

# Stichting Elco Foundation

## Claim Code Compliance Document

### 2020

#### 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 as amended on 4 March 2019 (the "**Claim Code**"). The Claim Code consists of 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, 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.

Elaboration II.3 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: EXTERNAL FUNDING**

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 assist 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.

EIS has agreed to fund the appeal against the judgment of 9 December 2020.

The members of the management Board, members of the Supervisory Board, and the lawyers of the Foundation are all independent from EIS and its affiliates. The funding conditions do not conflict with the collective interests the Foundation aims to protect on the basis of its Articles. In return for the services rendered and the risks and costs assumed by EIS, it will receive a fee of 25% of any financial recovery achieved through a collective settlement or litigation.

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

In accordance with the Claim Code and the Articles, 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 the Supervisory Board, the individual with the conflict of interest will not take part in the deliberations and shall abstain from voting with respect to the matter in which he or she has a conflict of interest (Clauses 13.1 and 18.2 of the Articles).

The Articles do not explicitly prohibit the Foundation from entering into agreements with a legal entity in which a member of the Board or Supervisory Board acts as a director, founder, shareholder, partner, member of the Supervisory board and/or employee. The Foundation is currently not engaged in such an agreement. Since the Foundation has an adequate conflict of interest policy, the current governance of the Foundation provides sufficient safeguards in this respect and sufficiently complies with Elaboration IV.3 of the Claim Code.

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

Elaboration V.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 VI: 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 payable to the board in 2020, inclusive of any VAT, was EUR 20.416,60

#### **PRINCIPLE VII: THE SUPERVISORY BOARD**

Currently, the Supervisory Board consists of three members: Messrs. Patrick van Gerwen (financial expert: owner of Cadension, a financial advisory firm, and *inter alia* the former Director Mutual Funds Netherlands of ING Group), Wil Tonkens-Gerkema (legal expert: arbitrator and former judge (*inter alia*)) and Emma Kostense (legal expert: over 40 years of experience as an Attorney at law, currently at the law firm SmeetsGijbels). For his/her services and duties, each member of the Supervisory Board is entitled to an amount of EUR 3,000 per annum (excluding VAT). Any costs and/or out of pocket expenses incurred by the member of the Supervisory Board in rendering his/her services and duties can be charged separately to the Foundation. Given the current composition of the Supervisory Board, it has adequate legal and financial expertise and experience, in accordance with Elaboration VII of the Claim Code. The total remuneration payable to the Supervisory Board in 2020, inclusive of any VAT, was EUR 7.260.