FORTIS SETTLEMENT DISPUTE COMMITTEE
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BINDING ADVICE

under Articles 7:900 *et seq*. of the Dutch Civil Code

in accordance with Clause 4.3.5 of the Settlement Agreement

in the dispute between

Mr [redacted]

Represented by Mr Lievin De Wulf

the "***Claimant***"

AND

Computershare Investor Services PLC
Fortis Settlement Claims Administrator

Represented by Mr Stan Putter and Ms Lilian Meinen

hereafter referred to as "***Computershare***"

together referred to as the "***Parties***"

The Dispute Committee:

Mr Harman Korte
Mr Dirk Smets
Mr Jean-François Tossens

15 JULY 2021

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I. INTRODUCTION

A. The Parties

1. The Claimant in this dispute is Mr [redacted], with domicile at [redacted], Belgium. For the purpose of this dispute, the Claimant is represented by his counsel Mr Lievin De Wulf.

2. Computershare Investor Services PLC is a company incorporated under the laws of the United Kingdom, acting as Fortis Settlement Claims Administrator and, in that capacity, having its registered office at PO Box 82 The Pavilions, Bridgwater Road, Bristol BS99 7NH, United Kingdom (***Computershare***)[1]. For the purpose of this dispute, Computershare is represented by its counsel Mr Stan Putter and Ms Lilian Meinen.

B. Composition of the Dispute Committee

3. The Dispute Committee is composed of five members[2]. In accordance with Article 3.1 of its Regulations, "*Each matter coming before the Dispute Committee shall be decided by a panel of three members*"[3].

4. For the purpose of this particular dispute, the three members composing the panel are: Mr Harman Korte, Mr Dirk Smets and Mr Jean-François Tossens (Chairman).

C. Historical context and procedural background of the Dispute

C.1 The Events

5. Between 2007 and 2008, Fortis N.V. (after 30 April 2010, Ageas N.V.), a company incorporated under the laws of The Netherlands and Fortis S.A./N.V. (after 30 April 2010, Ageas S.A./N.V.), a company incorporated under the laws of Belgium (the ***Fortis Group*** or ***Ageas***) engaged in certain activities which, following certain allegations, would have violated Belgian and Dutch laws and regulations (the ***Events***).

6. As a result of these allegations, a number of civil claims and legal proceedings were initiated both in The Netherlands and in Belgium, among others, by the Dutch Investors' Association

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[1] Computershare has been appointed, pursuant to Clause 4.2 of the Settlement Agreement, as an independent claims administrator to handle the claims process.

[2] The Dispute Committee is composed of the following members: Ms Henriëtte Bast (as from 30 April 2021), Mr Harman Korte (as from the origin), Ms Alexandra Schluep (as from 30 April 2021), Mr Dirk Smets (as from the origin) and Mr Jean-François Tossens (as from the origin). Mr Marc Loth was also a member of the Dispute Committee as from the origin and until 18 November 2020.

[3] "*3.1 The Dispute Committee shall consist of three or more independent members, appointed by the Foundation. Each matter coming before the Dispute Committee shall be decided by a panel of three members. If the Dispute Committee is composed of more than three members, they shall decide which three of them sit in any particular matter* […]".

(VEB)[4], SICAF[5] and FortisEffect[6] (all in The Netherlands), and by Deminor[7] and a group of investors advised and coordinated by Deminor (in Belgium).

C.2 The Mediation Process

7. On 8 October 2015, a mediation process, based on a mediation agreement, was initiated between the aforementioned plaintiffs, Ageas and Stichting FORsettlement[8] (***FORsettlement***).

8. It stemmed out of that mediation process that, without admitting that it would have been or is engaged in any wrongdoing, that any laws, rules or regulations would have been violated or that any person who held any shares in the Fortis Group in 2007 or 2008 would have suffered any compensable damage, Ageas was willing to settle all claims which any person who held any share in the Fortis Group at any time between 28 February 2007 c.o.b.[9] and 14 October 2008 c.o.b. (the ***Eligible Shareholders***) has had, now has or may have in the future against Ageas in connection with the Events.

C.3 The Settlement Agreement[10]

9. The above agreement has since then been embedded in a formal settlement on 13 April 2018 between Ageas SA/NV, Vereniging van Effectenbezitters, DRS Belgium CVBA, Stichting Investor Claims Against FORTIS, Stichting FortisEffect and Stichting FORsettlement (the ***Settlement Agreement***)[11]. Pursuant to the Settlement Agreement, each Eligible Shareholder is entitled to a certain compensation (part of the Settlement Amount), the allocation of which is to be supervised by a Claims Administrator and a Dispute Committee. The Settlement Agreement was declared binding on 13 July 2018 by ruling of the Amsterdam Court of Appeal.

10. Computershare has been appointed by FORsettlement as Fortis Settlement Claims Administrator. It is charged with making an independent assessment of whether or not someone who files a Claim Form is entitled to compensation under the Settlement Agreement and to pay, on behalf of Ageas, compensation to Eligible Shareholders who filed a Claim Form for a valid claim.

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4 *Vereniging van Effectenbezitters*, an association incorporated under the laws of The Netherlands, having its registered office in The Hague, The Netherlands and registered under number 40408053 (***VEB***).

5 *Stichting Investor Claims Against FORTIS*, a foundation incorporated under the laws of The Netherlands, having its registered office in Amsterdam, The Netherlands and registered under number 50975625 (***SICAF***).

6 *Stichting FortisEffect*, a foundation incorporated under the laws of The Netherlands, having its registered office in Utrecht, The Netherlands and registered under number 30249138 (***FortisEffect***).

7 *DRS Belgium CVBA*, a cooperative company with limited liability, incorporated under the laws of Belgium, having its registered office in Brussels, Belgium and registered with the Crossroads Bank for Enterprises under number 0452.511.928 (***Deminor***).

8 A foundation incorporated under the laws of The Netherlands, having its registered seat in Amsterdam, The Netherlands and having as registration number 65740599.

9 According to Schedule 1 to the Settlement Agreement, c.o.b. means the moment trading closed on the stock exchanges of Amsterdam or Brussels as relevant on the relevant date.

10 The Settlement Agreement can be consulted on the website www.forsettlement.com.

11 Unless otherwise specified in this Binding Advice, the capitalized terms shall have the same meaning as those terms defined in the Settlement Agreement.

C.4 The Dispute Committee

11. A Dispute Committee was also established under the Settlement Agreement (see, its Clause 4.3.5). According to that Clause, Eligible Shareholders may submit disputes to the Dispute Committee "*for final and binding resolution by way of a binding advice (bindend advies) under Dutch Law*".

12. Upon signing and submitting the Claim Form, the Claimant (again) agreed with the exclusive jurisdiction of the Dispute Committee in respect of the matters set out in Clauses 4.3.4 through 4.3.8 of the Settlement Agreement, including disputes between the Claimant and the Claims Administrator concerning the eligibility, including where relevant as Active Claimant, validity and/or amount of the claim for compensation made in the Claim Form by way of binding advice to be issued conform the Regulations of the Dispute Committee. These Regulations are publicly available[12].

13. The binding advice which the Dispute Committee shall issue in accordance with the above is a specific form of dispute resolution provided by Articles 7:900 and following of the Dutch Civil Code (the ***DCC***) by which the parties to a dispute entrust a third party to settle the legal relationship between them. In accordance with Article 4.17 of the Regulations of the Dispute Committee, such binding advice should be rendered in accordance with Dutch law, the provisions of the Settlement Agreement and the Regulations of the Dispute Committee and, if relevant, in accordance with other rules of law or any applicable trade usages which the Dispute Committee considers appropriate in view of the nature of the Dispute.

II. HISTORY OF THE PROCEEDINGS BEFORE THE DISPUTE COMMITTEE

14. On 20 November 2020, the Claimant submitted through his attorney Mr De Wulf a Request for Binding Advice ("*Demande de résolution du différend"*) to the Dispute Committee against a Notice of Rejection issued by Computershare on 21 October 2020. The Claimant attached exhibits 1 to 18 to his Request. In the Notice of Rejection, Computershare had denied all of Claimant's claim because the deficiencies identified in the Notice of Deficiency of 15 May 2020 could not be resolved (see, paras. 43 and 47 *infra*).

15. On 21 November 2020, the Dispute Committee acknowledged receipt of the Claimant's recourse and invited Computershare to submit its observations by 11 December 2020.

16. By e-mail of 6 December 2020, Computershare sent a letter dated 2 December 2020 to the Dispute Committee, containing its observations on the dispute. In this letter, Computershare indicated that as the Claimant had provided documents to show that he had the authority to sign on behalf of the two legal entities [redacted] Inc. and [redacted] Ltd. that were also holding Fortis shares in the relevant periods, the dispute could be considered as resolved. Computershare invited the Claimant to confirm the same to the Dispute Committee.

[12] The Regulations of the Dispute Committee can be consulted on the website www.forsettlement.com.

17. On 8 December 2020, the Dispute Committee acknowledged receipt of Computershare's communication and invited the Claimant to confirm that the dispute could indeed be considered resolved.

18. By letter dated 11 December 2020 and communicated on 18 December 2020, the Claimant confirmed his acceptance of the provisional amount of EUR 16.766,15 proposed by Computershare for his claim "*to irrevocably settle the current dispute*".

19. On 28 December 2020, Computershare indicated that it required additional information to satisfy payment requirements, notably with respect to the liquidation of the Panamanian entity [redacted] Inc. and the BVI incorporated entity [redacted] Ltd. and invited the Claimant to provide such further information before payment would be executed.

20. On 14 January 2021, Computershare sent a reminder with respect to its latest e-mail of 28 December 2020.

21. On the same date, the Claimant indicated that the requested information had been requested from the relevant banks and that he would revert to Computershare upon receipt of such information.

22. On 21 January 2021, the Claimant provided further information with respect to [redacted] Inc. and requested additional time to provide the requested documentation with respect to [redacted] Ltd.

23. On 22 January 2021, the Dispute Committee invited the Claimant to advise, by 15 February 2021, of the outcome of its request for additional documents regarding [redacted] Ltd. It also invited Computershare to comment, in the meantime, on the new documentation submitted regarding [redacted] Inc.

24. On the same date, Computershare indicated that its attorney Mr Stan Putter would be assisting Computershare in the dispute and confirmed it would provide a written response shortly.

25. On 10 February 2021, the Claimant provided additional information and documentation regarding [redacted] Ltd.

26. On 17 February 2021, Computershare commented on the Claimant's additional information and documentation with respect to the two companies. It requested that further documentation be submitted with regard to [redacted] Limited.

27. On the same date, the Dispute Committee proposed to hold a case management videoconference.

28. On 18 February 2021, the Claimant provided further documentation with respect to the two companies concerned.

29. On 1 March 2021, a case management videoconference was held in the presence of the Parties and of the Dispute Committee. A provisional procedural timetable was agreed upon, notably fixing a hearing on 8 April 2021 at 3:30 pm.

30. On 2 March 2021, the Claimant requested that the hearing be postponed by one week.

31. On the same date, Computershare objected to that request.

32. On the same date, the Dispute Committee suggested to hold the hearing on 1 April 2021 at 3:30 pm.

33. On 4 March 2021, the Dispute Committee confirmed that, following the videoconference of 1 March and the ensuing exchanges, the next steps of the procedural timetable would be the following:

    - By 8 March 2021, the Claimant shall submit a consolidated list of continuously numbered exhibits, together with additional information/ documentation regarding (i) the Swiss address of [redacted] Ltd and (ii) the cleared tax status of the assets for which a compensation is claimed;
    - By 25 March 2021, Computershare shall submit its final and comprehensive submission in reply;
    - On 1st April 2021, a hearing shall be held by videoconference on the Teams platform from 3:30pm CEST to 6:30pm CEST.

34. On 8 March 2021, the Claimant submitted (i) a letter, (ii) an explanatory note, (iii) the consolidated list of exhibits and (iv) a copy of the exhibits.

35. On 25 March 2021, Computershare submitted its final and consolidated statement together with its factual exhibits and legal authorities.

36. On 1 April 2021, a virtual hearing was held in presence of:

    - For the Claimant: Mr Lievin De Wulf and Mr Victor Leblanc;
    - For Computershare: Mr Stan Putter, Ms Lilian Meinen, Ms Janainna Pietrantonio, Ms Leonie Parkin and Mr Albertus Ruiter;
    - For the Dispute Committee: Mr Jean-François Tossens (Chairman), Mr Harman Korte and Mr Dirk Smets, assisted by Ms Anne-Marie Devrieze and Ms Lily Kengen.

    At that hearing, the Claimant raised as legal argument that an agreement between the Parties regarding the compensation to be paid to the Claimant would have been reached through the exchange of correspondence in December 2020, which would bind Computershare and the Dispute Committee.

    At the end of the hearing, it was decided by the Dispute Committee, in agreement with the Parties, that post-hearing written submissions would be filed on the subject-matter before the rendering of the binding advice.

37. By e-mail of the same date, the Dispute Committee confirmed that, as agreed during the hearing, the next steps of the proceedings would be as follows:

    - By 12 April 2021, the Claimant shall file a submission on his argument that Computershare and the Dispute Committee would be bound by the agreement that the Parties would have reached through their exchange of correspondence in December 2020;

    - By 22 April 2021, Computershare shall file its submission in reply to Claimant's above submission, including any argument pertaining to Dutch public policy.

38. On 12 April 2021, the Claimant submitted his post-hearing submission.

39. On 22 April 2021, Computershare submitted its post-hearing statement.

40. On 28 May 2021, the Dispute Committee closed the proceedings.

41. On 2 July 2021, the Dispute Committee informed the Parties that it needed additional time for its deliberation and announced the imminent rendering of the present binding advice.

III. CORRESPONDENCE PRIOR TO THE SUBMISSION OF THE DISPUTE TO THE DISPUTE COMMITTEE

42. On 23 July 2019, the Claimant submitted a Claim Form under the Settlement Agreement to Computershare, claiming compensation for Fortis shares held directly and indirectly (see, para. 48 *supra*). On the Claim Form, the Claimant did not indicate that he was claiming compensation on behalf of legal entities. In the attached documentation, the Claimant submitted bank certificates referring to himself personally as account holder and to the legal entities [redacted] Inc. and [redacted] Ltd.

43. On 15 May 2020, Computershare sent a Notice of Deficiency to the Claimant, for the following reasons, which the Claimant was invited to cure by 14 June 2020:

    - "*The Claim Form was submitted on behalf of a legal entity, by a signatory who has not demonstrated having the relevant power to sign on behalf of such legal entity*"; and
    - "*By means of precaution, we require additional documentation in order to confirm the holding of the bank account that you have provided for payment in the Claim Form*"[13].

44. On 10 July 2020, Computershare sent a Determination of Rejection to the Claimant, as the Claimant had not replied to the Notice of Deficiency dated 15 May 2020. In its Determination

[13] Free translation of : « *Le Formulaire de Demande a été soumis au nom d'une personne morale par un signataire qui n'a pas démontré le pouvoir de signer au nom de la personne morale* […] *Par précaution nous avons besoin de documents supplémentaires afin de confirmer la détention du compte bancaire que vous avez fourni pour le paiement dans le Formulaire de Demande* ».

of Rejection, Computershare indicated that the provisional amount of compensation was EUR 0. The Claimant was invited to submit any disagreement by 30 July 2020.

45. On 28 July 2020, the Claimant submitted additional information following the Determination of Rejection issued on 10 July 2020 (***Notice of Disagreement***).

46. On 21 August 2020, Computershare sent an Update ("*Mise à jour"*), by which it indicated that the claim required the submission of supporting evidence ("*preuves à l'appui uniques*"), and requested that the following information be communicated:

> "*Extract from the Chamber of Commerce (indicating the liquidation in case the company has been dissolved) and of the shareholders to explain where the Fortis compensation must go to. Please also note that a business reclamation cannot be paid on a personal account*"[14].

47. On 21 October 2020, Computershare sent a Notice of Rejection, indicating that it rejected the objections raised by the Claimant in his Notice of Disagreement and confirming that the Determination of Rejection was therefore maintained, for the reasons mentioned therein.

IV. SUMMARY OF THE DISPUTE

48. The Claimant explains that he is a Belgian resident who has held, directly or indirectly, several securities accounts on which Fortis shares were held during the relevant periods covered by the Settlement Agreement.

He has held Fortis shares *directly* via his personal bank accounts held with (i) Keytrade Bank on bank account number [redacted] (highest number of shares: 5.715) and (ii) BNP Paribas Fortis Bank on bank account number [redacted] (highest number of shares: 8.000). In addition, he had also invested in Fortis shares *indirectly* via two legal entities of which he was the sole beneficial owner, which entities held bank accounts with foreign banks, *i.e.* (i) [redacted] Inc. holding an account with BGL BNP Paribas SA in Luxembourg, on bank account number [redacted] (highest number of shares: 16.000) and (ii) [redacted] Ltd. Holding an account with ING Bank (Switzerland) SA, which became Julius Bär & Cie in 2010, on bank account number [redacted] (highest number of shares: 15.500).

The Claimant essentially argues (i) that he has concluded in December 2020 a legally valid, binding and enforceable agreement with Computershare which cannot be annulled and that his entitlement to compensation can therefore not be questioned and (ii) in any event, that he has sufficiently demonstrated being the beneficial owner and economic right holder of the Fortis shares concerned with the dispute, and that he should therefore be compensated pursuant to the Settlement Agreement. The Claimant also underlines that, insofar as he has

[14] Free translation of : « *Extrait de la Chambre de Commerce (indiquant la liquidation en cas de dissolution de la société) et des actionnaires pour expliquer où doit aller l'indemnisation Fortis. Notez également qu'une réclamation commerciale ne peut pas être versée sur un compte personnel* ».

sufficiently evidenced that he can act on behalf of both [redacted] Inc. and [redacted] Ltd., the two legal entities which held the original Fortis shares during the relevant periods, he has sufficient standing to introduce the claim concerned.

49. Computershare submits that the claim is inadmissible and that, in any event, the Claimant's claims should be rejected insofar as these relate to the shares held by [redacted] Inc. and [redacted] Ltd. Any offer made by Computershare regarding payment of the full Claim to the Claimant was made by Computershare and accepted by the Claimant erroneously or in any event in violation of Dutch public policy and is therefore null and void.

50. The question at hand is essentially whether or not the Claimant was entitled to submit a Claim Form and claim compensation under the Settlement Agreement for shares that he did not hold himself as an Eligible Shareholder, but that were held by two legal entities, *i.e.* [redacted] Inc. registered in Panama and [redacted] Ltd. registered in the British Virgin Islands (***BVI***) as Eligible Shareholders and, consequently, whether the claims relating to these companies' shares should be awarded to the Claimant in his own name by Computershare.

51. In particular are in dispute the questions whether (i) there exists a legally binding agreement between the Claimant and Computershare regarding the compensation to be paid to the Claimant to which the Dispute Committee would also be bound, and (ii) the Claimant has sufficient authority and standing to claim compensation on behalf of [redacted] Inc. and [redacted] Ltd. or whether these companies could (or should) have claimed compensation themselves in the relevant period.

V. POSITIONS OF THE PARTIES AND RELIEF SOUGHT

A. <u>With respect to the existence of a binding agreement between the Parties</u>

(i) The Claimant's position

52. At the hearing of 1 April 2021, the Claimant raised an argument (which he deems is not a new argument but simply derives from the chronological and factual overview of the various steps) that there is an agreement between the Parties regarding the amount of the compensation to be paid to the Claimant that was reached through the exchange of correspondence in December 2020. That agreement would bind Computershare and the Dispute Committee.

In that respect, the Claimant refers to the following exchanges which, he submits, amount to a legally binding and enforceable agreement between him and Computershare:

- Computershare's letter of 2 December 2020 and cover e-mail of 6 December 2020 which, according to the Claimant, would constitute an offer;
- A letter of 8 December 2020 of the Dispute Committee allegedly acknowledging that the dispute would be resolved at the level of Computershare;
- Claimant's letter of 11 December 2020 which, he argues, constitutes the acceptance of Computershare's offer.

53. It is also submitted by the Claimant that the Dispute Committee would have no margin of appreciation as to the validity of that agreement, notably as it would have already confirmed the resolution of the Dispute by its letter of 8 December 2020.

54. Computershare's request for further information, as sent on 28 December 2020 and reiterated on 14 January 2021, did not – as argued by the Claimant – have as purpose to question his entitlement to compensation (nor to annul the above agreement) but rather only to satisfy certain payment requirements.

55. All requested information was provided by the Claimant on 21 January 2021 for [redacted] Inc. and on 10 February 2021 for [redacted] Ltd. Hence, he argues that he undeniably satisfied all "payment requirements".

56. The Claimant further sustains that it is vain for Computershare to try to "restart the dispute settlement" and to try withdrawing its earlier agreement. In that respect, he raises notably that, besides the existence of the above agreement, the "No authority to file deficiency" raised in the Notice of Deficiency was cured by Computershare as it already confirmed, and that therefore the latter cannot now invoke such deficiency to oppose the claim.

57. The Claimant also argues that there is no Belgian and/or Dutch rules of public policy that would be violated or that could render the legally binding agreement between the Parties invalid and that Computershare's allegations in that respect must be disregarded. Rather, the agreement is plainly valid and must be honoured and executed by Computershare.

(ii) Computershare's position

58. Computershare disputes that there would exist any legally binding agreement between it and the Claimant. In support of that argument, Computershare first highlights that the binding party decision it issued on 21 October 2020 in the form of a Notice of Rejection (see para. 47 *supra*) was a first-tier decision, only conditional by nature as it is open to a contractual appeal. As soon as the appeal was filed by the Claimant before the Dispute Committee, Computershare submits that the first-tier decision ceased to bind the Parties. It is then up to the second-tier decision maker, *i.e.* the Dispute Committee, to render a decision on a *de novo* basis.

59. Computershare also alleges that the correspondence exchanged in December 2020 does not provide for an unconditional agreement or undertaking, as testifies the wording "provisional" claim amount in its letter of 2 December 2020. Computershare explains that all claims go through a "provisional" acceptance process and that these only become finally administered and resolved after the claims administration process is over. This is because the final claim amount cannot be calculated until all claims have been processed and all disputes resolved. Therefore, while Computershare acknowledges the possibility for the parties to a binding advice procedure to reach a settlement agreement, it submits that in the present matter, no unconditional settlement was reached.

60. In the case at hand, a serious irregularity was discovered in the further process with respect to the bank details to which the compensation was to be paid out. The fact that the Claimant claimed for a pay-out on a personal bank account for claims relating to corporate entities gave rise to a "red flag for fraud" as amongst other things it can indicate tax evasion. Computershare stresses that, in such a case and considering that the claim has not lost its "provisional" status, the proceedings before the Dispute Committee could resume.

61. Moreover, Computershare submits that the Claimant waived his right to raise the argument that there existed a prior agreement to accept the claims, by his behavior and conduct towards both Computershare and the Dispute Committee. Computershare refers in that respect to seven "waivers" resulting from the Claimant's agreement to reopen the scrutiny of his claims after Computershare's letter of 28 December 2020 and from the Claimant's letters of 14 and 21 January 2021, and of 10 and 18 February 2021, in which the Claimant never raised the argument of an existing binding agreement.

    Computershare also highlights that the Claimant did not raise that objection at (or after) the case management conference of 1 March 2021, or in his pre-hearing consolidated written statement of 8 March 2021, whereas he had ample opportunity to digest, review, research and strategize on the case, but rather the Claimant was arguing that he was authorized to receive the compensation claimed for the entities involved.

62. In fact, the Claimant raised this argument for the first time at the hearing of 1 April 2021, after four months of discussions and several actions and a general (procedural) conduct irreconcilable with that line of reasoning, and whereas no new legal arguments are supposed to be raised at that stage. It is therefore Computershare's position that the Claimant has lost his right to raise it, as per the *rechtsverwerking* and *afstand van recht* theory (waiver of rights) under Dutch law.

63. Computershare further argues that the Claimant's analysis based solely on "offer and acceptance" ignores the applicable Dutch law rules governing binding advice dispute resolution proceedings and the ability to reopen such proceedings, even after these are concluded, as the case may be.

64. In any event, it is moreover underlined by Computershare that – even in case of settlement and lack of agreement to reopen – the Dispute Committee remains entitled to reopen the proceedings on its own motion. First, because it cannot be and is not correct that a party may benefit from an incorrect decision at the expense of other *bona fide* Eligible Shareholders (which would receive a lower final claim amount). Second, because, as Computershare argues, binding advice proceedings may be reopened in case of serious (procedural but also substantive) irregularities.

    Computershare refers in that respect to potential violations of due process rules but also of rules of public policy. In this case, public policy would lead to the agreement being null and void as per Article 3:40 of the DCC.

65. Computershare submits that the type of international offshore group company structure used by the Claimant (Panama and BVI companies) will have been set up as a structure to anonymize the (full scope of) assets of the Claimant, not only for the local fiscal authorities but in effect also for the Belgian tax authorities. Being asked to provide answers or documentation in respect of the tax-cleared status of the two companies, the Claimant refused to provide any answers or documentation and merely questioned the relevance of the questions. Computershare points to publicly available information from which it can be derived that the companies concerned have been avoiding paying their registration taxes to the Panamanian and BVI authorities for several years, the arrears payments totaling many thousands of USD. The Claimant has not disputed, let alone refuted this information.

66. According to Computershare, the Dispute Committee being the appropriate authority to review whether the compensation paid under the Settlement Agreement is in accordance with legal principles and appropriate policy, it is well capable of reopening the proceedings on its own motion, which in practice it has already done, on the grounds that the Claimant's scheme led to serious irregularities in the sense of public policy breaches. This would ensure that the fundamental mandatory rules are adhered to, the operation of which cannot be restricted by procedural restrictions.

67. The Claimant's assertion that Computershare is bound by the agreement entered into with Claimant in December 2020 should therefore be rejected on that basis.

B. <u>With respect to the shares held directly and personally by the Claimant</u>

(i) The Claimant's position

68. With respect to the shares held with Keytrade Bank (Belgium), the Claimant indicates having submitted an attestation emanating from that financial institution which establishes with sufficient certainty the holding of the shares concerned in his own name.

69. With respect to the shares held with BNP Paribas Fortis (Belgium), the Claimant similarly indicates having submitted an attestation emanating from that financial institution which establishes with sufficient certainty the holding of the shares concerned in his own name.

(ii) Computershare's position

70. Computershare does not oppose and confirms it will accept the claims made by the Claimant and which concern shares held by him directly in his accounts with Keytrade Bank (Belgium) and BNP Paribas Fortis (Belgium).

71. For these shares, Computershare indeed deems that the Claimant sufficiently demonstrated the holding of the shares in his own name, and that these can thus be excluded from the present dispute.

C. With respect to the shares held by [redacted] Inc.

(i) The Claimant's position

72. The Claimant also held shares, via [redacted] Inc., on a securities account with BGL BNP Paribas Fortis (Luxembourg). The Claimant explains that this company was established on his behalf and incorporated under the laws of Panama. That company was, according to the Claimant, managed by an international trust and corporate management company, Intertrust SA.

73. With respect to those shares, the Claimant highlights that [redacted] Inc. held the securities account from 19 January 2006 until 31 December 2013, as from which date the account was closed. He also argues that the shares were transferred in November 2013 to his personal securities account with BGL BNP Paribas (Luxembourg).

74. To evidence these facts, the Claimant submitted the following documents:

- An undated attestation emanating from BGL BNP Paribas Fortis (Luxembourg) establishing the holding by [redacted] Inc. on securities account number [redacted] of Fortis shares during the relevant Periods, with a maximum of 16.000 shares held between 28 February 2007 and 14 October 2008 (Exhibit 11 of the Claimant);
- An attestation dated 17 June 2013 emanating from BGL BNP Paribas Fortis (Luxembourg) establishing [redacted] Inc.'s ownership of the securities account number [redacted] which had been opened on 19 January 2006 (Exhibit 12 of the Claimant);
- An attestation dated 30 May 2013 emanating from Intertrust SA establishing that the Claimant had declared being "the effective beneficial owner" of the securities account number [redacted] held in the name of [redacted] Inc. (Exhibit 13 of the Claimant);
- An attestation dated 13 January 2006signed by Mathieu Ltd., a BVI company acting on behalf of [redacted] Inc., confirming that the Claimant is the sole effective beneficial owner of all the securities held in the securities account number [redacted] (Exhibit 15 of the Claimant);
- An instruction dated 22 October 2013 signed by Mathieu Ltd. on behalf of [redacted] Inc. to close the securities account number [redacted] due to the strike-off of [redacted] Inc. and to transfer the securities to the personal account of the Claimant (Exhibit 16 of the Claimant);
- An e-mail dated 1 September 2020 from Intertrust SA confirming the strike-off of [redacted] Inc. and an excerpt from the Official Gazette of Panama stating the "inactive" status of that company for three consecutive years (Exhibits 17 and 18 of the Claimant).

75. It is moreover indicated by the Claimant that the shares held by [redacted] Inc. and later transferred to his own account included 8.100 Fortis shares, which in fact represented 81.000 Fortis shares before a "reverse stock-split" took place on 7 August 2012. The 16.000 shares held on 3 October 2008 were, according to the Claimant, included in these 81.000 shares that became 8.100 shares.

76. In view of the above, the Claimant claims having sufficiently demonstrated his right to act on behalf of [redacted] Inc., his status of sole beneficial owner of the shares held by [redacted] Inc. and his standing to introduce the claim as legal successor of that company.

(ii) Computershare's position

77. Computershare opposes such claim highlighting that the Claimant was not himself a Fortis shareholder at the relevant periods under the Settlement Agreement, and only allegedly became one in 2013 when the Fortis shares were transferred to his personal account. Consequently, Computershare indicates that there is no basis to approve such claim for compensation as Claimant does not qualify as Eligible Shareholder as defined in the Settlement Agreement.

78. Computershare also argues that, contrary to what is sustained by the Claimant, there is no sufficient evidence demonstrating that he was or is the actual ultimate beneficiary of [redacted] Inc. and, if so, whether he was a shareholder of that company in any indirect way. Computershare emphasizes that only the shareholder register or trust documentation can provide decisive evidence in that respect.

In this regard, Computershare argues that it appears from publicly available information that the Claimant would not be a shareholder or a director of [redacted] Inc.

Computershare observes that the Claimant only submits a self-attestation of his alleged ultimate beneficiary status, which in itself is irrelevant since the right to claim compensation under the Settlement Agreement is a personal right of the shareholder only. Moreover, Mathieu Ltd's mandate to represent [redacted] Inc. seems questionable to Computershare in view of the documentation provided.

Consequently, Computershare takes the position that there is no evidence that a Claim Form has been submitted on behalf of [redacted] Inc. by a person having authority to do so.

79. Computershare also objects that the documentation provided by the Claimant with respect to the Fortis shares held by [redacted] Inc. does not demonstrate the number of Fortis shares actually held by that company, (i) before and/or after the relevant periods, nor (ii) on the date of the alleged transfer to the Claimant's personal account. It can therefore not be determined by Computershare whether (and if so, how many), Fortis shares were held and transferred by [redacted] Inc. to the Claimant, especially in the absence of any sale and purchase documentation.

This circumstance entails that, according to Computershare, it cannot be verified whether the shares were really transferred to the Claimant by [redacted] Inc. directly, or if such shares were actually sold and purchased through the public market.

80. According to Computershare, it cannot be inferred from the documents submitted by the Claimant that an authorized representative of [redacted] Inc. transferred the right to claim compensation to the Claimant in the period after the claim arose, *i.e.* on 27 July 2018 and before its contractual lapse, *i.e.* on 28 July 2019. However, as a principle, the right to compensation under the Settlement Agreement is personal and can only be assigned to a third-party after it came into existence, *in casu* after the Settlement Agreement has been declared legally binding, and separately from a mere transfer of shares as it is not an ancillary right.

81. Moreover, and considering that the purpose of granting compensation to Eligible Shareholders under the Settlement Agreement is to compensate the latter for the decreased value of the shares induced by the Events, it cannot be accepted that a mere successor shareholder which would have acquired the shares at the then lower value would also be entitled to the compensation provided as a result of the alleged reduction in the value of those shares. Therefore, as argued by Computershare, the claim under the Settlement Agreement can only fall to [redacted] Inc. and not to the Claimant.

82. It is neither demonstrated, according to Computershare, that [redacted] Inc.'s account was actually closed or that the company was in fact dissolved. In that respect, Computershare argues that under Panamanian company law and in particular the Panamanian *Código de Comercio* [redacted] Inc. in fact still exists.

This would notably stem from publicly available registers of legal entities in Panama. Computershare sustains that the company was merely dissolved and as from 26 November 2019 only, *i.e.* after the expiry of the time limit to file a Claim Form, and that any alleged suspension of the company in 2017 did not take effect. In any event, Computershare argues that this would not have prevented [redacted] from being able to file its own Claim Form.

It is therefore Computershare's argument that [redacted] Inc. could have submitted a Claim Form itself in due time, but failed to do so.

83. In any event, Computershare argues that [redacted] Inc. could have easily "undone" its dissolution or liquidation pursuant to Panamanian company law and that this did therefore not prevent the latter from claiming compensation in its own name.

84. Computershare further observes that, while the Claim Form explicitly required such information being disclosed, the Claimant did not complete the field "*legal entity holding the shares*".

85. Finally, and notwithstanding the above, Computershare highlights that the claim right for [redacted] Inc. expired as from 28 July 2019. Consequently, it is Computershare's view that it cannot grant a claim to the Claimant for the shares held by [redacted] Inc.

D. With respect to the shares held by [redacted] Ltd.

(i) The Claimant's position

86. The Claimant indicates that he held shares, via [redacted] Ltd., on a securities account with Julius Bär (Switzerland). The Claimant explains that this company was incorporated under the laws of BVI and established on his behalf by ING Bank (Switzerland), which then became Julius Bär (Switzerland) in 2010.

87. [redacted] Ltd. was, according to the Claimant, managed by a fund administration and fiduciary services company, ING Fiduciary Services (Switzerland), which later became Julius Bär Fiduciary Services (Switzerland) and then again later BTT Fiduciary Services (Switzerland). This company provided an address in Switzerland for [redacted] Ltd, used as administrative address by the latter. The Claimant therefore indicates that there is no doubt that [redacted] Ltd was therefore effectively the BVI company holding the shares.

88. To evidence these facts, the Claimant submitted the following documents:

- Several attestations emanating from Julius Bär (Switzerland) establishing the holding by [redacted] Ltd of a maximum amount of 15.500 Fortis shares, and the status of sole beneficial owner of the Claimant during the relevant periods for these shares (Exhibits 27, 29 and 30 of the Claimant);
- Purchase confirmations from ING Fiduciary Services (Switzerland) establishing the purchase of the shares concerned (Exhibit 28 of the Claimant); and
- Proof of the strike-off of [redacted] Ltd as of 1 November 2014 (Exhibit 32 of the Claimant).

89. With respect to those shares, the Claimant highlights that, prior to the strike-off of [redacted] Ltd., the shares were transferred, in January 2014, to his personal securities account with Julius Bär (Switzerland), as is evidenced by a letter dated 20 January 2014 from [redacted] Ltd to Julius Bär (Switzerland).

90. It is moreover indicated by the Claimant that the shares held by [redacted] Ltd. and later transferred to his own account included 12.000 Fortis shares. These 12.000 shares were included in the 15.500 shares held by [redacted] Ltd. during the relevant periods. The Claimant also explains that [redacted] Ltd. held a maximum of 96.000 Fortis shares, which were later reduced to 9.600 shares following a "reverse stock-split" which took place on 7 August 2012. The 15.500 shares held on 3 October 2008 were, according to the Claimant, included in these 96.000 shares that became 9.600 shares.

91. The Claimant further indicates, for the sake of completeness, that he acquired, via [redacted] Ltd., 2.400 additional Fortis shares on 27 December 2013 so that the total number of Fortis shares held by the latter was 12.000.

92. In view of the above, the Claimant claims having sufficiently demonstrated his right to act on behalf of [redacted] Ltd., his status of sole beneficial owner of the shares held by [redacted] Ltd. and his standing to introduce the claim as legal successor of that company.

(ii) Computershare's position

93. Computershare holds a similar analysis with respect to the shares held by [redacted] Ltd. as that held with respect to those held by [redacted] Inc., although [redacted] Ltd. is incorporated under the laws of the BVI.

94. Computershare raises the question whether the Claimant filed his claim on behalf of the correct legal entity, considering that his exhibits refer both to an entity in Switzerland and to an entity in the BVI and that there is no satisfactory explanation for that fact.

95. Computershare also highlights that it cannot be verified who the directors and shareholders of [redacted] Ltd. are, which in its view raises doubts as to the actual ultimate beneficiary status of the Claimant which is thus disputed by Computershare. In any case, it does not stem that the Claimant would be a shareholder himself of that company and he does not evidence that he ever had authority to represent the latter.

96. Similarly, no sufficient documentation evidences that ING Fiduciary Services (Switzerland) (incl. under its later denominations) actually provided trust services to [redacted] Ltd.

97. Moreover, according to Computershare, there remains doubt as to the correct number of shares for which a claim has been submitted, and the company does not seem to have been dissolved contrary to what is sustained by the Claimant, [redacted] Ltd. still existed in 2014 and 2020 and it still does today.

98. Computershare also indicates that, similarly to the shares held by [redacted] Inc., the Claim Form did not list [redacted] Ltd. anywhere.

99. Computershare further raises that under the laws of the BVI and the Companies Act in particular [redacted] Ltd. would have been able to submit a Claim Form itself in the relevant period. Indeed, Computershare argues that the alleged strike-off status of that company was temporary only and, in any case, did not affect the possibility to file a Claim Form or it would only have taken minimal efforts on the part of [redacted] Ltd. to do so (incl. by means of a restoration procedure which could have been completed before expiration of the applicable time limit for such filing).

100. Similarly, even if that company had effectively been dissolved at any point in time, Computershare sustains that it could have "undone" that dissolution straightforwardly in such a way that it would have claimed compensation itself. However, it does not stem from the file that such steps to undo the dissolution would have been taken.

101. Finally, Computershare reiterates that – similarly to the above with respect to [redacted] Inc. – the claim right under the Settlement Agreement only arose for [redacted] Ltd. and not for the Claimant, and that there is no evidence that such right had been transferred to the latter. Meanwhile, [redacted] Ltd.'s claim right having expired, no claim can be granted with respect to these shares.

E. Relief sought by the Parties

102. The Claimant requests the Dispute Committee to declare that he is entitled to compensation pursuant to the Settlement Agreement.

103. Computershare requests the Dispute Committee to declare the Claimant's claims inadmissible or at least to reject the Claimant's claims insofar as these relate to the shares held by these two companies.

VI. DISCUSSION AND FINDINGS

A. Admissibility of the Claimant's recourse

104. By submitting his Request for Binding Advice to the Dispute Committee on 20 November 2020, the Claimant has submitted the dispute within thirty (30) Business days after the Notice of Rejection sent by Computershare on 21 October 2020. The Claimant's Request before the Dispute Committee was consequently timely filed and is therefore admissible as per Clause 4.3.5 of the Settlement Agreement and Article 4.6 of the Regulations of the Dispute Committee.

B. With respect to the shares held directly and personally by the Claimant

105. The Dispute Committee acknowledges and accepts that the Claimant has provided sufficient evidence, to the satisfaction of Computershare, regarding the shares he held directly in his own name.

106. Consequently, the Claimant's claim is accepted by the Dispute Committee in so far as his claim concerns:

(i) the 5.715 shares held by him directly in securities account number [redacted] with Keytrade Bank (Belgium) (Exhibit 8 of the Claimant);

and

(ii) the 8.000 shares held by him directly in securities account number [redacted] with BNP Paribas Fortis (Belgium) (Exhibit 9 of the Claimant).

C. With respect to the agreement concluded between Computershare and the Claimant in the pending proceedings regarding the shares held by [redacted] Inc. and [redacted] Ltd.

107. It is a fact that Computershare stated in its letter of 2 December 2020 (Exhibit 39 of the Claimant), as well as in the accompanying cover e-mail of 6 December 2020 that "*we have cured the related deficiency for Claim ID 40188768-5. The recognized provisional claim amount is € 16,766.15 payable in a future distribution. We therefore respectfully request that this matter be considered resolved. We invite the claimant to confirm the same to the Dispute Committee"*.

108. By a letter dated 11 December 2020 and transmitted by e-mail of 18 December 2020 to the Dispute Committee (Exhibits 42-43 of the Claimant), the Claimant replied: "*with current letter I confirm that I accept, as Claimant, the proposed claim's resolution for the amount of EUR 16,733.15 to irrevocably settle the current dispute*".

The above exchange of correspondence between the Claimant and Computershare suggests indeed that an agreement had been reached on the amount of the claimed compensation, even if such amount is a "*provisional*" amount as indicated in Computershare's communications.

109. The question then arises of whether this agreement (the ***December 2020 Agreement***) entered into between Computershare and the Claimant has brought an end to the Dispute Committee's jurisdiction or should be acknowledged and enforced by the Dispute Committee irrespectively of the merits of Computershare's objections with respect to this claim.

For answering that question, the Dispute Committee will first examine (i) the scope of its jurisdiction under the Settlement Agreement (hereafter section (i)) and then (ii) whether the December 2020 Agreement has put an end to its mandate to render a Binding Advice in this matter (hereafter section (ii)).

(i) The scope of the Dispute Committee's jurisdiction

110. In the instant case, the Dispute Committee's jurisdiction is based on Clause 4.3.3 h) of the Settlement Agreement that provides that by signing the Claim Form, each Eligible Shareholder shall "*consent to the exclusive jurisdiction of the Claims Administrator and the Dispute Committee, in respect of the matters set out in Clauses 4.3.4 through 4.3.8 by way of binding advice (bindend advies)* […]". In accordance with these provisions, the Dispute Committee shall decide (a) whether a claimant is an Eligible Shareholder, (b) whether a claimant qualifies as an Active Claimant, (c) whether a claimant has submitted a valid claim in due time and (d) what amount of compensation as formulated in the Settlement Agreement will be allocated to such Eligible Shareholder.

111. Pursuant to the same Clause 4.3.3 h), the Eligible Shareholder has submitted itself, "*to the exclusive jurisdiction of the Amsterdam District Court, and its appellate courts, with respect to*

any other dispute such Eligible Shareholder may have, or claim to have, with Ageas, the other Parties or any of the shareholders with respect to this agreement […]".

Such jurisdiction clause is repeated in the Claim Form (Part 5) itself.

112. The sole matter for which the Dispute Committee is competent is therefore to render a binding advice (a *bindend advies* under Dutch law) on the correct interpretation and implementation by Computershare of the terms of the Settlement Agreement in its capacity of first line independent reviewer within the meaning of Article 7:907 (3) (d) of the DCC. In other words, the Dispute Committee shall only decide whether the determination by Computershare of the Eligible Shareholder's claim has been made in conformity with the Settlement Agreement's provisions and whether such determination must be upheld or invalidated on that basis.

113. It is the Dispute Committee's opinion that these matters do not encompass the issues of the legal status, of the potential nullity or of the legal effects of an agreement, provisional or not, that Computershare would have entered into with the Claimant, such as the December 2020 Agreement. The Dispute Committee's binding advice can only consist in deciding whether an Eligible Shareholder is entitled to compensation based on Clauses 4.3.4 to 4.3.8 of the Settlement Agreement and for what amount.

(ii) Has the December 2020 Agreement put an end to the Dispute Committee's mandate?

114. As it is recognized by Computershare, it is in principle legally possible for the parties to reach a settlement during the proceedings pending before a binding advisor. In such case, "*the mandate of the binding advisor would generally cease to exist with the (…) reaching of a Settlement*"[15].

115. In the present case however, if Computershare is a party to the proceedings before the Dispute Committee, it is not a party to the agreement in dispute, *i.e.* the Settlement Agreement itself.

According to Clause 4.3.4 of the Settlement Agreement, Computershare is "*acting as independent reviewer within the meaning of Article 7:907 (3) (d) DCC, in accordance with the terms of this agreement and the Settlement Distribution Plan*". Computershare is entrusted with a limited mandate in the implementation of the Settlement Agreement. Its mission consists in initially determining "*the validity of each claim made on a Claim Form and the amount allocated to each Eligible Shareholder who complies with the requirements for compensation of this agreement*" (Clause 4.3.4 of the Settlement Agreement). Computershare can neither dispose of nor extend the limits of the rights recognized by the Settlement Agreement.

116. The question that then arises is when the Determination of a claim becomes final and irrevocable. The answer to that question which pertains to the mandate of the Dispute Committee remains rooted in the terms of the Settlement Agreement.

[15] See Legal Authority no. 26 of B. Punt, quoted by Computershare in its post hearing statement of 22 April 2021, p. 6, para. 3.4 and footnote no. 3.

117. The Settlement Agreement and the Regulations of the Dispute Committee explicitly provide that a claim shall cease to be subject to any discussion in the following circumstances:

(a) If the Determination of such claim by Computershare is not disputed by the filer of the claim within 20 calendar days of that Determination "*then the Determination by the Claims Administrator will be binding and no further recourse shall exist" (*Article 4.4 of the Regulations of the Dispute Committee);
(b) If a claimant does not submit the dispute to the Dispute Committee within 30 Business Days after it has received a Notice of Rejection from Computershare, then such rejection will be binding (Article 4.9 of the Regulations of the Dispute Committee and Clause 4.3.5 of the Settlement Agreement); or
(c) If a dispute is brought before the Dispute Committee within the prescribed time limit, then it is submitted to the Dispute Committee "*for final and binding resolution by way of a binding advice under Dutch law*" (Clause 4.3.5 of the Settlement Agreement).

118. Once the Dispute Committee has been seized of a recourse by a Disputing Claimant, in the terms set forth by the Settlement Agreement, then the matter is deferred to the Dispute Committee, acting as a second-tier independent reviewer, in its capacity of binding advisor. In such capacity the Dispute Committee is vested with the exclusive authority to perform a full *de novo* assessment of all aspects of the claim and to substitute its assessment to the assessment previously made by Computershare if and to the extent that it deems appropriate.

119. The Settlement Agreement does not address the situation where an agreement would be entered into between Computershare and the Claimant at the stage of the proceedings pending before the Dispute Committee.

In absence of an explicit provision on that specific situation, the Dispute Committee finds that its mandate to render a binding advice does not come to an end if the Determination of the Eligible Shareholder's claim remains for whatever reason disputed between Computershare and the claimant, in other words, as long as "*the Claims Administrator and the Eligible Shareholder are unable to resolve the dispute"* about the Determination of the Eligible Shareholder's claim.

120. It is a fact in the instant case that the Claimant and Computershare have remained unable to finally resolve their disagreement despite the December 2020 Agreement, which entails that the Dispute Committee has remained seized of a "*dispute*" in the meaning of Clause 4.3.5 of the Settlement Agreement, notwithstanding the December 2020 Agreement.

121. The circumstances of the present case comfort the above finding for the following reasons:

122. First, after the December 2020 Agreement, the Claimant has continued to proceed before the Dispute Committee (i) by submitting documentary evidence on 21 January, 10 February and 18 February 2021 with respect to his entitlement to the Fortis shares held by [redacted] Inc. and [redacted] Ltd. and a letter, an explanatory note, a consolidated list of exhibits

and all the exhibits on 8 March 2021; (ii) by participating in the Case Management Conference of 1 March 2021 and in the hearing of 1 April both by videoconference; (iii) by filing a post-hearing submission on 12 April 2021, in which he concludes that the December 2020 Agreement must be honoured and executed and that as a result an of EUR 16,766.15 must be awarded to him with respect to the Fortis shares held either directly or indirectly.

123. Second, after the December 2020 Agreement, Computershare has raised further issues with the Claimant's claim. In its correspondence of 28 December 2020 (Exhibit 44 of the Claimant), Computershare has requested additional information in order to satisfy payment requirements, thereby noting: "*In the absence of formal liquidation documentation for Panamanian entity* [redacted] *Inc. and Swiss entity* [redacted] *Ltd we must establish another connection to satisfy [the Claimant] as the sole economic right-holder of these two entities and to allow us to compensate him directly*". In its letter, Computershare explained that it had no satisfying evidence regarding (i) the continued ownership of the Fortis shares held by [redacted] Ltd. and their transfer to the Claimant and (ii) the transfer of the Fortis shares from [redacted] Inc. to the Claimant. By letter dated 17 February 2021, Computershare requested additional information from the Claimant regarding [redacted] Ltd. In its consolidated statement dated 25 March 2021, Computershare has argued on the basis of an analysis of Panamanian and BVI company law that both legal entities had not been dissolved, that, consequently, the legal entities themselves could have submitted a Claim Form for the Fortis shares that they held, and that the Claimant had no authority to represent both legal entities.

124. Finally, in its post-hearing submission dated 22 April 2021, Computershare admitted having made an incorrect assessment of the Claimant's authority to represent both [redacted] Inc. and [redacted] Ltd. and therefore having made a mistake by notifying the Dispute Committee that the claim was resolved, not only for the shares owned by the Claimant, but also for the amounts of compensation for the shares held by [redacted] Inc. and [redacted] Ltd. as Eligible Shareholders. In its last submission, Computershare invoked the nullity of the December 2020 Agreement on the ground that this agreement would violate the principles of Dutch public policy as it may be (ab)used to legitimize tax evasion. Computershare has explained that due to the Claimant's refusal to provide information on the tax-cleared status of the legal entities, Computershare would be unjustifiably exposed to risks of cooperating with tax evasion and/or other frustration of recourse. Computershare therefore requests the Dispute Committee to declare the Claimant's claims inadmissible, or in any event reject the Claimant's claims insofar as these relate to the shares held by [redacted] Inc. and [redacted] Ltd.

125. As a conclusion, especially in view of the circumstances above, the Dispute Committee finds that the December 2020 Agreement has not put an end to the dispute and hence has not deprived the Dispute Committee of its authority to decide whether the Claimant enjoys the right to obtain the claimed compensation as per the Settlement Agreement. The mandate of the Dispute Committee, and its discretionary authority to assess *de novo* the Claimant's rights will only end by the rendering of a binding advice.

126. This conclusion will not be invalidated by the circumstance that the Dispute Committee has itself announced, in its e-mail to the Parties of 8 December 2020 (Exhibit 1 of the Claimant), that upon receipt of the Claimant's confirmation of his agreement with Computershare's proposal, "*the dispute committee will then consider this file as closed".* That e-mail did not put an end in itself to the mandate of the Dispute Committee. It does not reflect the position that the Dispute Committee has reached on such issue after deliberation between the members of the panel, for the reasons above.

127. The Dispute Committee will therefore now address the merits of the Claimant's disputed claims.

D. <u>With respect to the shares held by [redacted] Inc.</u>

128. The Claimant contends to have right to compensation in person because he allegedly became the owner of the shares previously held by the Panamanian company [redacted] Inc., by the dissolution of that company in 2013, of which he has always been the beneficial owner.

129. The Dispute Committee notes that the Claim Form was submitted under the personal name of the Claimant, with no mention at all of [redacted] Inc. The Claimant accordingly claims for himself the benefit of the compensation related to the shares previously held by [redacted] Inc.

130. According to the Settlement Agreement, the Settlement Amount shall be distributed to Eligible Shareholders only, *i.e.* to any person who held the Fortis Shares in 2007/2008[16].

131. The compensation granted by the Settlement Agreement is personal to the Eligible Shareholder. The Claimant must therefore demonstrate that he has personally acquired the claim rights on the Fortis shares previously held by [redacted] Inc. when he filed a Claim Form in his sole name on 23 July 2019.

132. It is the Dispute Committee's opinion that it is not sufficient for the Claimant to establish that he may have been at any time the beneficial owner or the sole shareholder of [redacted] Inc. He must demonstrate that the rights for which he seeks compensation are his own personal rights and not (any longer) those of [redacted] Inc., which legal entity did not file a Claim Form and therefore did not claim any compensation.

133. It is also the Dispute Committee's finding that when a claimant claims compensation in his personal name for shares held at the time by a legal entity, the relevant issue is not for that claimant to provide evidence that he has acquired those Fortis shares or a similar number of shares, it is for that claimant to prove that he/she has acquired the claim rights granted to the original Eligible Shareholder by the Settlement Agreement. In such case the claimant must prove that he has acquired these claim rights. Notwithstanding the transfer of shares, these claim rights can indeed have been kept or separately transferred by the legal entity that was a shareholder of Fortis in 2007/2008 distinctively of the property of the Fortis shares.

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16 Clause 4.3.1 of the Settlement Agreement.

134. Computershare convincingly argues that the Claimant does not produce sufficient evidence of his personal acquisition of the claim rights held by [redacted] Inc.

In particular:

- The Claimant's Exhibit 16 seems to indicate that all assets of [redacted] Inc. have been transferred to a personal account of the Claimant on 22 October 2013. Yet what [redacted] Inc.'s account held in terms of numbers of Fortis shares at that time remains insufficiently clear from the documentation contained in Exhibits 19 through 22 of the Claimant.
- It cannot be concluded from Exhibit 20 of the Claimant, containing an overview of the Claimant's personal account, that the 8.100 shares procured by the Claimant on 13 November 2013 would be the exact shares previously held by [redacted] Inc.;
- The Claimant does not provide satisfactory legal documentation that would establish a transfer of [redacted] Inc.'s rights to the Claimant, in the period preceding the filing of the Claim Form by the Claimant;
- According to the public Panamanian register to which Computershare had access (Exhibit 4 of Computershare), [redacted] Inc. has not been dissolved and is still in existence. This makes Computershare's concern to obtain reliable evidence that the claimed rights have actually been transferred to the Claimant by their original owner, *i.e.* [redacted] Inc. even more legitimate, since nothing would prevent [redacted] Inc. from having retained ownership of all or part of its Fortis shares and/or from having retained the compensation rights attached to the Fortis shares held in 2007/2008.

135. As a conclusion, Computershare's rejection of the Claimant's claim, in so far as it concerns the Fortis shares previously held by [redacted] Inc., is upheld. The Claimant's claim regarding those shares shall be rejected.

E. <u>With respect to the shares held by [redacted] Ltd.</u>

136. The Claimant has filed a similar claim in his own name and for his own account with respect to shares previously held by [redacted] Ltd., a company established under the laws of the BVI, of which the Claimant is allegedly the sole beneficial owner.

137. For the same reasons as those explained above, the Claimant must demonstrate having acquired the ownership of all the claim rights initially attached to the relevant Fortis shares, by the time he filed his Claim Form in July 2019.

138. To deliver that proof, the Claimant mainly relies on bank statements issued by Julius Bär, the Swiss bank on which account the Fortis shares were held for [redacted] Ltd (Exhibits 26, 30, 34, 35 and 37 of the Claimant). In particular, two of these bank statements indicate that 12.000 Fortis/Ageas shares have been transferred from [redacted] Ltd.'s account to the Claimant's account, on 28 January 2014 (Exhibits 34 and 35).

139. Computershare deems that evidence as insufficient in the context of multiple outstanding uncertainties as to the exact status and existence of [redacted] Ltd., as to the identity of its shareholders/beneficial owners/directors and as to the legal justification and documentation of the transfer of assets from [redacted] Ltd. to the Claimant. Computershare concludes that "*there is no evidence that* [redacted] *Ltd transferred its claim right to Claimant*"[17] .

The Dispute Committee concerns with Computershare that the Claimant has not sufficiently evidenced the transfer of the claimed rights to his person.

140. In view of all these remaining uncertainties, considering in particular the lack of official legal documentation supporting the claimed transfer of the relevant Fortis shares from [redacted] Ltd. to the Claimant, the Dispute Committee decides to uphold Computershare's decision. It is the Dispute Committee's finding that the Claimant has not adequately taken away Computershare's legitimate doubts and has not convincingly rebutted the latter's objections as to the required demonstration by the Claimant of his personal right for compensation for the shares held by [redacted] Ltd. As a consequence, the Claimant's claim shall also be rejected in so far it concerns those shares.

VII. DECISION

For the above reasons, the Dispute Committee:

- Accepts as admissible and valid the Claimant's claim with respect to the Fortis shares held directly with Keytrade Bank in securities account number [redacted] and with BNP Paribas Fortis in securities account number [redacted]

- Rejects the Claimant's claim with respect to the Fortis shares held by [redacted] Inc. and with respect to the Fortis shares held by [redacted] Ltd.;

- Decides that the present Binding Advice shall be published in an anonymized form (with respect to the Claimant and the two legal entities concerned) on www.forsettlement.com.

This Binding Advice is issued in 4 original copies, one for each of the Parties, one for FORsettlement and one for the Dispute Committee.

Done on 15 July 2021

[17] Computershare's consolidated statement of claim of 25 March 2021, p. 28, para 5.23.

The Dispute Committee:

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Harman Korte

_____

Dirk Smets

_____

Jean-François Tossens