

SE TR03

Transfer from the United Kingdom (UK) c
Societas Europaea (SE)

se

☒ **What this form is for**
You may use this form to transfer an
SE from the UK.

☐ **What this form is NOT for**
You cannot use this form for
any other information.

FRIDAY



A06 27/09/2019 #15
COMPANIES HOUSE

1 SE details

SE registered number S E 0 0 0 0 7 8

SE name in full ZEAL NETWORK SE

→ Filling in this form

Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2 Proposed new name

Please enter the proposed new name of the SE on transfer, if applicable.

Proposed new name
in full

Duplicate names

Duplicate names are not permitted.
A list of registered names can be
found on our website. There are
various rules that may affect your
choice of name. More information is
available at
www.companieshouse.gov.uk

3 Member state name and address of registry

Name of member state Germany

Address Amtsgericht Hamburg Mitte - Registergericht

Caffamacherreihe 20, Hamburg

Postcode 2 0 3 5 5

① Please enter the name of the
member state where the above
named SE is to transfer. Please also
enter the contact address of the
new registry.

4 Proposed registered office address

Building name/number 70

Street Valentinskamp

Post town Hamburg

County/Region

Postcode 2 0 3 5 5

Country Germany

SE TR03

Transfer from the United Kingdom (UK) of Societas Europaea (SE)

5 Principal business activity

Please show the trade classification code number(s) for the principal activity or activities. ①

Classification code 1	9	2	0	0	0
Classification code 2					
Classification code 3					
Classification code 4					

If you cannot determine a code, please give a brief description of your business activity below:

Principal activity description

① Principal business activity

You must provide a trade classification (Standard Industrial Classification 2007) code or a description of your SE's main business in this space.

A full list of the trade classification codes are available on our website: www.companieshouse.gov.uk

6 Documents attached

Please tick the boxes to confirm that all the following documents are attached to this form.

Document description

- ☒ Copy of the general meeting resolution approving the transfer of SE.
- ☒ Statement of Solvency form (SE SS01) required by Regulation 72 of The European Public Limited-Liability Company Regulations 2004.
- ☒ Report explaining and justifying the legal and economic aspects of the transfers and explaining the implications of the transfer for shareholders, creditors and employees in accordance with Article 8(3) of Council Regulation (EC) No 2157/2001.

7 Transfer report ②

Please give the date that the report was drawn up on.

Drawing up date 3 0 0 8 2 0 1 9

Please give the date that the general meeting was held and the transfer approved.

Meeting date 2 5 0 9 2 0 1 9

② Transfer report

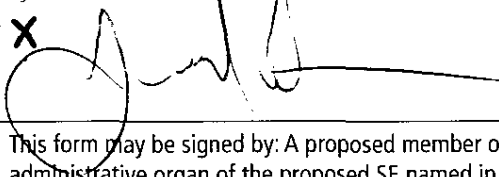
In accordance with Regulation 11(2)(f)(g) of the European Public Limited Liability Company Regulations 2004.

8 Statement of compliance

I am signing this form on behalf of the SE and confirm that all the requirements of these Regulations and the EC Regulations in respect of such formation, transformation or transfer (including as to registration) have been complied with.

Signature

Signature

X  X

This form may be signed by: A proposed member of the management or administrative organ of the proposed SE named in Part 1.

SE TR03

Transfer from the United Kingdom (UK) of Societas Europaea (SE)



Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Company name

K&L Gates LLP

Address

One New Change

Post town

London

County/Region

Postcode

E C 4 M 9 A F

Country

DX

Telephone



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ You have filed form SE TR01 in advance of this form.
- ☐ The SE name and number match the information held on the public Register.
- ☐ You have completed the proposed new name.
- ☐ You have given the member state name and address of the new registry.
- ☐ You have attached the appropriate supporting documents.
- ☐ Any address given must be a physical location. They cannot be a PO Box number (unless part of a full address), DX or LP (Legal Post in Scotland) number.
- ☐ You have completed the appropriate declarations.
- ☐ You have signed the form.
- ☐ ~~You have enclosed the correct fee.~~

No fee payable as confirmed by Steven Turvey



Important information

Please note that all information on this form will appear on the public record.



Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below:

For SEs registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For SEs registered in Scotland:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For SEs registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk

SE SS01

Statement of solvency by members of Societas Europaea (SE) which is propos transfer from the United Kingdom (UK)

✓ What this form is for

You may use this form to make a
statement of solvency by members
of the SE which is proposing to
transfer from the UK.

✗ What this form is N

You cannot use this f
any other statement.

1	SE details
SE number	S E 0 0 0 0 7 8
SE name in full	ZEAL NETWORK SE

→ **Filling in this form**
Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2	Proposed name of SE, if applicable
Proposed new name of SE in full ①	

① **Proposed new name**
Please enter proposed name, if
applicable.

3	Date of proposed transfer
Proposed transfer date	d1 d6 m1 m0 y2 y0 y1 y9

4	Declaration
----------	--------------------

We being all the members of the: ②

☐ administrative organ of the SE named above

☒ management organ of the SE named above and having been authorised to
make this statement by the supervisory organ;

make this statement in accordance with Regulation 72(6) of The European Public
Limited-Liability Company Regulations 2004, in order to satisfy the Secretary of
State as required by Article 8(7) of Council Regulation (EC) No 2157/2001 (the
"Regulation").

We have formed the opinion:

- As regards the above named SE's financial situation immediately following
the date (as given above) on which the transfer is proposed to be made,
that there will be no grounds on which the SE could then be found to be
unable to pay its debts;
- As regards the above named SE's prospects for the year immediately
following the date (as given above) on which the transfer is proposed
to be made, that, having regard to our intentions with respect to the
management of the SE's business during that year and to the amount and
character of the financial resources which will in our view be available to
the SE during that year, the SE will be able to carry on business as a going
concern (and will accordingly be able to pay its debts as they fall due
throughout that year); and
- In forming our opinion for the purposes of paragraph 1 above we
have taken into account the same liabilities (including prospective and
contingent liabilities) as would be relevant under section 122 of the
Insolvency Act 1986 (winding up by the court) to the question whether a
company is unable to pay its debts.



② Please tick the appropriate box.

SE SS01

Statement of solvency by members of Societas Europaea (SE) which is proposing to transfer from the United Kingdom (UK)

5

Signatures of all the members of the management or administrative organ of the SE named in Section 1 ①

Member's signature	Signature 	X
Member's signature	Signature 	X
Member's signature	Signature X	X
Member's signature	Signature X	X
Member's signature	Signature X	X
Member's signature	Signature X	X
Member's signature	Signature X	X
Member's signature	Signature X	X
Member's signature	Signature X	X

① All members of the management or supervisory organ of the SE must sign.

Continuation pages
Please use a continuation page if necessary.

SE SS01

Statement of solvency by members of Societas Europaea (SE) which is proposing to transfer from the United Kingdom (UK)

Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Company name **K&L Gates LLP**

Address **One New Change**

Post town **London**

County/Region

Postcode **E C 4 M 9 A F**

Country

DX

Telephone

Checklist

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Please make sure you have remembered the following:

- ☐ The SE name and number match the information held on the public Register.
- ☐ You have filed this form with an SE TR03.
- ☐ You have ticked the appropriate box and read the declaration.
- ☐ You have signed the form.

Important information

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DX 33050 Cardiff.

For SEs registered in Scotland:
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

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Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.

Further information

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Company no. SE000078

THE COMPANIES ACT 2006

SOCIETAS EUROPAEA REGISTERED IN ENGLAND AND WALES

ZEAL NETWORK SE

At a general meeting of ZEAL Network SE (the "**Company**") duly convened and held on 25 September 2019, the following resolution was duly passed as a special resolution.

SPECIAL RESOLUTION

THAT :

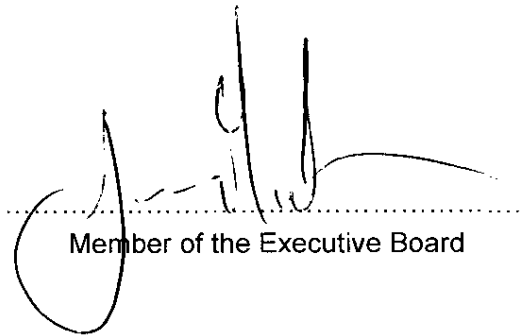
- (a) the Company's registered office shall be transferred from the United Kingdom to Germany, pursuant to Article 8 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (the "**Transfer**");
- (b) effective from the Transfer, the draft articles of association with the title "Articles of Association of ZEAL Network SE" submitted to the General Meeting and, for the purpose of identification, signed by the Chairman of the General Meeting (the "**New Articles**"), be approved and adopted as the statutes of the Company;
- (c) the Company's Executive Board shall be authorised to agree on a termination of the Custody Agreement with Clearstream Banking AG with effect as of the Transfer;

and that, effective from the Transfer and pursuant to German law,

- (d) the Company's Executive Board shall, subject to the consent of the Supervisory Board, be authorised to issue new shares with a nominal value of up to EUR 1,197,000 in accordance with the provisions in section 4(2) of the New Articles, including under disapplication of shareholders' pre-emption rights in certain cases, such authority to expire on 21 June 2021; and
- (e) the Company's Executive Board shall be authorised in relation to the 43,910 shares in the Company acquired pursuant to the authorisation of the General Meeting of 27 July 2018 (the "**2018 Treasury Shares**"):
 - (i) to sell any 2018 Treasury Shares (limited in any case to a number of 2018 Treasury Shares corresponding to 10 percent of the Company's total share capital), subject to the approval of the Supervisory Board, in

a manner other than via the stock exchange or by means of an offer to all shareholders against cash consideration, at a price not significantly lower (excluding transaction costs) than the price of the Company's shares as determined by the closing auction in XETRA trading (or a comparable successor system) on the Frankfurt Stock Exchange on the last trading day before the binding agreement on the sale;

- (ii) to transfer any 2018 Treasury Shares, subject to the approval of the Supervisory Board, to third parties, provided this is done for the purpose of acquiring companies, parts of companies, equity interests in companies, or other assets, or to effect business combinations;
- (iii) to distribute any 2018 Treasury Shares, subject to the approval of the Supervisory Board, to employees of the Company and affiliated companies, including managers at affiliated companies, and to utilise them for the fulfilment of rights or obligations to purchase shares in the Company that have been conferred or will be conferred to employees of the Company and affiliated companies, including managers at affiliated companies, in the scope of share-option and/or employee profit-sharing plans; and
- (iv) to cancel any 2018 Treasury Shares without a further resolution of the Company's shareholders, also without reducing the capital by adjusting the proportionate interest of the remaining no-par value shares in the total share capital of the Company, in which case the Company's Executive Board shall be authorised to amend the number of no-par value shares in the statutes of the Company.



Member of the Executive Board

TRANSFER REPORT

EXPLANATORY REPORT ON THE PROPOSAL TO TRANSFER THE REGISTERED OFFICE OF A SOCIETAS EUROPAEA

Transfer of the registered office of ZEAL Network SE
from the United Kingdom to Germany

30 August 2019

1. Background

- 1.1 This Transfer Report has been prepared by the Executive Board (the "**Board**") of ZEAL Network SE (the "**Company**") pursuant to Article 8(3) of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (the "**Regulations**"). The purpose of the Transfer Report is to explain and justify the legal and economic aspects of the proposed transfer of the Company's registered office from the United Kingdom ("**UK**") to Germany (the "**Transfer**") and to explain the implications of the Transfer on the Company's shareholders, creditors and employees.
- 1.2 The name of the Company is currently "ZEAL Network SE" and the company is currently registered in the United Kingdom with registered number SE000078. The registered office of the Company is currently 5th Floor, One New Change, London EC4M 9AF.
- 1.3 The Transfer will become effective when the Local Court (*Amtsgericht*) of Hamburg, Germany ("**German Court**") incorporates details about the Transfer into the Commercial Register (*Handelsregister*) of Hamburg (the "**Registration**").
- 1.4 After the Registration, the German Court will submit information about the Transfer for publication on the Common Register Portal of the German States (*Gemeinsames Registerportal der Länder*). Third parties will be bound by the Transfer with effect from such publication. Information about the Transfer will also be submitted for publication in the Official Journal of the European Union.

2. Legal aspects of the Transfer

2.1 Justification for the Transfer

On 14 May 2019, the Company completed a voluntary takeover to acquire all the issued shares of Lotto24 AG, Hamburg, Germany ("**Lotto24**", resulting in a shareholding by the Company in Lotto24 of ca. 93% (the "**Offer**"). The Company had already announced its intention in November 2018 to relocate to Germany, subject to the completion of the Offer. The Executive Board and the Supervisory Board of the Company (the "**Directors**") believe that, now that the Offer is completed, it will be in the best interests of the Company and its shareholders (the "**Shareholders**") as a whole to transfer the registered office of the Company to Germany. The transfer will, in the opinion of the Directors, in particular benefit the integration of the businesses of the Company and Lotto24 and therefore the success of the intended business model change of the Company's currently independently managed UK associated companies, myLotto24 Limited and Tipp24 Services Limited, from a secondary lottery model to a locally-licensed brokerage model.

2.2 Applicable laws

Subject to the provisions of the Regulations, an SE is treated as if it were a public limited liability company established in accordance with the law of the Member State in which it has its registered office. Accordingly, the Company is currently governed by English company law, but following the Transfer it will be governed by German law and will be treated as an SE established in accordance with German law. A summary of the main differences between English and German company law as it affects the Company is set out in the Schedule to this Transfer Report.

2.3 Transfer Proposal

The Directors have prepared a Transfer Proposal pursuant to Article 8(2) of the Regulations (the "**Transfer Proposal**"). The Transfer Proposal was received by the Registrar of Companies for England & Wales (the "**UK Registrar**") on 4 July 2019 and notice of the UK Registrar's receipt of the Transfer Proposal was published in the London Gazette on 23 July 2019.

3. Economic aspects of the Transfer

As noted in paragraph 1.5 above, the Transfer is expected to benefit in particular the integration of the businesses of the Company and Lotto24 and therefore the success of the intended business model change of the Company's currently independently managed UK associated companies, myLotto24 Limited and Tipp24 Services Limited, from a secondary lottery model to a locally-licensed brokerage model. The integration of the businesses of the Company and Lotto24 is furthermore expected to deliver significant cost synergies, which will be facilitated by a physical integration of both Companies' offices.

4. Implications of the Transfer for Shareholders

Following the Transfer, the Company will be subject to the laws of Germany and will be treated in the same way as an SE established under the laws of Germany. Company law in Germany differs from company law in England and Wales and a comparison of the laws of the two jurisdictions is set out in the Schedule to this Transfer Report.

The Company's shares will remain to be admitted to trading only on the regulated market (Prime Standard) of the Frankfurt Stock Exchange.

Shareholders should consult their own tax advisers for advice in respect of any tax consequences for them as a result of the Transfer.

5. Implications of the Transfer for employees

5.1 The rights of the Group's employees and the terms of their employment will not be affected by the Transfer and their existing terms of employment will continue in full force and effect.

5.2 The Company currently has nine employees. With effect from the date on which the Company is registered by the German Court (the "Effective Date"), the German subsidiary provisions on employees' involvement will apply to the Company's employees. The Company will continue to not be subject to any employee co-determination or participation. The transfer of the registered office is neither a structural change nor will it lead to a reduction of the participation rights of employees. Therefore, there is no requirement to resume negotiations on the involvement of employees between the Company and the special negotiating body. There was also no agreement made between the Company and the special negotiating body which would require the resumption of negotiations on the occasion of the transfer of the Company's registered office. Finally, Article 12(2) SE Regulation does not impose an obligation to commence negotiations on the occasion of the intended transfer of the registered office, as this provision is only relevant for the formation of a European Company (societas europaea).

6. Implications of the Transfer for creditors

6.1 The Transfer is not expected to have any effect on the Company's creditors although the Company will be governed by German law, rather than the laws of England and Wales, following completion of the Transfer and therefore, for example, German insolvency law and procedure will apply to the Company.

6.2 In order to protect the interest of its creditors, the Company:

- (a) has notified its creditors of the Transfer by depositing a copy of the Transfer Proposal with the UK Registrar. As noted above, the UK Registrar placed a notice of receipt of the Transfer Proposal in the London Gazette on 23 July 2019, in accordance with Regulation 68(1) of the European Public Limited-Liability Company Regulations 2004 (SI 2326/2004) (the "ECR"); and
- (b) intends to make a statement of solvency in accordance with Regulation 72(1) of the ECR. Pursuant to Regulations 72(3) and 72(6) of the ECR the statement of solvency will be made by each member of the managing organ of the Company.

SCHEDULE

Comparison between English and German Company Law

The Company is a European Public Limited-Liability Company incorporated and registered in England & Wales, whose country of origin is the United Kingdom. It is governed by the Companies Act 2006 (the "Act").

Subject to the provisions of the Regulations, an SE is treated as if it were a public limited liability company established in accordance with the law of the Member State in which it has its registered office. Accordingly, the Company is currently governed by English company law, but following the Transfer it will be governed by German company law.

Whilst the rights and privileges of shareholders of an SE incorporated in England and Wales are substantially comparable to those of shareholders in an SE incorporated in Germany, there are certain distinctions arising from differences between English and German company law.

The following is a comparison of certain significant differences between English and German company law as at the date of this document and the respective constitutions of the Company before and after the Transfer. The summary is not intended to address all differences between English and German company law and is qualified in its entirety by reference to the Act in respect of English law, and the German Stock Corporation Act (*Aktiengesetz*) in connection with the German SE Implementation Act (*SE-Ausführungsgesetz*) in respect of German law, and to the statutes of the Company prior to and following the Transfer.

English Law

German Law

Share Capital

Common Shares: The share capital of the Company amounts to EUR 8,385,088 and consists of 8,385,088 registered Shares of a nominal value of EUR 1.00 each. The Company holds 43,910 Shares in treasury.

Pursuant to statute 14, subject to the provisions of the Companies Act, the statutes and to any resolution of the Company, and without prejudice to any rights attached to any existing shares, the Executive Board may, with and subject to the approval of the Supervisory Board in each case and subject to any necessary authority and/or power being conferred on the Executive Board by resolution of the Company in general meeting, offer, allot (with or without conferring a right of renunciation), grant options over or otherwise deal with or dispose of any shares to such persons, at such times, for such consideration and upon such terms as the Executive Board may decide provided always that no share shall be issued at a discount to its nominal value.

In advance of a general meeting proposing to authorise the directors to allot shares, a company will be required to publish a circular to shareholders, including a statement of the maximum number of shares which can be allotted and the date on which the authority expires. Such resolutions will be contained in the notice of the general meeting prepared by the company to convene the meeting.

A company may not, without the approval of shareholders, allot equity securities for cash unless it also makes an offer to all existing shareholders of the company on the same or more favourable terms as those offered to the public. Breach of this provision renders the company, and every officer who knowingly authorised or permitted the breach, jointly and severally liable to compensate any person to whom the offer

Common Shares: The share capital (*Grundkapital*) of the Company will remain unchanged at EUR 22,396,070 and will consist of 22,396,070 no-par value registered shares, 43,910 of which the Company will continue to hold in treasury.

Under German law, the Company requires a shareholders' meeting resolution passed by a majority of at least 75% of the share capital represented at the vote to increase its share capital. However, the articles of association can provide – as the New Articles do – that, instead of the 75% majority of the share capital represented at the vote, a simple majority of the share capital represented at the vote suffices to increase the share capital.

The Shareholders' meeting can also create an authorised capital. This requires a resolution passed by a majority of at least 75% of the share capital represented at the vote, authorising the Executive Board to issue a specific quantity of shares within a period not exceeding five years. The nominal amount may not exceed 50% of the share capital existing at the time the authorisation is granted.

In principle, the German Stock Corporation Act (*Aktiengesetz*) grants all Shareholders the right to subscribe for new shares to be issued in a capital increase. The same applies to convertible bonds, bonds with warrants, profit participation rights and participating bonds. Subscription rights are freely transferable and may be traded on German stock exchanges for a prescribed period before the deadline for subscription expires.

However, Shareholders do not have a right to request admission to trading of subscription rights. The Shareholders' meeting may, subject to a majority of at least

should have been made for losses suffered as a result of the breach. Proceedings to recover such losses must be brought within two years of (i) the delivery to the registrar of companies of the return of allotment or (ii) where equity securities apart from shares are granted, from the date of grant.

Where non-cash consideration is to be received by a public company on the allotment of shares, the consideration must have been individually valued and the valuers' report must have been made to the company during the six months' before allotment and sent to the proposed allottee. An exception is available where the non-cash consideration comprises all or part of the share capital of another body corporate, as is the case with regard to the Offer.

As described in *Pre-Emption Rights* below, a public company may disapply the operation of these statutory pre-emption provisions, by special resolution of the shareholders. Such disapplication must be limited in time to the length of the directors' corresponding authority to allot shares (for cash or otherwise).

On 22 June 2016, the general meeting authorised the Executive Board of the Company, subject to the consent of the Supervisory Board, to allot Shares with a nominal value of up to EUR 1,197,000 on one or more occasions, in whole or in part, in return for cash or contribution in kind, such authority to expire on 21 June 2021.

75% of the share capital represented at the vote, resolve to exclude subscription rights. Disapplication of Shareholders' pre-emption rights, wholly or in part, also requires a written report from the Executive Board, justifying the disapplication to the shareholders' meeting; the report must substantiate the proposed issuing price. Excluding Disapplication of Shareholders' pre-emption rights when new shares are issued is specifically permissible where:

- the Company is increasing share capital against cash contributions;
- the amount of the capital increase of the issued Shares under disapplication of pre-emption rights does not exceed 10% of the share capital at issue, neither at the time when the authorisation takes effect nor at the time when it is granted; and
- the price at which the new Shares are being issued is not materially lower than the stock exchange price.

In addition, the Shareholders' meeting can create contingent capital by a resolution passed with a majority of at least 75% of the share capital represented at the vote for the purposes of: (i) granting conversion or subscription rights to holders of convertible bonds or other securities granting a right to subscribe for shares; (ii) issuing Shares as consideration to prepare for a merger with other companies; or (iii) granting subscription rights to managers and employees of the Company or an affiliated company by way of an approval resolution or authorisation resolution. The nominal amount of contingent capital may not exceed 10% of the share capital at the time the resolution is passed in cases where it is being created to issue shares to managers and employees of the Company or an affiliated company, and may not exceed 50% in all other cases. The New Articles do not provide for contingent capital.

Resolutions to reduce the share capital require a 75% majority of the share capital represented at the vote.

Authorised Capital. Subject to the Supervisory Board's approval, the Executive Board may, pursuant to the New Articles, increase the Company's share capital until 21 June 2021 by issuing up to 1,197,000 new Shares in exchange for cash or payment in kind. The Executive Board may, under certain conditions and with the consent of the Supervisory Board, disapply Shareholders' pre-emption rights in connection with any such issuance. This authority is comparable to the current authority of the Executive Board to allot shares.

Purchase of own shares

The Company may only purchase its own shares in accordance with the provisions of the Companies Act, which require the consent of the shareholders as well as the specification of a maximum number of shares authorised to be acquired, the determination of both the maximum and minimum prices that may be paid

Under German law, the Company may acquire own shares, among others, on the basis of an authorisation by the general meeting of Shareholders setting forth the lowest and the highest price for the Shares, so long as it acquires no more than 10% of its issued shares. Such authorisation can be granted for a period of up to

for the shares as well as the specification of a date on which it is to expire, which must not be later than five years after the date on which the resolution is passed.

five years. The purpose of the acquisition of own Shares may not be the trading in own Shares.

Dividends/Distributions

Dividends may only be paid out of a company's distributable profits available for this purpose and may only be paid if the amount of the company's net assets is not less than the aggregate of its called-up share capital and undistributable reserves.

Under German law, dividends may only be paid out of a company's distributable profits as determined by a resolution of the Shareholders at the general meeting of Shareholders for the preceding fiscal year.

Annual Meeting of Shareholders

The Company is required to give notice of a resolution if requested to do so by (i) one or more Shareholders representing at least 5% of the total voting rights of all Shareholders who having a right to vote on such resolution at the annual general meeting or (ii) at least 100 Shareholders which have a right to vote on such resolution and hold shares on which there has been paid up an average sum, per Shareholder, of at least GBP 100.

Under German law, an annual meeting of Shareholders is held to exonerate (*entlasten*) the Company's Executive Board and Supervisory Board. The annual Shareholders' meeting also resolves on the use of the Company's distributable profits and elects the members of the Supervisory Board upon expiration of their office. The meeting is convened by the Executive Board.

The Company is required to include in the business to be dealt with at an annual general meeting any matter which may be properly included in the business if requested to do so by (i) one or more Shareholders representing at least 5% of the total voting rights of all Shareholders who having a right to vote on such resolution at that meeting or (ii) at least 100 Shareholders which have a right to vote on such resolution and hold Shares on which there has been paid up an average sum, per shareholder, of at least GBP 100.

To the extent that no shorter period is admissible by law, the convening of the shareholders' meeting must be published in the German Federal Gazette (*Bundesanzeiger*) no less than 30 days prior to the conclusion of the date by which Shareholders are required to register to attend the meeting (no less than six days prior to the Shareholders' meeting). The date on which the convening notice was published is not included in this 30-day period. This does not exclude any other forms of convocation permitted by law.

Shareholders meetings are called by the Directors or by the holders of Shares representing at least 5% of the ordinary share capital of the Company.

A Shareholders' meeting may also be called if Shareholders, whose holding in the aggregate equals or exceeds 5% of the share capital, demand such meeting in writing, stating the purpose of and reasons for such meeting.

Under English law, shareholders of a public company must be given at least 21 clear days' notice of an annual general meeting and at least 14 clear days' notice of any other general meetings.

Voting Rights – General

Each ordinary share confers on each Shareholder the right to receive notice of and to attend, speak and vote at all general meetings of the company. Each ordinary Share carries the right to one vote on a poll unless a vote shall be decided on a show of hands. In the Company's practice, voting takes place by means of a poll according to a demand of the chairman of the meeting. The right to vote is determined by reference to the register of members, respectively the CI Register, at a time specified in the notice of general meeting, being not more than 48 hours (disregarding non-working days) before the general meeting in question.

Under German law, the right to participate in and vote at the Shareholders' meeting is extended to all shareholders having registered in due time whose Shares are registered in the share register. Each no-par value Share entitles the holder to cast one vote at a Shareholders' meeting.

Ordinary resolutions at a general meeting will be adopted if passed by a simple majority of the votes cast and special resolutions will require at least 75% of the votes cast at a general meeting. Voting rights may be exercised by proxy.

Unless mandatory rules of the German Stock Corporation Act provide to the contrary, resolutions of the shareholders' meeting are adopted with a simple majority of the votes cast. Voting rights may be exercised by proxy.

Quorums

A general meeting of Shareholders is quorate if two qualifying persons, being a Shareholder, a person authorised to act as the representative of a corporation in relation to the meeting or a person appointed as proxy of a Shareholder at the meeting, are present. However, the general meeting is not quorate if there are only two qualifying persons and they are (i) representatives of the same corporation or (ii) proxies of the same member.

Neither German law nor the New Articles have any minimum quorum requirement applicable to Shareholders meetings.

Approval of Extraordinary Transactions

Under English law, shareholder resolutions require the approval of either (i) a simple majority of the votes cast or (ii) a majority of not less than 75% of the votes cast. Matters requiring the approval of not less than 75% of the votes cast by those entitled to vote include in particular resolutions to:

- amend the statutes;
- re-registering the Company as a private company;
- dis-applying shareholders' pre-emption rights; and
- reducing the Company's share capital, share premium account, capital redemption reserve or redenomination reserve.

In addition,

- arrangements under which a company buys or sells a substantial non-cash asset from or to a Director or a person connected to a Director; or
- loans and related guarantees or security made by a company for a Director

generally require shareholder approval by a simple majority of votes cast.

According to German law, certain resolutions of fundamental importance require a majority of at least 75% of the votes cast.

Such resolutions include in particular:

- capital increases, including the exclusion of the shareholders' subscription rights;
- measures according to the German Act on Corporate Transformations (*Umwandlungsgesetz*);
- entering into a domination and/or profit and loss transfer agreement;
- approval of management measures to which the Supervisory Board denied its approval;
- dissolution of the Company; and
- asset disposals which may jeopardise the Company's business objectives.

Shareholders Rights to Requisition a General Meeting

One or more Shareholders representing at least 5% of the paid-up share capital of the Company as carries the right of voting at general meetings may require the Directors to call a general meeting of the Company. The request (i) must state the general nature of the business to be dealt with at the meeting, (ii) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting, (iii) may be in hard copy or electronic form and (iv) must be authenticated by the person or persons making it.

See also *Annual General Meeting* above in respect of rights of shareholders to request that an item is put on the agenda of, or that a resolution is proposed at, an annual general meeting.

Additionally, (i) one or more Shareholders representing at least 5% of the total voting rights of all members with a relevant right to vote or (ii) at least 100 Shareholders which have a relevant right to vote and hold shares on which there has been paid up an aver-

One or more Shareholders holding shares representing an aggregate of at least 5% of the issued share capital of the Company are entitled to request a general shareholders' meeting be called. Shareholders holding ordinary shares representing an aggregate of at least 5% of the issued share capital or holding shares in an aggregate nominal amount of at least EUR 500,000 are entitled to require that a matter be placed on the agenda of the general shareholders' meeting for resolution. The requests must be made in writing stating the purpose and the reasons for the request and must be addressed to the Executive Board. A proper request will be published together with the notice of the shareholders' meeting and the agenda in the German Federal Gazette (*Bundesanzeiger*), or, if a request was made after the publication of the notice and agenda, will be published without undue delay.

Additionally, each shareholder may submit, at or prior to the shareholders' meeting, counter proposals to the proposals submitted by the Executive Board and the Supervisory Board. Under certain circumstances, such

age sum, per member, of at least GBP 100, are entitled to request that the Company circulates to Shareholders a statement of not more than 1000 words relating to a proposed resolution or business to be dealt with at a general meeting.

counter proposals must be published in the German Federal Gazette prior to such shareholders' meeting.

Pre-emption Rights

Similar pre-emption rights apply under English law. A public company may disapply the operation of these statutory pre-emption provisions, by special resolution of the shareholders. Such disapplication must be limited in time to the length of the directors' general authority to allot shares (for cash or otherwise).

Pre-emption rights can be disapplied if at least 75% of the votes cast at a general meeting are in favour of their disapplication.

Under the German Stock Corporation Act, an existing shareholder in a stock corporation has a preferential right to subscribe for issues of new shares in proportion to the number of shares such shareholder holds in the corporation's existing share capital (pre-emption rights or subscription rights; *Bezugsrechte*). The German Stock Corporation Act allows companies to exclude this preferential subscription right in limited circumstances and only if so provided in the same shareholder resolution that authorises the accompanying capital increase or share issuance. At least 75% of the share capital represented at the meeting must vote to authorise the exclusion of subscription rights. The exclusion of subscription rights requires the Management Board to report on the reasons for the exclusion to the shareholders in writing prior to approval by the shareholders.

Shareholder Suits

In certain circumstances shareholders may bring an action against a director on behalf of the company. This is not a right for shareholders to recover damages themselves – it is a right to pursue an action on behalf of the company where the company has suffered or may suffer from a director's negligence or breach. Any financial benefit from the litigation would go to the company, not directly to the shareholders conducting it.

Claims may be brought in respect of any actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director. A claim can be brought by any shareholder (even if they were not a shareholder at the time the actions complained of took place); and there is no need for a particular number of members, nor a percentage threshold of shareholding, to launch a claim.

There is no need to demonstrate any actual loss suffered by the company, or any benefit gained by the directors, before commencing a claim.

Permission to bring a claim must be granted by the court. A court must refuse permission to carry out a claim where it considers that a person acting in accordance with the duty to promote the success of the company would not seek to continue the claim, or where the act or omission has been authorised or subsequently ratified by the company.

The Companies Act affords protection to minority shareholders by giving shareholders the right to petition the court for relief if the affairs of the company are being conducted in a manner that is unfairly pre-

judicial. In particular each shareholder who was present at the general meeting of the shareholders and has objected to individual resolutions or all of the resolutions in the minutes may, within one month after adoption of the resolutions by the shareholders' meeting, take action against the Company to contest such resolutions (*Anfechtungsklage*).

However, German law does not provide for class actions and does not generally permit shareholder derivative suits, even in the case of a breach of duty by the members of the Executive Board or the Supervisory Board. Company claims for compensatory damages against members of the Executive Board or the Supervisory Board may, as a rule, only be asserted by the Company itself, in which case the Company is represented by the Supervisory Board when claims are made against members of the Executive Board and by the Executive Board when claims are made against members of the Supervisory Board.

According to a ruling by the German Federal Court of Justice (*Bundesgerichtshof*), the Supervisory Board is obligated to assert claims for compensatory damages against the Executive Board that are likely to be successful, unless important company interests would conflict with such an assertion of claims and such grounds outweigh, or are at least comparable to, the grounds in favour of asserting claims. In the event that the relevant entity with powers of representation decides not to pursue such claims, then such claims of the Company for compensatory damages must nevertheless be asserted against members of the Executive Board or the Supervisory Board if the general share-

dicial to the interests of shareholders generally or to the interests of certain shareholders. The unfairly prejudicial conduct must be in respect of the company's affairs and must relate to the shareholders' interest as members of the company.

holders' meeting passes a resolution to this effect by a simple majority vote. Any claims for damages must be brought within six months from the date of the shareholders' meeting. The shareholders' meeting may appoint a special representative to assert a claim for damages. The court will, upon petition by shareholders whose aggregate holdings amount to at least 10% of the share capital or a portion of the share capital of EUR 1,000,000, appoint persons other than those appointed to represent the Company to assert the claim for damages, if in the opinion of the court such appointment is appropriate for the proper assertion of such claim.

Additionally, Shareholders whose aggregate holdings amount to at least 1% of the share capital or EUR 100,000 are entitled to request admission to file a claim for damages on behalf of the Company. The court will admit the claim if:

- the Shareholders exercising the right to file a claim for damages establish that (1) they have acquired the shares prior to the alleged breach of duty; and (2) they have demanded, to no avail, that the Company file the claim within a reasonable period of time;
- facts have been presented that justify a suspicion that the Company has been damaged by improprieties or serious breaches of the law or the articles of association; and
- no overriding interests of the Company prevent the enforcement of the compensation claim.

Rights of Inspection

Under the current statutes, the Shareholders have no right to inspect the accounts and records of the Company, except as provided by law, ordered by court or authorised by the Executive Board. The Company is required under the Act as well as under the Disclosure and Transparency Rules to publish annual and interim accounts and to comply with certain disclosure and filings requirements. The annual accounts of the Company must be laid before Shareholders at annual general meetings.

Under the Act, Shareholders have the right to inspect the Company's statutory registers, copies of Directors' service contracts and minutes of general meetings.

Under the Act, the Company is required to make statutory filings of certain information with the registrar of companies, including its statutes, annual accounts, special resolutions adopted at general meetings and notices relating to changes in share capital and its Directors.

German law does not permit Shareholders to inspect corporate books and records. However, Section 131 AktG provides each Shareholder with a right to information at the general meeting of the Shareholders, to the extent that such information is necessary to permit a proper evaluation of the relevant item on the agenda.

The right to information is a right only to oral information at a general meeting of the Shareholders. Information may be given in writing to Shareholders, but they are neither entitled to receive written information nor to inspect any documents of the Company. As a practical matter, Shareholders may receive certain written information about the Company through its public filings with the commercial register (*Handelsregister*), the company register (*Unternehmensregister*) and the German Federal Gazette and other places where documents of the Company are made publicly available.

Location of Shareholder Meetings

There is no requirement as to the location of shareholder meetings in the current statutes or under English law.

Pursuant to the New Articles, the general meeting of Shareholders shall be held at the Company's registered office, at the place of a German stock exchange where the Company's shares are admitted to trading on a

regulated market, or in a German city with a population of more than 250,000, at the discretion of the convening body.

Obligations to Notify Interests in Shares

An interest in shares must be notified to a company having shares admitted to trading on a regulated market (such as the Company) if the percentage of voting rights held by or attributed to a person exceeds, reaches or falls below 3% or any further whole percentage point of the total voting rights of a company (disregarding treasury shares).

According to German law, an interest in shares must be notified to a company having shares admitted to trading on a regulated market (such as the Company) as well as to the German Federal Financial Supervisory Authority (*BaFin*) if the percentage of voting rights held by or attributed to a person exceeds, reaches or falls below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the total voting rights of a company (including treasury shares).

Compulsory Acquisition/Squeeze-out

An offeror who acquires 90% or more of the shares of a public company to which the offer relates may, subject to compliance with the relevant provisions of the Act, become entitled to acquire the remaining outstanding shares. In such circumstances a shareholder may also require the offeror to acquire their shares under the terms of the offer.

Under German law, if, after completion of a public offer, the bidder holds at least 95% of the voting share capital of a public company, it may, within three months after the end of the offer period, file an application with the competent court for the transfer of the company's shares held by the remaining shareholders to the bidder against payment of an appropriate compensation.

Furthermore, if a shareholder holds at least 90% of the voting rights of a German public company, it can resolve at the general meeting of the company to transfer the shares held by the remaining shareholders to the shareholder in exchange for an appropriate cash compensation in connection with a merger with the bidder.

If a shareholder holds at least 95% of the shares of a company, it may resolve at the general meeting of the company to transfer the shares held by the remaining shareholders to the shareholder against payment of an appropriate cash compensation.

Mandatory Takeover Offer

Under the Code, an offer to acquire all shares of a public company for a cash compensation must be made (unless a waiver of that obligation is granted) where a person together with any parties acting in concert with that person (i) acquires interests in shares of that company which carry 30% or more of the voting rights of a company or (ii) holds 30% or more (but less than 50%) of the voting rights of a company and acquires any further interests in shares of that company.

Pursuant to German law, there is a similar offer obligation for any person reaching 30% or more of the voting rights of a company, while the shareholders cannot resolve to waive such obligation. However, any additional acquisitions of interests in shares of the company by the same shareholder do not trigger further offer obligations.