

# Stichting Elco Foundation

## Claim Code Compliance Document

### 2017

#### INTRODUCTION

Stichting Elco Foundation (the “**Foundation**”) was established in 2016 and currently has a board (the “**Board**”) consisting of three directors. The supervisory board consists of three members (the “**Supervisory Board**”).

The Board is charged with the management of the Foundation and it requires prior written approval of the Supervisory Board for certain resolutions that may significantly impact the Foundation and/or its (endeavors to achieve its) objects.

The Foundation endorses the Claim Code that came into force on 1 July 2011 (the “**Claim Code**”). The Claim Code consists of six principles (the “**Principles**”) that are considered to be broadly accepted general guidelines and views on how claim foundations and associations should represent collective interests, including – but not limited to – litigation. The Principles create a set of standards for the founders, directors, supervisory boards and consultants and advisors engaged by the foundation or association.

#### PRINCIPLE I: COMPLIANCE WITH THE CLAIM CODE

The compliance of the Foundation to the Claim Code will be discussed annually in a joint meeting of the Board and the Supervisory Board. If and when the Board wishes to deviate from the Claim Code, it will need prior written approval of the Supervisory Board as set out in clause 7.1 articles of association of the Foundation (the “**Articles**”).

This document is a document as set out in clause 7.2 of the Articles and Elaboration 1 of Principle I of the Claim Code and will be published on the Foundation’s website: [www.elcofoundation.com](http://www.elcofoundation.com).

#### PRINCIPLE II: PROTECTING COLLECTIVE INTERESTS ON A NON-PROFIT BASIS

The Foundation acts as a non-profit entity in the collective interests of the parties suffering damage, having suffered damage or that may still suffer damage due to any acts or negligence/inaction (the ‘*Belanghebbenden*’ as defined in the Articles, hereinafter the “**Interested Parties**”) by the financial institutions identified in the Articles and defined therein as the ‘*Financiële Instellingen*’ (hereinafter the “**Financial Institutions**”), in connection with *inter alia* the manipulation of the JPY LIBOR, GBP LIBOR, CHF LIBOR, USD LIBOR, EURIBOR, TIBOR, SIBOR, SOR, BBSW and/or HIBOR benchmark rates, between 1 January 2001 and 30 June 2011.

The Foundation does not generate revenues by requiring Interested Parties to pay a registration fee. The risk of inappropriate use of such funds – for which the Claim Code provides important safeguards – is therefore absent.

The Foundation entered into an agreement with ELCO Investor Services, LLC (“EIS”) and has engaged EIS (i) to provide the funding to the Foundation and (ii) to render services to the Foundation including certain associated information activities and initiatives, aggregation and sharing of dedicated case documents, website operations, direct contact with Interested Parties, contract collection from Interested Parties, data collection from Interested Parties or respective custodians, loss calculation and loss certification of Interested Party losses and pay-out administration, and all tasks reasonably related thereto.

Elaboration II.2 of Claim Code provides that the Articles should also contain a provision that a liquidation surplus should be distributed amongst a claim foundation’s participants. Clause 27.5 of the Articles provides that if the Board adopts a resolution to dissolve the Foundation it will need to stipulate how any surplus on winding up is to be allocated; the surplus is to be spent on the parties who were a participant (as defined in clause 20 of the Articles) at the time the resolution was made. The resolution to dissolve the Foundation (including the allocation of a possible surplus) is subject to prior written approval of the Supervisory Board (clause 27.2 in conjunction with clause 26.1 Articles) and can (in principle) only be passed by a majority of two thirds of the votes cast at a board meeting at which at least two thirds of the Board members are present or represented (clause 27.2 in conjunction with clause 26.2 Articles).

### **PRINCIPLE III: COMPOSITION OF THE BOARD**

Elaboration III.1 of the Claim Code provides that the Board of the Foundation should consist of at least three individuals. Currently the board consists of three individuals: Messrs. Dick Bouma (former partner at Pels Rijcken & Droogleever Fortuijn and expert on class actions and settlements) Jos van Huut (former board member of Mazars) and Jop Rosenberg Polak (former partner at Salomons Van der Valk). Given the current composition of the Board it has adequate legal and financial expertise and experience.

The Board runs a website for the Foundation ([www.elcofoundation.com](http://www.elcofoundation.com)). On this website stakeholders have access to all relevant information, including – but not limited to – the following documents: (i) the Articles, (ii) this Claim Code Compliance Document, (iii) the résumés of the members of the Board and the Supervisory Board, and (iv) updates on any pending litigation.

### **PRINCIPLE IV: INDEPENDENCY OF THE FOUNDATION AND AVOIDING CONFLICTS OF INTERESTS**

In accordance with the Claim Code, any apparent conflict of interest between the Foundation’s engaged advisors, the Supervisory Board and the Board should be avoided. In all cases where there is a direct or indirect conflict of interest between the interests of the Foundation and the interests of one or more members of the Board or (as soon as applicable) the Supervisory Board, the individual with the conflict of interest will not take part in the deliberations and shall abstain from voting in respect of a the matter in which he has a conflict of interests (Clauses 13.1 and 18.2 Articles).

## **PRINCIPLE V: RENUMERATION OF THE MEMBERS OF THE BOARD**

Directors are entitled to a management fee for services rendered to the Foundation (Clause 6.7 Articles). All Board members have specific legal and financial expertise required for their task within the Foundation. Given the complex international setting of the benchmark rates matter, the exposure, and the specific requirement of legal and financial knowledge, the Foundation deems it justified to determine an hourly rate of EUR 300 (excluding VAT) for time spent by its Board members. The total remuneration paid to the board in 2017, inclusive of any VAT, was EUR 36,263.

## **PRINCIPLE VI: THE SUPERVISORY BOARD**

The Supervisory Board currently has three members: Messrs. Peter Broekveldt (legal expert: former partner at Van Doorne and deputy justice at the Arnhem Court of Appeal), Patrick van Gerwen (financial expert: owner of Cadension, a financial advisory firm, and *inter alia* the former Director Mutual Funds Netherlands of ING Group) and Wil Tonkens-Gerkema (legal expert: arbitrator and former judge (*inter alia*)). Mrs. Tonkens-Gerkema was appointed in December 2017, filling the vacancy left by Ms. Bregje Krijnen's resignation from the supervisory board in August 2017. Given the current composition of the Board it has adequate legal and financial expertise and experience. The total remuneration paid to the supervisory board in 2017, inclusive of any VAT, was EUR 10,285.