicable to it established by the competent regulatory agency(ies).



### **2.2.2.5 Central Depositories and Clearing Institutions**

Central depositories and clearing institutions are organisations which provide clearing, and/or settlement and/or physical storage facilities for securities and/or related financial instruments operations as:

- a) a central system for handling of securities and/or related financial instruments or equivalent book entries in a country, and/or
- b) a transnational system for the central handling of securities and/or related financial instruments or equivalent book entries.

### **2.2.2.6 Fund Administrators**

A Fund Administrator is an organisation which has one or more of the following activities:

- a) maintains the official ownership record of all fund units,
- b) provides administration of orders subscribing to and redeeming from investment funds,
- c) executes, administers payments, money transfers on behalf of the fund,
- d) calculates Net Asset Value, generates statements, legal reporting and reconciliations on behalf of the fund.

For the purpose of this definition, a 'fund' includes investment fund, hedge fund, mutual fund, unit trust, Sicav, and collective investment vehicles.

Where the applicant is a regulated entity, it must comply with the local laws and regulations as identified by the Board with the assistance of the National Member Group.

Where the applicant is not a regulated entity, or where no regulations exist in the country of the applicant, the BRM 092 Sponsorship Rule applies (see *Section 2.2.2.21, BRM 092 Sponsorship Rule*).

### **2.2.2.7 Investment Management Institutions (including Insurance Companies and Government Institutions)**

Investment Management Institutions are institutions which:

- a) are engaged in the management of asset portfolios (which must be composed, at least in part, of securities), in connection with their primary business activity, which is either the provision of investment management services to other persons or the underwriting of insurance or both; and
- b) are authorised by a competent regulatory authority to conduct such primary business activity; and
- c) are subject to relevant regulations applied by such competent regulatory authority;

- d) in countries where conditions b) and c) do not apply, are sponsored as Investment Management Institutions by at least two-thirds of the S.W.I.F.T. SCRL shares held by the Members in the country of origin of the applicant and either (i) by a minimum of ten Members; or (ii) by one percent of the total S.W.I.F.T. SCRL shares.

An agency, department or institution of a national, regional or state government or public international organisation (“public authority”) qualifies as an Investment Management Institution if (i) primarily engaged in the management of asset portfolios (which must be composed, at least in part, of securities) on behalf of and for the account of such public authority and (ii) sponsored in accordance with sub-paragraph d) above.

**Note:** *Note: either a), b), and c), or a) and d) must apply. The support referred to in d) (i) and (ii) may be provided by a combination of Members from and/or outside the country of origin of the applicant.*

#### **2.2.2.8 Money Brokers**

In many financial trading transactions between banks, money brokers act as intermediaries, bringing together the two counterparties of a deal. These transactions may involve spot deals, or other types of derivative deals such as futures and options deals. In deals using a broker as intermediary, confirmations must be sent between a broker and the counterparties.

A money broker is a person or an institution which:

- a) acts as the arranger of deals regarding financial instruments, including deposits, bringing together the counterparties to a deal on mutually acceptable terms with payment in the form of a commission (brokerage), or other fee, and
- b) is authorised for this purpose by a national or other competent government or by a regulatory agency which has been designated for this purpose by a national or other competent government.

#### **2.2.2.9 Non-Shareholding Financial Institutions**

A Non-Shareholding Financial Institution is an organisation in the European Union (EU) or the European Free Trade Association (EFTA) which provides cross-border payment services to the public and satisfies the following cumulative eligibility criteria:

- a) it is authorised to hold accounts for customers;
- b) its direct participation in one or more fund transfer systems in the EU or the EFTA processing third-party payments has the approval of the relevant central bank; and
- c) either its public nature ensures little risk of failure, or its financial service activities are supervised by a recognised competent authority.

The Non-Shareholding Financial Institution shall have the same right to use the network, products and services present and future of the Company as a Member, and on the same terms and conditions as a Member, without limitation.

### **2.2.2.10 Recognised Exchanges for Securities and Related Financial Instruments**

A recognised exchange for securities and related financial instruments must:

- a) provide facilities and establish rules for the purpose of allowing orderly trading of debt securities, equity securities, derivatives or other financial instruments;
- b) ensure that all participants continuously adhere to established financial and other qualifications for market participation;
- c) grant exclusive access to trading to participants of the exchange or participants of other recognised exchanges;
- d) establish rules and regulations governing the trading and financial activities of participants in general, and the trading of individual instruments;
- e) maintain a publicly accessible list of financial instruments which may be traded through its facilities and ensuring that the issuer of such instruments complies with any regulatory, financial and other qualifications for such trading; and
- f) be recognised by at least one competent regulatory agency, and be subject to the regulations applicable to it established by the competent regulatory agency(ies).

### **2.2.2.11 Registrar and Transfer Agents**

A Registrar and Transfer Agent is an organisation which:

- a) maintains the legal ownership register of securities issues, and
- b) has been created and operates for the purpose of maintaining the legal ownership register of securities issues, and
- c) is authorised by a national or other competent government or by a regulatory agency which has been designated for this purpose by a national or other competent government, to maintain the legal ownership register of securities issues.

### **2.2.2.12 Representative Offices**

A Representative Office is a facility operated by or on behalf of a member bank or a consortium of member banks and

- a) which if necessary is authorised and/or licenced by an appropriate legal authority in the country of location; and
- b) which is authorised by the member bank(s) to represent its (their) interests in the host country but is not authorised and/or licenced as a bank in that country.

### **2.2.2.13 Securities Electronic Trade Confirmation (ETC) Service Provider**

A Securities Electronic Trade Confirmation (ETC) Service Provider is an institution which:

- a) is neither a SWIFT Member nor Sub-Member Bank, and

- b) functions as a securities ETC service provider for banks, broker/dealers, investment management institutions or other regulated institutions, any of whom meet the eligibility criteria to become a SWIFT User.

When utilising SWIFT to facilitate securities ETC processing, at a minimum, one of the counterparties to the trade or their settlement agent must be a SWIFT User connected directly to SWIFT, or indirectly connected via a SWIFT Member or Securities ETC Service Provider acting on its behalf. In addition, all parties to the trade process must meet the eligibility criteria to become a SWIFT User.

Through their connection to SWIFT, Securities ETC Service Providers must perform all of the following principal functions:

1. receive securities electronic trade confirmations from:
  - broker/dealer counterparties trading securities for market side clearing and/or
  - a broker/dealer counterparty for clearing purposes with the investment manager institution's settlement agent.
2. electronically match or affirm:
  - broker/dealer counterparty securities market side trade confirmations and/or
  - investment manager institution's allocation instructions against broker/dealer's trade confirmations
3. report the status of matching and/or confirmation/affirmation activity to the appropriate trading and settlement parties.

Any modification to the definition or activities of a Securities ETC Service Provider, as defined above, will require approval by the shareholders at the SWIFT Annual General Meeting.

The Securities ETC Service Provider's application must include:

1. a business plan describing how it intends to use the SWIFT network, specifying the individual Securities ETC services it intends to provide, including its ability to exchange Securities Standing Settlement Instructions with SWIFT and their users.
2. a definition of its own and its clients' responsibilities and liabilities including authorisation of its clients for the Securities ETC Service Provider to communicate Securities ETC messages over the SWIFT network.
3. a copy of its standard customer contract.
4. an affidavit confirming that individual Securities ETC clients are bound by its contract.
5. an implementation plan, including a plan for initial pilot testing of the service over the SWIFT network.
6. a list of clients.

The Board will accept the application of a Securities ETC Service Provider if it is supported by:

- a) at least 2/3 of the shares held by the Members of the nation of the applicant, if there are any, and
- b) at least 10 Members, and
- c) at least 1% of the total shares issued to the membership.

The support referred to in b) and c) above may be provided by a combination of Members from and outside the nation of the applicant.

Should licensing or authorisation be subsequently required in the nation of the Participant, the Participant will have to comply with these requirements in order to be allowed continued usage of the SWIFT system.

#### **2.2.2.14 Securities Proxy Voting Agency**

A Securities Proxy Voting Agency is a legally incorporated organisation, which undertakes the distribution, collection and exercise of voting proxies on behalf of a range of banks and institutional clients.

#### **2.2.2.15 Subsidiary Providers of Custody and Nominee Services**

A Subsidiary Provider of Custody and Nominee Services is an institution which:

- a) is a fully-owned subsidiary of one or a combination of several SWIFT member banks, sub-member banks, or accepted participants, or is a fully-owned subsidiary of an organisation which itself fully owns a SWIFT member bank or accepted participant; and
- b) is engaged primarily in the provision of securities custody services or nominee services.

#### **2.2.2.16 Trading Institutions**

A Trading Institution is an institution which:

- a) provides facilities and establishes rules for the purpose of allowing orderly trading of foreign exchange and/or other financial derivatives; and
- b) is at least 90 percent owned by a SWIFT member or a regulated SWIFT participant either directly or through its parent/holding company; and
- c) is engaged in trading primarily on its own behalf; and
- d) acts as a principal in the majority of deals rather than as an agent.

#### **2.2.2.17 Travellers Cheque Issuers**

A Travellers Cheque Issuer is an organisation which issues travellers cheques and is an obligor with ultimate responsibility to give value for the cheques which it issues irrespective of wherever they may be payable.

**2.2.2.18 Treasury Counterparty**

A Treasury Counterparty is an entity duly incorporated within its own jurisdiction which:

- a) undertakes a large volume of treasury activities incidental to its core business with multiple bank counterparties, and
- b) does not qualify as a SWIFT member, sub-member or other category of participants, and
- c) is in good standing, financially, and with respect to compliance with applicable laws and regulations, and
- d) is audited according to international accounting standards by a recognised audit firm on a regular basis.

To remain qualified, the entity must show continued compliance with the criteria above, failing which SWIFT has the right to disconnect the participant and terminate its usage of SWIFT Services according to the provisions of the *By-laws* (see *Clause 8* of the *By-laws, General Terms and Conditions*).

The applicant is required to be supported by at least 8 SWIFT member banks which are its counterparties in foreign exchange and money markets. At least one of these member banks must be from a country where the applicant is headquartered.

**2.2.2.19 Treasury ETC Service Providers**

A Treasury ETC Service Provider is an entity duly incorporated within its own jurisdiction, which:

- a) is clearly defined as a Treasury ETC Service Provider in its By-laws, and operates as such, and
- b) does not qualify as a SWIFT member, sub-member or other category of participant, and
- c) is in good standing, financially, and with respect to compliance with applicable laws and regulations, and
- d) is audited according to international accounting standards by a recognised audit firm on a regular basis.

When utilising SWIFT to facilitate electronic treasury confirmations processing through an ETC Service Provider, a minimum of one of the counterparties to the trade must be a SWIFT User (but neither another Treasury ETC Service Provider, nor a Treasury Counterparty) connected directly to the SWIFT system.

The Board will accept the application of a Treasury ETC Service Provider if it is supported by:

- a) at least 2/3 of the shares held by the Members of the nation of the applicant, if there are any, and
- b) at least 10 Members, and
- c) at least 1% of the total shares issued to the membership.

The support referred to in b) and c) above may be provided by a combination of Members from and outside the nation of the applicant.

Should licencing or authorisation be subsequently required in the nation of the participant, the participant will have to comply with these requirements in order to be allowed continued usage of the SWIFT system.

#### **2.2.2.20 Trust or Fiduciary Services Companies**

A Trust or Fiduciary Services Company is an institution which:

- a) is authorised to provide fiduciary services, as well as other financial services, and is subject to laws in effect in the national or other competent jurisdiction in which the institution is located, which govern the provision of fiduciary services, and
- b) is authorised to service cash accounts for clients, and is subject to regulation concerning the servicing of cash accounts for clients, by a national or other competent government or by one or more regulatory agencies established for the purpose of regulation by a national or other competent government.

#### **2.2.2.21 BRM 092 Sponsorship Rule**

*Note: Unless otherwise specified, the BRM (Board Report to Members) 092 Sponsorship Rule applies to all categories of Participants.*

If and only if no relevant regulatory environment is in effect in the nation of the applicant, the Board may accept the application of a Participant if it is supported by:

- a) at least 2/3 of the shares held by the Members of the nation of the applicant, if there are any, and
- b) at least 10 Members, and
- c) at least 1% of the total shares issued to the membership.

The support referred to in b) and c) above may be provided by a combination of Members from and outside the nation of the applicant.

Should licencing or authorisation be subsequently required in the nation of the Participant, the Participant will have to comply with these requirements in order to be allowed continued usage of the SWIFT system.

### **2.3 Categories of SWIFT Users for services administered by a Service Administrator**

In order to access through the SWIFT messaging services, services operated/administered by a Service Administrator specific categories of SWIFT Users have been defined as described below.

The eligibility criteria are supplemented by criteria set up by the particular Service Administrator, as described in the following SWIFT User Categories (see *Sections 2.3.1, 2.3.2, and 2.3.3*).

A SWIFT User admitted in a particular SWIFT User category that wishes to access additional SWIFT services and products, may need to change and be admitted in another SWIFT User category. This change may entail an additional entry fee.

An applicant wishing to subscribe to a service administered by a Service Administrator could apply also as Shareholder (Member), provided the applicant complies with the eligibility criteria as defined (see *Section 2.2.1, Shareholders (Members)*).

### **2.3.1 Payment System Participants**

Only applicable if a Closed User Group in connection with the provision of a SWIFT service has been set up.

A Payment System Participant is an institution which is:

- a) the Central Bank, the Regulatory Authority or the Administrator of the Payment System, or
- b) an institution authorised by the Central Bank, the Regulatory Authority or the Administrator to become a user of the Payment System according to the access criteria of the Payment System.

A Payment System is defined as:

- a) a funds transfer system processing third party payments
- b) supervised by a Central Bank or an appropriate Regulatory Authority
- c) for which SWIFT provides network or other services with the approval of the Board of Directors
- d) pursuant to a resolution from the Board of Directors acknowledging the access criteria of the system.

### **2.3.2 Securities Market Infrastructure System Participants**

Only applicable if a Closed User Group in connection with the provision of a SWIFT service has been set up.

A Securities Market Infrastructure System Participant is an institution which is:

- a) the Regulatory Authority or the Administrator of the Securities Market Infrastructure System, or
- b) an institution authorised by the Regulatory Authority or the Administrator to become a user of the Securities Market Infrastructure System according to the access criteria of the Securities Market Infrastructure System.



A Securities Market Infrastructure System is defined as:

- a) a system processing securities related messages or data
- b) administered by a Central Institution or an appropriate Regulatory Authority
- c) for which SWIFT provides network or other services with the approval of the Board of Directors
- d) pursuant to a resolution from the Board of Directors acknowledging the access criteria of the system.

When the Securities Market Infrastructure System is a domestic system, the Board shall approve SWIFT's role in the system upon recommendation of the National Member Group.

### 2.3.3

### **Service Participants within Member Administered Closed User Groups**

A Member Administered Closed User Group is defined as a group of users selected by a Member to participate in the closed user group as Service Participant and allowed to use SWIFT products and services to communicate with a Service Administrator, where:

1. the Service Administrator is a Member or its designated Sub-Member and is responsible for:
  - a) ensuring that users participating in the closed user group meet the admission criteria thereto;
  - b) administering the admission process to the closed user group, including in particular certifying the identity of users participating in the closed user group;
  - c) restricting the usage of SWIFT products and services to support other services supplied by the Service Administrator;
  - d) monitoring and taking reasonable measures to ensure compliance by the users participating in the closed user group with the admission criteria, and with applicable laws and regulations, including, but not limited to, money laundering regulations.
2. the admission criteria defined by the Service Administrator are objective and proportional to its legitimate needs and objectives and require, at a minimum, that any user admitted in the closed user group, as Service Participant:
  - a) be a duly incorporated, validly existing and duly organised legal entity,
  - b) be in good standing financially and with respect to compliance with applicable laws and regulations, and
  - c) be subject to regular audits in accordance with internationally recognised accounting standards by an independent audit firm.

3. the users participating in the closed user group are allowed to use the SWIFT products and services to communicate exclusively with the Service Administrator.

A “Service Participant” is an institution which:

- a) is a customer of the Service Administrator
- b) is sufficiently known by the Service Administrator of the relevant Member Administered Closed User Group to ensure the Service Administrator can meet its obligations outlined above; and
- c) has been admitted by the Service Administrator to the relevant Member Administered Closed User Group in accordance with the relevant admission criteria (as per 2 above).

## 2.4 Message Usage Restrictions

Under *Article 8* of the *By-laws, Articles of Association*, Participants are permitted to make use of specific services of the Company. Accordingly, message usage restrictions are defined from time to time by the Board, for each category of Participant.

As an example, within the FIN service, Participants are limited to sending and receiving those message types relevant to their particular business. For full details of the usage restrictions of the FIN service see the *SWIFT User Handbook - FIN Service Description*.

## 2.5 Fees

A SWIFT User will pay a one-time entry fee and recurring service fees to SWIFT. Details can be found in the *Pricing and Invoicing* module of the *SWIFT User Handbook*. In addition, an institution wishing to join SWIFT as a shareholder must buy one share of the Company at the then current transfer value (see *Chapter 4, Section 4.2.11 Shareholding*).

SWIFT Users under common ownership can aggregate their traffic and may benefit from lower traffic fees. In order to qualify, a SWIFT User must be more than 50% owned and under management/effective control of another SWIFT User.

A Declaration form can be obtained from the Board Secretariat.

## 2.6 Compliance with Eligibility Criteria

Continued compliance with the eligibility criteria is important for the SWIFT community. The *By-laws* stress this importance and define the roles and responsibilities of the parties in this area.

The following are two extracts from the *By-laws*:

*Clause 3* of the *By-laws, General Terms and Conditions* stipulates:

*‘The Users undertake to satisfy and ensure continued compliance with the eligibility criteria and conditions for admission as set forth in the Articles of Association and the General Terms and Conditions.’*

Clause 8 of the By-laws, General Terms and Conditions stipulates:

*‘The User shall give the Company written notice of a change concerning its status in the Company, including but not limited to in the ownership of its capital affecting its status in the Company, change in the legal or regulatory requirements material to its status in the Company, or change in its ability to comply with the eligibility criteria and conditions for admission.’*

The rules and procedures applicable to two cases of non-compliance are illustrated below:

- loss of operating licence
- liquidation

### **2.6.1 Loss of Operating Licence**

Each SWIFT User is required to inform SWIFT immediately when its licence to operate has been revoked or withdrawn. Loss of licence will result in disconnection from the SWIFT messaging services and loss of eligibility as a SWIFT User. SWIFT may also seek information on the User's eligibility from sources such as the Central Bank, the competent Regulator, the National Member Group Chairperson, etc.

The SWIFT User will be disconnected from the SWIFT messaging services within 24 hours of SWIFT being aware of the loss of licence. The SWIFT User will be notified accordingly prior to the disconnection.

SWIFT will inform the SWIFT community by means of a SWIFT broadcast. The cost of the broadcast will be charged and invoiced to the SWIFT User.

### **2.6.2 Liquidation**

In the event of liquidation, if the SWIFT User still holds a valid operating licence, it is allowed to make continued usage of the SWIFT messaging services for a maximum of 6 months under the following conditions:

- the Central Bank or Regulator confirms its supervision of the User, and
- the SWIFT User/Liquidator guarantees payment of SWIFT invoices, and
- the SWIFT User informs the SWIFT community, by broadcast invoiced to the SWIFT User, of the liquidation process.

The SWIFT User will be disconnected from the network at the latest 6 months after SWIFT has been made aware of the liquidation. No additional delays will be granted. The SWIFT User will be notified accordingly, prior to the disconnection.

SWIFT shall inform the SWIFT community by means of a SWIFT broadcast. The cost of the broadcast will be charged and invoiced to the SWIFT User.

## 2.7 Mergers

In case of mergers of SWIFT Users or of a SWIFT User with another organisation that is not yet a SWIFT User, information should be transmitted as soon as available by the SWIFT User to SWIFT.

When the merger involves two shareholders, it is the shareholders' responsibility to inform SWIFT how they wish to have the shares allocated. Typically, if a shareholder merges with another shareholder, the shares of the first shareholder will be transferred to the second one. This exercise is carried out in the share register of the Company with no financial implications from SWIFT's side. A shareholder that merges may also decide at the time of the merger to have its shares reimbursed by SWIFT.

A Merger Information Form can be obtained from the Board Secretariat to detail the merger case.

Reimbursement of shares will be effected once the resignation as shareholder has been approved by the Board of Directors.

In case of merger or take-over where a new legal entity is created, the new entity is considered as a new applicant SWIFT User and will need to follow the regular approval process.

## 2.8 Bank Identifier Code (BIC) and Business Identifier Code (BEI)

The ISO Bank Identifier Code (BIC) is an international standardised method for identifying financial institutions. The BIC is designed to facilitate automatic processing of telecommunication messages in banking and related financial environments.

SWIFT is the Registration Authority for ISO 9362 Banking - Banking Telecommunication Messages - BICs. SWIFT in this capacity is responsible for the assignment of these codes and their subsequent publication in the *BIC Directory*.

Each SWIFT User must register and publish a unique 8 character Bank Identifier Code (BIC). Such registration must be completed when the organisation applies to become a SWIFT User. An entity which is not a financial institution nor a SWIFT User can be identified with a Business Entity Identifier (BEI). The BEI has the same format as a BIC.

All BICs or BEIs used in a SWIFT message must be registered with SWIFT. Due to content validations being performed in messages, the usage of BICs/BEIs in messages can happen only if these are registered with SWIFT.

An entity may register additional 8 character codes and may also register separate 11 character codes where the last 3 characters represent a branch code, either of a geographical, functional or departmental nature. A branch code may not be registered for a separate legal entity.

All BICs/BEIs, in the absence of other instructions, will automatically be published. Publication of these BICs/BEIs includes an expansion as defined by the user.

**Note:** *BICs for the category of Participant - Representative Offices - are not published.*

## 2.9 Deactivations

If a SWIFT User wishes to disconnect from the SWIFT messaging services, ie deactivate its BIC, either a Request for Deactivation form or an MT 999 must be sent to the Commercial Operations Services (COS) department at least 7 days before the deactivation date. The SWIFT community must be advised by means of a user-initiated broadcast.

A SWIFT User that decides to cancel its membership to SWIFT will have its SWIFT BICs deactivated from the SWIFT network and removed from SWIFT's publications.



## Chapter 3

# The SWIFT Organisation

### 3.1 Introduction

SWIFT is a co-operative society under Belgian law and is owned and controlled by its Shareholders. It has a Board of up to 25 Directors, elected by the Shareholders, who are responsible for overseeing and governing the company. The Board oversees the Executive, a team of full-time employees headed by a Chief Executive Officer, who is appointed by the Board of Directors. The CEO appoints the SWIFT Executive. The Board and the SWIFT Executive work together with National Member Groups, User Groups and Working Groups to develop policies and discuss product and service performance, and standards. The Executive is responsible for the preparation, integrity and objectivity of the consolidated financial statements and other information presented in the Annual Report.

### 3.2 The SWIFT Executive

The Executive consists of a group of full-time SWIFT employees, heading the commercial and operational divisions of the Company and led by the Chief Executive Officer who reports to the Board.

The Executive issues on a regular basis Reports to Directors, including reports on performance against budget.

### 3.3 The Board of Directors

As per *Article 14* of the *By-laws, Articles of Association*, the total number of Directors shall not exceed twenty-five. The Board of Directors is elected by the General Meeting following proposal by the National Member Groups. The Directors are elected for a term of three years and are eligible for re-election.

The Board of Directors is an institution entrusted with the widest power with respect to the management and the administration of the company, restricted only by the framework of the Articles.

The Board has authority among others to decide on admission to membership, entry and service fees, and to control the Executive.

Because SWIFT's shareholders represent a broad international base, best practice from several countries has influenced the Company's governance. The Board has six committees with delegated decision powers: Audit and Finance, Banking and Payments, Compensation, Securities, Standards, Technology and Production.

The Board embodies its decisions in Board Resolutions, which may result in the issue of Board Reports to Shareholders for approval at the General Meeting.

The Chairmen and members of the Board Committees are elected by the Board of Directors according to their terms of reference.

### 3.4 National Member Groups

The National Member Group (NMG) consists of all SWIFT shareholders within the same nation (*Clause 1.12 of the By-laws, General Terms and Conditions*). It does not include other users of SWIFT, ie, subsidiaries and branches of foreign banks, participants.

Within each nation shareholders organise themselves in such a manner so that they can effectively advise and assist the Board on specific local matters such as admission of new users, propose Director candidates to the Board, communicate and work with their representative on the Board of Directors.

The organisation form may be a formal committee organisation or an informal assembly. The NMG is independent from SWIFT and does not form part of the SWIFT legal structure. It can legally organise itself as it thinks appropriate.

The NMG has an important role in the yearly proposals of Directors as per the procedure described in *Article 14 of the By-laws, Articles of Association*.

The NMG has an advisory role to the Board, as set out in *Clause 4 of the By-laws, General Terms and Conditions*.

The NMG is consulted in an advisory function at a national level on policy issues affecting members which are due to be discussed in the Board, such as share participation, new categories of SWIFT Users. In doing so, the NMG not only assists the Board, but also serves the interests of the members by co-ordinating their views and formulating a common policy. The NMG will also ensure that their advice to the Board is objective and competitively neutral and that the local criteria are not drafted to exclude or include specific institutions.

For countries where the NMG has not identified the local criteria, the NMG shall be considered as ‘non-existent’ and only applications to become Shareholders or Sub-members will be processed and will be based on the submission of an authenticated copy of the applicant’s operating licence with an English translation.

More generally, the NMG is the link between the Board of Directors and the shareholders of each country. It receives the Board documents, communiques and resolutions for discussion with and/or distribution to the shareholders. The Board of Directors may from time to time ask the NMG for specific advice and support.

The NMG is chaired by the National Member Group Chairperson (NMGC) who is elected by the SWIFT shareholders of the country. To fulfil his role, the NMGC should be well informed about SWIFT policy matters and be recognised as fully independent by all shareholders of the nation.



## 3.5 National User Groups

The **National User Group** consists of all SWIFT Users within the same nation who organise themselves to discuss SWIFT matters of an operational nature. They develop a forum to allow for collective planning and co-ordination in their operational activities.

The prime functions of the National User Group are:

- a) to enable users to co-operate in establishing their connections to SWIFT.
- b) to provide an easier way for SWIFT to communicate with its users than having to talk to them all individually.
- c) to advise organisational, operational or technical matters affecting the users in the country.
- d) to discuss and decide on matters which have to be agreed upon at a national level as they relate to the day-to-day network operation within the country (sharing of costs).
- e) to assist SWIFT in ensuring an efficient and reliable day-to-day operation of the network.

As is the case for the National Member Group, the National User Group is independent from the SWIFT structure and can organise itself as it thinks appropriate.

In some countries the National User Group is replaced by a special committee appointed by and reporting to the National Member Group, to which all day-to-day operational and technical matters are referred for advice.

The National User Group is chaired by the User Group Chairperson (UGC). To fulfil this role, the UGC should be well versed in operational and technical matters relating to SWIFT's operation and be in close contact with the users on an operational level. The UGC also acts as focal point for training requirements. In most countries the UGC is elected by the National Member Group or by the steering committee of that National Member Group.

## 3.6 Working Groups

SWIFT has created Working Groups to assist Board Committees on detailed industry matters (eg, Securities, Standards, Trade Services).

The Working Groups are limited in number and report directly or indirectly to Board Committees or SWIFT.

## 3.7 SWIFT Partners

To help its customers to provide low cost, competitive financial processing, and for them to achieve SWIFT readiness and straight-through processing, SWIFT works with vendors and partners.

For up-to-date information regarding SWIFT vendors and partners see [www.swift.com](http://www.swift.com).

## **3.8 Service Bureaux**

A Service Bureau is a non-SWIFT User organisation that provides facilities management and/or data processing services to one or more SWIFT Users.

A Service Bureau may thus operate various connectivity components (such as a connection to the SWIFT network or interface software) for the benefit of or, as the case may be, on behalf of the Users for their prime and/or backup connection.

However, a Service Bureau is not entitled to use SWIFT messaging services in its own name or for its own benefit. The Service Bureau may only act for and on behalf of the Users to the extent relating to their access to and use of the SWIFT messaging services.

A Service Bureau is required to send an Ownership Declaration if majority owned and controlled by SWIFT User(s), or a Compliance Declaration if not majority owned and controlled by SWIFT User(s). An annual update is requested.

Service Bureau Rules and Guidelines issued by SWIFT, as well as forms, can be obtained from the Board Secretariat.

## **Chapter 4**

# **The General Meeting of Shareholders**

### **4.1 Introduction**

The General Meeting of Shareholders is a formal assembly held in accordance with *Article 29 of the By-laws, Articles of Association* and deriving its powers and authority from the *Articles of Association* and the *General Terms and Conditions*.

Decisions of the General Meeting are framed as Resolutions which require formal adoption and which must be recorded in the Minutes of the General Meeting. The General Meeting has the power to modify the *By-laws*, to appoint the Board of Directors and the financial auditors of the Company, and to approve the annual accounts and new categories of Participants. Resolutions may contain directives to the Board of Directors. Minutes of the General Meeting are made available to the shareholders of the Company.

### **4.2 Organisation of a General Meeting**

#### **4.2.1 Board of Directors**

At the beginning of each year, the Chairman of the Board requests all National Member Groups to propose for election, at the General Meeting, a representative (SWIFT Board Director).

#### **4.2.2 Annual General Meeting Package**

At least thirty days before the Annual General Meeting, all shareholders will be sent the Annual General Meeting package including the invitation and agenda for the General Meeting, the latest share positioning within the Company, the Annual Report approved by the Auditors and the Board of Directors, and, as appropriate, other 'Board Reports to Members'. The Annual General Meeting pack includes an important document which is the "Désignation de Mandataire" (Appointment of Representative). This document must be duly filled in by the shareholder and submitted to SWIFT (see *Section 4.2.3, General Meeting Representative*).

A shareholder who has not received, two weeks prior to the Annual General Meeting, the Annual General Meeting pack, should contact the Board Secretariat at SWIFT.

### **4.2.3 General Meeting Representative**

A shareholder wishing to attend the General Meeting and exercise its powers may appoint a representative (see *Article 30 of the By-laws, Articles of Association*). The representative may be an employee of a shareholder, a SWIFT Board Director, or any other person the shareholder thinks fit to act as representative. When attending the General Meeting, the representative must bring the “*Désignation de Mandataire*” (Appointment of Representative) form duly completed and signed. Partially completed or non-signed forms will not be taken into consideration.

It should be noted that it is the shareholder's responsibility to ensure that the representative votes in accordance with the shareholder's wishes; SWIFT will not take note of instructions given by a shareholder to its representative.

### **4.2.4 Attendance at the General Meeting**

The shareholder's representative attending the General Meeting will need to register on arrival and present the “*Désignation de Mandataire*” (Appointment of Representative) form and passport or identity card. Representatives failing to do so may be refused admission.

Each representative will be given a voting form.

If a representative wishes to speak at the General Meeting, he/she should preferably notify the Chairman in advance. Before addressing the Meeting, the representative should give his/her name and the name of the shareholder on whose behalf he/she is speaking. Speakers should be as brief as possible.

Representatives must make their own travel and hotel arrangements. There will be no financial intervention from SWIFT.

Shareholders' representatives, the Board of Directors, General Meeting Secretary, Vote Tellers, Chief Executive Officer, SWIFT Executive, Auditors and Notary attend the meeting.

### **4.2.5 Chairman of the General Meeting**

According to *Article 31 of the By-laws, Articles of Association* the Chairman or Deputy Chairman of the Board of Directors shall be the Chairman of the General Meeting.

At the start of the General Meeting the Secretary and Vote Tellers are formally appointed.

### **4.2.6 General Meeting Procedure**

As soon as the doors have been closed, the number of shares represented are submitted to the Chairman. He will announce if the quorum is obtained and therefore the General Meeting validly constituted. Minutes issued of the Meeting will include the number of shares represented and the number of votes cast for and against each Resolution proposed.

## 4.2.7 Voting Process

If a representative wishes to call for a vote on a Resolution he should raise his hand when the Chairman asks if anyone wants to call for a vote. If no-one calls for a vote, the Resolution will be declared 'Carried Unanimously'.

Votes must be made on the official voting form. Attempts to vote by any other method will be ignored.

When voting on a Resolution is complete, the Chairman will ask the Vote Tellers to count the votes for and against. Blank forms, forms with both 'Yes' and 'No' crossed out, and votes cast other than on the official voting form will be disregarded.

The Vote Tellers calculate the 'Yes' and 'No' votes as percentages of the total votes cast. The results are passed to the Chairman.

## 4.2.8 Voting Conditions

Subject	Percentage
Quorum for an Annual General Meeting	At least 50% of shares represented
Quorum for change to <i>By-laws</i> and Category of participants	At least 75% of shares represented
Change to <i>By-laws</i>	At least 75% of votes cast
Dismissal of Director	At least 75% of shares represented
Category of Participant	At least 75% of votes cast
Other	Over 50% of votes cast

The terms used in the above box are explained as follows (see *Article 29* of the *By-laws, Articles of Association*):

<b>Quorum</b>	Percentage of the shares that need to be represented at the meeting to have it validly constituted.
<b>Shares</b>	The total number of shares issued by the company at the time the notice for the General Meeting was sent out.
<b>Votes cast</b>	The total of all votes deposited in the voting box on an official voting form at the time the Chairman has called for a vote. In this count, abstentions (such as unofficial forms, those not deposited in the box, those left blank, or forms on which both 'Yes' and 'No' are marked or crossed out) will be considered as 'No' votes. Therefore, for a resolution to be carried, 75% or 50% of the shares represented have to vote in favour of the resolution.
<b>Shares represented</b>	The total number of shares represented at the meeting in person or by proxy.

A second General Meeting can be held after a failure to reach a quorum at the first meeting. If a second meeting is to be held, a majority vote as per above is requested, although quorum will not be checked. (see *Article 29 of the By-laws, Articles of Association*).

#### **4.2.9 An Extraordinary General Meeting**

An Extraordinary General Meeting may be called at any time at the request of at least three Directors or of shareholders holding at least 20% of the shares. The request should be addressed to SWIFT and should include a proposed agenda.

#### **4.2.10 General Meeting Minutes**

General Meeting Minutes are made available to all shareholders.

#### **4.2.11 Shareholding**

##### **4.2.11.1 Introduction**

In accordance with *Article 5 of the By-laws, Articles of Association*, the capital of the Company is divided into shares with a nominal value of 125 Euro each.

Each SWIFT User wishing to become a shareholder of the Company will have to buy one (and only one) share when applying. The share will be purchased at the then current transfer value. The transfer value of a share is calculated based on the consolidated financial statements and defined each year prior to the General Meeting and is communicated to the shareholders at the meeting.

Shares give a right to vote. One share equals one vote at the General Meeting of Shareholders (see *Article 29* of the *By-laws, Articles of Association*). This right to vote is limited to a maximum of 20% of the total votes issued in the case of a nation holding/representing more than one fifth of the total shares.

The total number of shares within a nation gives the shareholders of that nation the right to propose a Director to the Board. The first six ranked nations in terms of number of shares can propose 2 Directors each, the next 10 nations 1 Director each, and the other nations can collectively propose one Director, with a maximum of 3 combinations of nations.

#### **4.2.11.2 Share Re-allocation**

As determined in the *By-laws (Clause 9 of the By-laws, General Terms and Conditions)*, at least every three years, all shares of the Company held by the shareholders are re-allocated. Each shareholder will be notified in writing at least thirty days prior the General Meeting.

The shares held by the shareholders are re-calculated according to their annual financial contribution paid to the company for network based services. Re-calculation is done on the number of issued shares. No new shares are issued during this exercise.





## **Appendix A**

### **By-laws - Articles of Association**

#### **Name, Registered Office, Object and Life**

##### **Article 1**

The name of the Company is 'Society for Worldwide Interbank Financial Telecommunication', limited liability Co-operative Society. The Company may use the abbreviation S.W.I.F.T. SCRL.

##### **Article 2**

The Registered Office of the Company is situated at Avenue Adèle 1, B-1310 La Hulpe, Belgium.

By decision of the Board of Directors, the Registered Office of the Company may be established at another address in Belgium.

The Company may establish branches or agencies in Belgium or in any other country.

##### **Article 3**

The object of the Company is for the collective benefit of the Members of the Company, the study, creation, utilisation and operation of the means necessary for the telecommunication, transmission and routing of private, confidential and proprietary financial messages.

The Company may take such steps as may be necessary, useful or conducive to its object, including the creation of subsidiaries in Belgium or abroad. The Company may provide data processing products and/or services in relation to its object, subject to approval of the Board of Directors. Moreover, the Company may enter into partnership or any joint arrangement, union of interest or co-operation with any company or firm carrying out or proposing to carry out any activities within the object or similar objects of the Company, even by way of guaranty, subject to approval of the Board of Directors.

##### **Article 4**

The life of the Company is for an unlimited term.

## **Capital and Shares**

### **Article 5**

The capital of the Company is divided into shares with a nominal value of 125 euro each. The minimum capital of the Company is 625,000 euro.

The Board of Directors may, from time to time, make calls upon the shareholders, (hereinafter referred to as 'Members') in respect of any moneys unpaid on their shares and each Member shall pay to the Company at the time or times and place so specified the amount called on his shares.

### **Article 6**

The name of each Member of the Company and the number of his shares shall be entered in the Register of the Company, to be kept at the Registered Office of the Company. The entry shall be deemed to be exclusive evidence of membership in the Company. No certificate of shares will be issued.

## **Liability**

### **Article 7**

The liability of the Members towards third parties shall be restricted to their obligation to pay up their shares in the capital of the Company.

## **Admission to Membership, Shareholding, Participants**

### **Article 8**

Any organisation may be considered for admission to membership in the Company which, in the opinion of the Board of Directors, is involved in the same type of business as the Members, and which is involved in international financial message transmission.

Any organisation which is eligible under the preceding paragraph but which would encounter obstacles because of statutory limitations or regulations to itself becoming a Member, may propose for admission to membership in the Company an organisation which holds shares in or whose shares are held by the eligible organisation. In the case of membership under this paragraph, only the eligible organisation shall be allowed to make use of the services of the Company.

However, if both organisations are eligible under the preceding paragraph, both organisations may make use of the services of the Company.

The procedures related to application and admission to membership are set forth in the *General Terms and Conditions*.

Any organisation may be permitted to make use of specific services of the Company as Participant, provided it complies with the criteria of eligibility of a Category of Participants as set forth by the General Meeting of the Company. Participants shall not be entitled to shares in the capital of the Company.

The procedures related to application and admission of Participants are set forth in the *General Terms and Conditions*.

## **Article 9**

Each Member shall have a number of shares in the capital of the Company which shall be proportional to the annual financial contribution paid to the Company by each such Member for the network based services of the Company. The number of shares allocated to each Member shall be determined from time to time by the Board of Directors, in accordance with the provisions set forth in the *General Terms and Conditions*.

## **Article 10**

The Members shall give up or take up the number of shares as determined by the Board of Directors.

The Board of Directors shall have every power to carry out in the name of, and on behalf of, the Member, the formalities relating to the registration of share ownership in the Register of the Company.

## **Article 11**

Transfer of shares shall be effected at the value of the shares resulting from the latest published consolidated financial statements ('the transfer value').

Any payment with respect to the transfer of shares shall be effected through the Company.

## **Article 12**

Any transfer of shares other than the transfer of shares as in *Article 9* and *Article 10* hereabove and in the *General Terms and Conditions* or other than in the case of merger or acquisition involving Members shall be null and void.

## Loss of Membership

### Article 13

- a) Membership is lost if a Member resigns, is expelled, ceases its activities, is adjudicated bankrupt, makes any arrangement or composition with or concerning its creditors, or goes into liquidation for reasons other than reconstruction.
- b) Any Member may resign from the Company provided it gives notice in writing to the Board of Directors within the first six months of the current financial year as defined in *Article 33*. The resignation of a Member shall be effective at the end of that year.
- c) A Member may be expelled from the Company if, in the opinion of the Board of Directors, it does not observe the *Articles of Association* of the Company and/or the *General Terms and Conditions* or any undertaking towards the Company, commits any act of negligence which may be prejudicial to the interest of the Company or ceases to fulfil any of the conditions for admission set forth in these *Articles of Association* and/or *General Terms and Conditions*, provided the Board of Directors has given that Member the reasons underlying its decision in writing. Expulsion of a Member shall be made in accordance with the rules laid down by Belgian law.
- d) In case of loss of membership, as mentioned under (a), (b), and (c) above, the transfer value of the shares of the Member concerned shall be repaid by the Company.
- e) In the event of resignation, expulsion and loss of membership, the Member concerned cannot demand the winding up of the Company, nor lay an attachment on the property of the Company nor have this property put under seal.

## Board of Directors

### Article 14

The Directors shall be elected by the General Meeting for a term of three years. The Directors shall hold office until immediately after the Annual General Meeting of the year during which their term expires unless terminated earlier if a share re-allocation causes the nation or group of nations which proposed them for election to cease to meet those criteria in a), b) or c) below as applicable at the time of the proposal. They shall be eligible for re-election.

*Transitional provision: the Annual General Meeting in June 2003 will elect three groups of Directors for a term of respectively one year for the first group of 8 Directors, two years for the second group of 9 Directors and three years for the third group of 8 Directors.*

The number of Directors shall not exceed twenty-five.

The Directors shall be proposed for election by the Annual General Meeting in the manner prescribed hereunder.

All nations are ranked in decreasing order based on the number of shares owned by all Members of each nation.

- a) All Members from each of the first six ranked nations may collectively propose to the General Meeting two Directors for election. In the case of equality of shares of two or more nations, which would increase the number of nations above six, the Board shall identify by drawing by lot, the nation(s) which will qualify under b) below.
- b) All Members from each of the ten following ranked nations may collectively propose to the General Meeting one Director for election. In case of equality of shares of two or more nations, which would increase the number of nations above ten, the Board shall identify by drawing by lot, the nation(s) which will qualify under c) below.
- c) All Members of a nation which do not qualify under a) or b) above, may collectively together with all Members of one or more other nations being in the same situation propose to the Annual General Meeting one Director for election, provided that no nation may participate in more than one such group of nations at any time.

The number of Directors thus proposed shall not exceed three.

- d) Any proposal must be notified to the Board of Directors in writing at least forty (40) days prior to the Annual General Meeting.
- e) In case the number of Directors proposed by the groups of nations qualifying under c) above, exceed three, the proposals shall be reduced by the Board of Directors, by elimination of the excessive proposals supported by the smallest share representation.

In case of equality of shares the elimination shall be made by drawing by lot.

- f) In case the proposal of a Director is rejected by the Annual General Meeting, an extraordinary General Meeting shall be held within thirty (30) days. At least fourteen (14) days prior to such extraordinary General Meeting, a new Director shall be proposed by the Members of the same nation or group of nations for election by the extraordinary General Meeting.

All Members from a nation who have not made a proposal for a Director, or whose proposal was eliminated according to the rules set forth under e) hereabove, may collectively support the proposal for election of a Director who is already proposed by the Members of another nation.

If a Director retires, is incapacitated in the opinion of the Members who proposed him for election, or becomes disqualified under the terms of *Article 15* or *Article 16*, the Board of Directors shall fill the vacated office by electing a person thereto for the outstanding term. This Director shall be proposed for election by the Members of the same nation or group of nations which initially proposed that Director for election.

## **Article 15**

A Director must be an employee of a Member or of an organisation deemed related by the Board of Directors.

## **Article 16**

A Director can be dismissed or suspended from his office by the General Meeting with a vote of at least three quarters of the shares represented in person or by proxy.

## **Article 17**

The Board of Directors shall elect a Chairman and a Deputy-Chairman from its members.

## **Article 18**

The Board of Directors shall meet at least four times annually, and at such other times as requested in writing to the Chairman by at least three Directors.

Meetings may be held within or outside of Belgium at a place indicated in the notice of the meeting.

The Directors shall be given notice in writing at least 14 days prior to any meeting being held. However, this requirement can be waived in cases of urgency.

A notice shall be validly given when sent by mail, courier or by any other secure electronic means of communication.

## **Article 19**

The quorum necessary for the meetings of the Board of Directors shall be at least two thirds of its members in office, of which quorum at least fifty per cent must be present in person.

Any Director unable to attend a meeting of the Board of Directors may, by means of a proxy transmitted by mail, courier or by any other secure electronic means of communication, authorise another Director to vote on his behalf, provided the Chairman of the meeting has been informed before the meeting of any such appointment and of the name of the proxy.

No Director may appoint a proxy for more than two consecutive meetings.

No proxy may represent more than one Director at any meeting.

## **Article 20**

Resolutions at any meeting of the Board of Directors shall be decided by a majority of votes. Every Director has one vote and no resolution can be decided in case of an equality of votes.

## **Article 21**

Minutes shall be kept of all meetings of the Board of Directors. These minutes shall contain the names of the Directors or their proxies present and all resolutions and proceedings, including the results of voting.

The minutes shall be executed by the Chairman and one Director so appointed at the meeting.

## **Article 22**

The Board of Directors has the widest powers with respect to acts of disposition or administration provided that the Board of Directors acts within the framework of the *Articles of Association* and *General Terms and Conditions*.

The Board of Directors shall execute the resolutions of the General Meeting and represent the Company towards Members and third parties.

The Board of Directors may enter into all manner of contracts, including compositions and Treaties of Arbitration, buy, sell, exchange or rent movable and immovable property, lend or borrow moneys, accept or admit mortgages or other collaterals to the benefits of the Company or of third parties, discharge, renounce from any right, privilege, legal proceedings or formalities even without any payment or take legal actions as a plaintiff or a defendant.

The Board of Directors shall approve the Budget on an annual basis.

The enumeration of the powers vested in the Board of Directors is not limiting.

## **Article 23**

The Board of Directors may establish special committees and may entrust to and confer upon one or more of the Directors a part of the powers exercisable by the Board of Directors.

The Board of Directors may delegate the day-to-day management of the Company to one or more persons who need not be Directors and may delegate any limited powers to any special agent.

## **Article 24**

The Company shall be bound towards third parties by the signatures of two Directors.

## **Auditors**

## **Article 25**

The General Meeting shall appoint one or more auditors upon such terms and conditions as the General Meeting may think fit.

The auditors' right of inspection of the activities of the Company is unlimited. They can inspect all records of the Company without removal of same.

## **General Meeting**

### **Article 26**

The Annual General Meeting of the Company shall be held on the second Wednesday of June at such place as indicated in the notice.

### **Article 27**

An extraordinary General Meeting shall be held at the request of at least three Directors or of the Members holding at least one fifth of the shares.

### **Article 28**

At least thirty days notice shall be given in writing to the Members, specifying the place, day and hour of meeting and the nature of business.

On request of at least three Members or one Director, one or more subjects shall be added by the Board of Directors to the agenda of any General Meeting.

Such a request shall be made in writing at least three weeks before the actual date of the meeting.

The Board of Directors shall immediately notify all Members of the above.

A notice shall be validly given when sent by mail, courier or by any other secure electronic means of communication. The Board of Directors will, from time to time, authorise the electronic means of communication that can be used, taking into account that any such means must be capable of identifying the originator and the recipient of the communication, ensuring its receipt and allowing the communication to be properly evidenced.

### **Article 29**

A General Meeting shall be deemed to be properly constituted when at least 50 percent of the shares are represented in person or by proxy.

If this quorum is not present in person or by proxy a second General Meeting shall be called as soon as possible with at least thirty days notice to the Members, for which meeting no quorum shall be required. Every Member present in person or by proxy shall have one vote for each share of which he is the holder. Resolutions shall require a majority of votes actually cast for enactment unless otherwise provided in these *Articles of Association*.



However, if Members of a nation hold and/or represent by proxy more than one-fifth of the shares, the right to vote shall be restricted to one-fifth of the total shares by reducing the relative votes in proportion to the number of shares of each of the Members concerned. Fractions of votes shall be disregarded.

Any resolution with respect to the modification of the *Articles of Association*, the approval of each category of organisation allowed to make use of specific services of the Company as Participants, the criteria of eligibility of each Category of Participants, the winding up of the Company or its merger with any other company, can only be enacted in a General Meeting at which at least three quarters of the shares are represented, in person or by proxy. Enactment of any such resolution requires at least a three quarters majority of the votes actually cast.

However, the main object of the Company or the liability of the Members, as defined under *Article 7*, can only be modified in accordance with the applicable provisions of Belgian law.

If a quorum requirement as set forth hereabove is not met at a General Meeting, a second General Meeting shall be called as soon as possible, with at least thirty days notice in writing to the Members, by registered mail. The second General Meeting may decide without any quorum, but with the same majority requirement of votes as provided hereabove.

Any proposed modification of the *Articles of Association* and any proposed resolution with respect to the approval and criteria of eligibility of Participants, shall be mentioned in full in the notice to the Members.

## **Article 30**

Any Member of the Company may, by means of a proxy transmitted by mail, courier or, subject to the last paragraph of *Article 28*, other secure electronic means of communication authorise such person as he thinks fit to act as his representative at any General Meeting of the Company, and the person so authorised shall be entitled to exercise all powers on behalf of the Member whom he represents.

## **Article 31**

The Chairman or in his absence the Deputy-Chairman of the Board of Directors shall be the Chairman of the General Meeting. The Chairman of the General Meeting shall appoint a secretary and two vote tellers.

## **Article 32**

The minutes of the General Meeting shall be executed by the Chairman and the Secretary of the General Meeting. Copies of the minutes shall be sent to the Members.

## Balance Sheet and Reserve

### Article 33

The financial year of the Company shall commence on 1 January and end on 31 December.

As of the close of each financial year, the Board of Directors shall cause a list of the assets and liabilities of the company, a set of financial statements and a report to the Members to be prepared in accordance with the law.

The document mentioned in the preceding paragraph shall be executed by the Chairman on behalf of the Board and copies thereof shall be sent to the Members, together with the report of the auditors and the notice and agenda, no less than thirty days prior to the General Meeting.

### Article 34

The General Meeting shall make decisions with respect to the adoption of the financial statements and the disposition of the financial results. If there is a net profit for the financial year, the General Meeting shall allocate at least 5 percent thereof to the legal reserve required by law provided that no such allocation shall be required when the legal reserve amounts to at least 10 percent of the capital.

The Board of Directors and the statutory auditor of the Company have to be discharged by special resolution of the meeting.

## Winding Up

### Article 35

In case of winding up of the Company the General Meeting shall determine the method of liquidation, appoint the liquidators and determine their powers and remuneration.

After settlement of all debts and charges owed by the Company, any remaining positive balance shall be divided amongst the Members in proportion to their shares.

## General Rules

### Article 36

All matters which are not provided for in these *Articles of Association* shall be governed by the 'Company Code'.

## Appendix B

# By-laws - General Terms and Conditions

## Definition

### Clause 1

In these *General Terms and Conditions*, the following terms are understood to mean:

<b>1 Company</b>	Society for Worldwide Interbank Financial Telecommunication, limited liability Co-operative Society, established in Belgium.
<b>2 General Meeting</b>	A General Meeting of the Company.
<b>3 Board of Directors</b>	The Board of Directors of the Company.
<b>4 Members</b>	Organisations admitted to membership of the Company in accordance with the <i>Articles of Association</i> .
<b>5 Sub-Members</b>	Organisations, more than 50 percent directly or 100 percent indirectly owned by a Member, which meet the criteria set forth in the first paragraph of <i>Article 8</i> of the <i>Articles of Association</i> . A Sub-Member must be under the full management control of the Member.
<b>6 Category of Participants</b>	Organisations in the same type of business activities permitted to make use of specific services of the Company in accordance with the <i>Articles of Association</i> .
<b>7 Participants</b>	Organisations complying with the eligibility criteria set forth by the General Meeting for a Category of Participants.
<b>8 Users</b>	Organisations which are permitted to make use of services of the Company.
<b>9 Articles of Association</b>	The Articles of Association of the Company.
<b>10 User Handbook</b>	The set of documents named 'The User Handbook' as amended from time to time and which constitutes a contractual basis for the operational relationship between the Company and any user.
<b>11 International Financial Messages</b>	Messages between users and related to international financial transactions.
<b>12 National Member Group</b>	The group of Members indigenous to the same nation, acting through a duly authorised representative.

## Members' Responsibility

### Clause 2

The Members agree that the Company, being a co-operative Company, expects the Members to actively support and contribute to the use of the services of the Company.

The Members also agree that it is their responsibility to see that the Company is expanded as required, and that its activities are actively monitored and periodically reviewed to ensure that the maximum benefit continues to accrue to the combined membership.

## Users' Responsibility

### Clause 3

The Users undertake to satisfy and ensure continued compliance with the eligibility criteria and conditions for admission as set forth in the *Articles of Association* and the *General Terms and Conditions*.

The Users undertake to notify the Board in writing of any change concerning their status in the Company and of their inability to honour their obligations as Users.

## National Member Group

### Clause 4

The National Member Group shall have an advisory role as set out in these *General Terms and Conditions*. It shall assist the Board of Directors:

1. to further define the eligibility criteria by identifying the local laws and regulations, pursuant to which an organisation complies with the criteria to become a Member, Sub-Member or a Participant, and
2. to verify if the organisation applying to become a Member, Sub-Member or Participant, in the nation of the National Member Group, complies with the eligibility criteria as defined, and
3. to monitor continued compliance by the Users of the Company with the eligibility criteria and conditions for admission as set forth in the *Articles of Association* and the *General Terms and Conditions*.

## New Members — New Sub-Members — New Participants

### Clause 5

1. Any organisation may be considered for admission and be permitted to make use of the services of the Company as a Member which, in the opinion of the Board of Directors, complies with the eligibility criteria set forth in *Article 8* of the *Articles of Association*.

The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group, if there is any.

However such requirements shall not apply to:

- a Central Bank, or
- similar financial institutions which can show to the satisfaction of the Board of Directors, that they have an international or supranational legal status.

2. Any organisation may be considered for admission and be permitted to make use of the services of the Company as a Sub-Member which, in the opinion of the Board of Directors:

- a) is more than 50 percent directly or 100 percent indirectly owned by a Member, and
- b) is under the full management control of the Member, and
- c) complies with the criteria to become a Member as mentioned in the first paragraph of *Article 8* of the *Articles of Association*. The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group, if there is any.

However such requirements shall not apply to:

- a Central Bank, or
- similar financial institutions which can show to the satisfaction of the Board of Directors, that they have an international or supranational legal status.

The Member shall be liable for all obligations towards the Company of its Sub-Members.

3. Any organisation may be considered for admission as a Participant and be permitted on a contractual basis to make use of specific services of the Company as Participant which, in the opinion of the Board of Directors, complies with the criteria of eligibility of a Category of Participants.

The General Meeting shall approve each Category of Participants and shall set forth the criteria of eligibility. Any such resolutions of the General Meeting in this respect shall be adopted in accordance with *Article 29* of the *Articles of Association*.

The requirements to meet the eligibility criteria, based on applicable local laws and regulations, shall be identified by the Board of Directors with the assistance of the National Member Group, if there is any.

The Board of Directors shall within the limits defined by the General Meeting, define the contractual terms and conditions applicable to each approved Category of Participants.

4. The procedures related to the admission of Users are set forth in *Clause 6*.

## Admission Procedure

### Clause 6

1. Any application for admission to the Company as either a Member, Sub-Member or Participant shall be made in writing to the Board of Directors.
2. Upon receiving an application, the Company shall immediately notify the authorised representative of the National Member Group concerned, for confirmation that the candidate complies with the local laws and regulations to meet the eligibility criteria. In the absence of a National Member Group, the Board may request such confirmation from the local regulatory authority.
3. The Company shall send the candidate all the relevant documentation including the *General Terms and Conditions* and the *User Handbook*, as well as the necessary forms to be completed, signed and returned to the Company.
4. The return of the duly completed and signed forms shall constitute acceptance by the candidate of the *General Terms and Conditions* and the *User Handbook*, it being understood that such acceptance shall not confer on the candidate any rights before it has been admitted to the Company by majority vote of the Board of Directors.
5. The application, together with the National Member Group's advice as mentioned in *Clause 4* (2) above, will be submitted to the majority vote of the Board of Directors for acceptance based solely upon the eligibility of the candidate under the relevant eligibility criteria. In the case of a Sub-Member candidate, the Board of Directors may delegate its powers to decide upon applications for Sub-Membership to the Board Secretary.

6. The decision of the Board of Directors is immediately notified in writing to the candidate and to the duly authorised representative of the National Member Group.
7. The decision of the Board of Directors shall take effect at once if the application has been accepted and if such decision is in accordance with the National Member Group advice, if any.
8. If, notwithstanding a negative recommendation of the National Member Group, the application has been accepted by the Board, the decision of the Board shall take effect thirty days after notification of the Board of Directors decision to the duly authorised representative of the National Member Group, unless the majority of the Members of the nation of the applicant, based upon their share representation, have notified the Board of Directors, in writing, of their disagreement with the decision.

If the duly authorised representative of the National Member Group notifies the Board of Directors, in writing, of the majority of the Members' disagreement with the decision, the Board of Directors shall submit the application to the General Meeting.
9. In the event of rejection of the application by the Board of Directors, the applicant may request the Board of Directors to submit its application to the General Meeting.
10. The Board of Directors shall inform the applicant, and the duly authorised representative of the National Member Group, of the final decision of the General Meeting concerning the application for admission.
11. The General Meeting shall decide upon the application submitted to it under sub-clauses 8) and 9) above, in accordance with *Article 29* of the *Articles of Association*.
12. The name, address and date of admission of a new Member shall be entered into the Register of the Company.
13. In the event of rejection of the application by the General Meeting, the applicant may submit its application to arbitration as foreseen in *Clause 15*.

## Loss of User Status

### Clause 7

1. User status is lost if a User withdraws, is expelled, ceases its activities, is adjudicated bankrupt, makes any arrangement or composition with or concerning its creditors, or goes into liquidation for reasons other than reconstruction.

2. Any User may withdraw from the Company provided it gives three months notice in writing to the Board of Directors, except otherwise defined in Article 13 of the *Articles of Association*. The User shall not be permitted to make use of the services of the Company as from the effective resignation date.
3. A User may be expelled from the Company if, in the opinion of the Board of Directors, it does not observe the *General Terms and Conditions* or any undertaking towards the Company, commits any act of negligence which may be prejudicial to the interests of the Company or ceases to fulfil the eligibility criteria and conditions for admission set forth in these *General Terms and Conditions*, provided the Board of Directors has given that User the reasons underlying its decision in writing.
4. The User shall not be permitted to make use of the Company upon loss of its User status.

## Termination Procedure

### Clause 8

1. The User shall give the Company written notice of a change concerning its status in the Company, including but not limited to change in the ownership of its capital affecting its status in the Company, change in the legal or regulatory requirements material to its status in the Company, or change in its ability to comply with the eligibility criteria and conditions for admission.
2. The duly authorised representative of the National Member Group shall use its best endeavours to monitor the continued compliance by the Users with the eligibility criteria and conditions for admission. He shall notify the Company of any non-compliance and of any other change concerning the status of the Users in the Company.
3. Upon receiving a notice, the Company may require the User or the duly authorised representative of the National Member Group to furnish such additional information as the Company may consider material.
4. If the Company is not satisfied that the User continues to comply with the eligibility criteria and conditions for admission, or in the cases specified in *Article 13* (c) of the *Articles of Association* or *Clause 7* (3) of the *General Terms and Conditions*, the Company shall at its option suspend the User, expel it or impose conditions on the User's continued use of the services of the Company.
5. A User shall be suspended for the period of time specified in the notice served by the Company on the User. The suspended User shall not be permitted to use the services of the Company until such time as the Company notifies the User of the termination of the suspension.



6. A User shall be expelled from the Company by a special resolution of the Board of Directors, decided by a majority of votes. The decision of the Board of Directors, including the reasons underlying its decision, is notified in writing to the User and to the duly authorised representative of the National Member Group.
7. The User has the right to appeal against an expulsion decision within thirty days of the notification of such decision.
8. The decision of the Board of Directors shall take effect on the later of (i) the expiry of the thirty-day period after notification of the expulsion decision to the User and (ii) if timely appeal is lodged, the notification of the General Meeting decision referred to in *sub-clause 8.10* confirming the expulsion decision.
9. The Board of Directors shall within ninety days after receipt of the notice of appeal convene an extraordinary General Meeting at which the appeal shall be considered.
10. The User shall have the right to present its case in writing before the General Meeting and to be heard orally at the General Meeting. The General Meeting shall decide on the appeal in accordance with *Article 29* of the *Articles of Association*, provided that the appealed decision will be deemed confirmed unless a majority of the Members present and voting at the General Meeting overturns it. The decision of the General Meeting needs not be reasoned, unless the General Meeting decides otherwise.
11. The Board of Directors shall inform the User and the duly authorised representative of the National Member Group of the final decision of the General Meeting.

## Allocation of Shares

### Clause 9

The shares in the capital of the Company shall be proportional to the annual financial contribution paid to the Company by the Member for the network based services of the Company as determined from time to time by the Board of Directors in accordance with the *Articles of Association* and in accordance with the provisions set forth below:

1. Each new Member admitted to the Company shall initially be allocated one share.
2. Allocation of shares for all Members who are in live operation shall be determined at least every three years. Each Member shall be notified of its allocation in writing at least thirty days prior to the Annual General Meeting.
3. A Member having notified its decision to resign from membership shall not participate in any subsequent allocation of shares.
4. The annual financial contribution paid to the Company by a Sub-member for the network based services of the Company shall be added to the financial contribution of the Member concerned for the purpose of allocation of shares.

5. If a Member is an organisation as defined under the second paragraph of *Article 8* of the *Articles of Association*, its shares in the capital of the Company shall be allocated in proportion to the annual financial contribution paid to the Company by the eligible organisation.
6. Taxes, if any, resulting from allocation of shares shall be borne by the Member concerned.
7. No Member may own less than one share.

## **Entrance Fee**

### **Clause 10**

Organisations accepted as Users shall pay an entrance fee as determined by the Board of Directors.

## **Payment for Services**

### **Clause 11**

Users shall pay for usage of the services of the Company as set forth in the *User Handbook*.

## **Liability**

### **Clause 12**

The Company shall not be responsible for any loss or damage caused by failure to carry out, or delay of, messages resulting from technical failure, unless otherwise provided in the *User Handbook*, or force majeure. Force majeure shall include acts of authorities including P.T.T. authorities, strike or industrial dispute, political disturbance, catastrophes in nature, fire, war, epidemics and all other circumstances which prevent the Company against its will from carrying out its activities. Moreover, the Company shall not be responsible for any loss or damage caused by the performance of non-authorised transmission orders unless the prejudiced party proves that the Company could not reasonably assume the validity of those orders. The Company shall be entitled to make use of any reputable third party with regard to the transmission of messages, at the risk of the ordering User.

## Language

### Clause 13

The *Articles of Association* shall be published as required under Belgian Law. However, between the Users and the Company and between the Users themselves the English version of the *Articles of Association*, *General Terms and Conditions* and *User Handbook* shall be decisive in matters of interpretation of these documents.

## Board Members' Remuneration

### Clause 14

The Company shall not remunerate the Board of Directors. However, the Company shall pay all travel, hotel and other expenses properly incurred by the Directors for the purpose of attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or in connection with the business of the Company.

## Applicable Law and Arbitration

### Clause 15

All relations between the Company and each User shall be governed by Belgian Law.

Any dispute arising in connection with these *General Terms and Conditions*, failing amicable settlement, shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these rules.

Such proceedings shall be conducted in Brussels and in the English language.

## Modification

### Clause 16

Any resolution with respect to the modification of these *General Terms and Conditions* can only be enacted in a General Meeting at which at least three-quarters of the shares are represented in person or by proxy. Enactment of any such resolution requires at least a three quarters majority of the votes actually cast. If the quorum of any such General Meeting is not present or represented, a second General Meeting shall be called as soon as possible with at

least thirty days notice in writing to the Members by registered mail. The second General Meeting may decide without any quorum but with at least a three-quarters majority of the votes actually cast.

Any proposed modification of these *General Terms and Conditions* shall be mentioned in full in the notice to the Members.

The Board of Directors shall inform the Users in writing of any modification after any such General Meeting. Any modification shall be binding upon all Users.

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