

CLAIM CODE COMPLIANCE OVERVIEW 2021

Introduction

The foundation was established in October 2015 and is an interest organization within the meaning of article 3:305a Dutch Civil Code ('**DCC**'). Currently, the foundation has a management board ('**MB**') consisting of three members and a supervisory board ('**SB**'), also consisting of three members.

The foundation fully commits to the Claim Code that came into force on 1 July 2011 and was amended in March 2019 ('**Claim Code**'). The Claim Code is a private initiative that currently consists of seven principles ('**Principles**') that are broadly accepted general guidelines and views on the way interest organizations such as the foundation should represent collective interests. The Principles contain a set of standards for the founders, directors, supervisory board members, consultants, and advisors engaged by the interest organization. All in order to provide those who wish to join a 305a-initiative with guarantees that their interests are paramount.

With this underlying document, the MB provides a high-level explanation of the foundation's compliance to the Claim Code (in conformity with Principle I, elaboration 1 of the Claim Code).

Principle I: Compliance with the Claim Code

The governance structure of the foundation is in accordance with the principles of the Claim Code. Clause 3.3 of the articles of association of the foundation ('**Articles**') determines that the MB and SB together are responsible for the compliance of that governance.

The compliance of the foundation to the Claim Code is discussed annually within the (joint) MB and SB meeting. If the MB wishes to change the governance structure or to deviate from the Claim Code, it first needs to submit the proposed change for discussion to the SB as set out in clause 6.5 of the Articles.

This document is a document as set out in clause 6.4 of the Articles and elaboration 1 of Principle I of the Claim Code and will be published together with the Annual Report on the foundation's websites: www.derclaim.nl and www.stichtingcarclaim.com.

Principle II: Protecting collective interests on a non-profit basis

The foundation represents the interests of car owners, such as consumers and (leasing) companies, whose cars are equipped or have been equipped with hardware and/or software, with the intention of manipulating emission tests and/or because of which the legal emission standards are exceeded.

The Articles provide important safeguards, which prevent that any natural or legal person can – directly or indirectly – dispose the capital or income of the foundation (within the meaning of elaboration 1, Principle II of the Claim Code). For example, clause 7.1 of the Articles provides for a two-signature clause with regard to the external representation of the foundation by the MB. The risk of improper use of the foundation's funds is further excluded as the foundation does not generate revenues. Participants are not required to pay a registration fee. Further, legal advisors of the foundation receive their fees directly from the foundation's external funder (see Principle III below). This further reduces the risk of improper use of the foundation's resources by members of the MB and/or SB.

In conformity with elaboration 3 of Principle II of the Claim Code, clause 17.3 of the Articles determines that the MB shall, subject to approval from the SB and with due observance of the interests of the participants of the foundation, determine the appropriation of the surplus after dissolution. The appropriation will have to approach the objects of the foundation as closely as possible and shall be distributed to the participants or an organization within the meaning of Section 6.33 paragraph 1 section b of the Tax Act 2001. This, in conformity with the elaboration of principle III, further strengthens the non-profit character of the foundation.

Principle III: External funding

The foundation attracted third party litigation funding from Vannin Capital, a UK litigation funder. Vannin Capital was acquired by Fortress Investment Group LLC ('**Fortress**') in 2019. Fortress has its registered office in New York and was founded in 1998. Nowadays, Fortress is one of the largest and best-known litigation funders worldwide, with a formidable reputation. Before concluding the litigation funding agreements, the foundation did profound research into (first) Vannin and (later) Fortress with regard to capital, track-record and reputation.

Fortress is a member of the International Legal Finance Association (ILFA) and adheres to ILFA's *best practices*. These best practices has been put in place to protect parties who want to use third litigation funding.

The foundation's collective proceedings are funded by different operating entities, all falling under (now) Fortress. For the case against Volkswagen et al., the foundation entered into a funding agreement with Vannin Capital PCC, established in Jersey. For the other cases, the foundation entered into a funding agreement with CF ND Car Ltd, established in the Grand Cayman.

The MB, SB and affiliated parties are fully independent from the funders. This is *inter alia* secured through the funding agreement, which contains safeguards with regard to control and decisive power, confidentiality, early termination, and disclosure of funding terms to the court. The funding conditions also do not conflict with the collective interests within the meaning of the statutory objects of the foundation.

In return for the funding costs and the risk incurred, the Funder receives a premium of maximum 25% of any financial recovery achieved through a (collective) settlement or litigation (dependent on the duration of the procedure and the number of participants included in such resolution).

Elaboration of Principle III of the Claim Code provides that the funding agreement should *inter alia* contain (i) a provision that Dutch law is applicable and (ii) choice of competent jurisdiction for the Dutch court or a Dutch arbitral tribunal. The funding agreement with regard to the legal proceedings against Volkswagen et al. deviates from this elaboration, as this funding agreement was concluded before new principle III of the Claim Code (2019) was published. The foundation's funding agreements pertaining to all other legal proceedings are governed by Dutch law and contain a choice of jurisdiction for a Dutch arbitral tribunal.

Principle IV: Independency and avoiding conflict of interests

In accordance with elaboration 1 of Principle IV of the Claim Code, any apparent conflict between the foundation's MB, SB, the external funder and the engaged advisors should be avoided (see for instance clause 5.3, 8.14, 10.3 and 12.12 of the Articles). If a(n) (in)direct conflict of interest should exist, the relevant

member of the SB/MB will not take part in the deliberations and decision-making process (clause 8.14 (MB) and 12.12 (SB) of the Articles).

In accordance with elaboration 3 of Principle IV of the Claim Code, the Articles do not allow the MB to enter into agreements on behalf of the foundation, with a legal entity or natural person or other entities, whereby a MB or SB member – whether or not through a relationship within the meaning of elaboration 1 of Principle IV of the Claim Code – in the capacity of board member, founder, shareholder, supervisor, partner in a partnership or employee is involved.

Principle V: Governance of the MB

In conformity with Principle V of the Claim Code, the MB currently consists of three natural persons: Messrs. Fausto Pocar (former president of the International Criminal Tribunal for the former Yugoslavia (ICTY)), Guido van Woerkom (former president of the Royal Dutch Touring Club (ANWB) and Arie van der Steen (accountant and former CFO of a number of private companies).

With these members, the MB has sufficient legal and financial expertise (within the meaning of elaborations 3 and 4 of Principle V of the Claim Code) to successfully pursue the statutory objectives of the foundation.

Principle VI: Remuneration of the members of the MB

The members of the MB receive a management fee for their services to the foundation. For meetings of the MB or joint meetings with the supervisory board, members of the MB are compensated a remuneration of € 1,000 (excluding VAT) per day attended.

For additional services related to the activities of the foundation, members of the MB are entitled to a service fee of € 175 per hour excluding VAT. Given the experience of the MB members, this is a very modest hourly rate.

The total amount received by the members of the MB in 2021 amounts to € 26,654 (including VAT).

Principle VII: Governance of the SB

In conformity with Principle VII of the Claim Code, the SB currently consists of three natural persons: Messrs. Marten Oosting (former National Ombudsman, former member of the Council of State), Hans de Savornin Lohman (Attorney-at law with more than 25 years of litigation experience, as well as judge at the Court of Appeal in The Hague) and Jan Zielonka (professor of European Politics at Oxford University with his main areas of expertise in Comparative politics, Ethics, International Relations and Political Theory).

With these members, the SB has sufficient legal and financial expertise and experience (in accordance with elaborations 4 and 5 of Principle VII of the Claim Code) to successfully pursue the statutory objectives of the foundation.

The total amount received by the members of the SB in 2021 amounts to € 11,607 (including VAT), consisting of (i) reimbursement of reasonable expenses and (ii) so-called *vacatiegeld* for meetings of the

SB or joint meetings with the MB of € 1,000 (excluding VAT) per day attended.⁵

⁵ As per 2022, the remuneration for the Supervisory Board Members is € 1,250 (excluding VAT) per quarterly year.