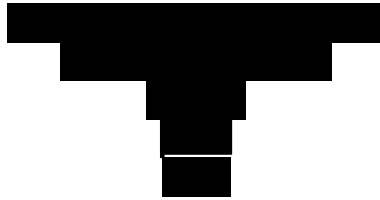


FORTIS SETTLEMENT DISPUTE COMMITTEE
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INTERIM BINDING ADVICE

on the procedural issue of the participation of third parties in the proceedings before the Dispute Committee

in the dispute between



Represented by Mr M.G. KUIJPERS, Mr S.L. BOERSEN, Mr M. HAPPÉ and Ms M.C. HERWEIJER

hereafter referred to as the ***“Claimant”***

AND

Computershare Investor Services PLC
Fortis Settlement Claims Administrator
P.O. Box 304
B-2800 Mechelen, Belgium

hereafter referred to as ***“Computershare”***

together referred to as the ***“Parties”***

Dispute Committee :

M. Jean-François TOSSENS
M. Marc LOTH
M. Harman KORTE

6 FEBRUARY 2020

I. INTRODUCTION

A. The Parties

1. The Claimant in this dispute is [REDACTED] a limited liability company incorporated in [REDACTED] and having its registered address at [REDACTED] (the **Claimant**). The Claimant is represented by its counsel Mr M.G. KUIJPERS, Mr S.L. BOERSEN, Mr M. HAPPÉ and Ms. M.C. HERWEIJER.

The Claimant describes itself as a licensed trust bank owning and managing assets in its own name which have been entrusted to it by its customers, including but not limited to Fortis shares.

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 P.O. Box 304, B-2800 Mechelen, Belgium (**Computershare**).¹

B. Composition of the Dispute Committee

3. The Dispute Committee shall, in accordance with Article 3.1 of its Regulations, be composed of a panel of three of its members².
4. For the purpose of this particular dispute, the three members composing the panel are: Mr Jean-François TOSSENS, chairing the Dispute Committee, Mr Marc LOTH and Mr Harman KORTE.

II. HISTORY OF THE PROCEEDINGS

5. On 28 December 2018, the Claimant filed claims with Computershare concerning [REDACTED] Fortis shares.
6. Computershare acknowledged receipt of the Claimant's claims on 25 April 2019.
7. On 8 August 2019, Computershare issued a "Notice of Rejection" for these claims. Certain claims were rejected as "late" and other as "ineligible".
8. Between 13 and 26 August 2019, the Parties exchanged by e-mail on the grounds for rejection of the Claimant's claims and the Claimant expressed its disagreement on such grounds, in particular by way of an e-mail on 15 August 2019. In that context, the Claimant provided further documentation in order to support its claims.
9. On 24 August 2019, Computershare issued a new "Notice of Rejection" for the Claimant's claims with amended rejection codes. All claims nonetheless remained rejected as "late".

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

² "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 [...]."

10. On 26 August 2019, the Claimant sent further documents, by FedEx, to Computershare.
11. On 30 August 2019, Computershare acknowledged receipt of the Claimant's FedEx courier, but still issued a "Notice of Rejection of Disagreement" rejecting the Claimant's disagreement filed on 15 August 2019 because the Claimant "*did not submit documentation to support [its] shareholdings by the Claims Submission Deadline nor was there a good faith attempt at providing a signed Release as [the Claimant] did not submit powers of attorney signed by [its] claimants [for whom the Claimant filed its claim] granting [the Claimant] authority to file on their behalf*".
12. On 13 September 2019, the Claimant filed another "Notice of Disagreement" with Computershare, claiming that the "Notice of Rejection of Disagreement" of 30 August 2019 was invalid.
13. On 24 September 2019, Computershare confirmed its view that the said Notice of Rejection was properly timed and valid and that any further communication should therefore be addressed by the Claimant to the Dispute Committee.
14. On 10 October 2019, the Claimant filed with the Dispute Committee its recourse against the "Notice of Rejection of Disagreement" issued on 30 August 2019 by Computershare (the **Dispute**).
15. On 11 October 2019, the Dispute Committee acknowledged receipt of the recourse and notified Computershare of its existence and content. Computershare was also invited by the Dispute Committee to submit, by 18 October 2019, all comments, factual background, references, guidelines and any other element that it may deem relevant for the decision.
16. On 14 October 2019, Mr Errol KEYNER, Deputy director of the Vereniging van Effectenbezitters (VEB) addressed an e-mail to the Dispute Committee, informing the latter of VEB's position in the Dispute.
17. On 16 October 2019, the Dispute Committee received a letter from Ms. Françoise LEFÈVRE, counsel of Ageas S.A./N.V. (hereafter **Ageas**) in relation to the Dispute, expressing Ageas' wish to file observations in that Dispute.
18. On 18 October 2019, Computershare communicated its observations.
19. On 21 October 2019, the Claimant asked the Dispute Committee to be given a possibility to comment on Computershare's communication of 18 October 2019.
20. On 22 October 2019, the Dispute Committee acknowledged receipt of Ageas' communication of 16 October 2019 and of Computershare's letter of 18 October 2019. In view of the plurality of actors and requests for submissions it received in the context of the Dispute, the Dispute Committee suggested to hold a case management conference call on 25 October 2019 having as purpose to discuss procedural aspects of the Dispute, including the setting of a procedural calendar.

21. On 23 October 2019, Mr Charles DEMOULIN (DRS Belgium SCRL, hereafter **Deminor**) sent a letter to the Dispute Committee indicating Deminor's intention to take part in the proceedings in its quality of "Active Claimant Group".

22. On 25 October 2019, the Dispute Committee held a case management conference call in the presence of:

For the Claimant:

- Mr Matthijs KUIJPERS (Stibbe N.V. Nederland)
- Mr Milan HAPPÉ (Stibbe N.V. Nederland)

For Computershare:

- Ms. Leonie PARKIN
- Ms. Janainna PIETRANTONIO
- Ms. Kirsten VAN ROOIJEN
- Ms. Katherine ELLIS

For Ageas:

- Ms. Pia LAVRYSEN (Ageas)
- Ms. Françoise LEFÈVRE (Linklaters)
- Mr Jellen RASQUIN (Linklaters)
- Ms. Clémence VAN MUYLDER (Linklaters)

For VEB:

- ir. H.F.B. (Errol) KEYNER, Deputy director

For Deminor:

- Not present on the call

For the Dispute Committee:

- Mr Jean-François TOSSENS (Chair of the conference call)
- Mr Harman KORTE
- Mr Marc LOTH
- Mr Dirk SMETS

23. At the opening of this conference call, the Claimant objected against granting any right of participation of any kind to Ageas, VEB, Deminor and/or to any entity other than Computershare itself, in the Dispute. The Claimant consequently requested the suspension of the conference call pending a decision of the Dispute Committee on such right of participation.

24. The Dispute Committee discontinued the case management conference call and, by e-mail of the same day, invited the Claimant and Computershare to share their observations and respective positions, in writing, on the issue of the potential participation in the proceedings before the Dispute Committee, under any form or to any extent, of any entity other than the

Claimant and Computershare. The Claimant was given until Monday 4 November 2019 for presenting its observations on this particular issue and Computershare was given until Tuesday 12 November 2019 for the same.

25. By reply e-mail, the Claimant requested to be able to present its observations on Tuesday 5 November 2019, considering that 4 November 2019 is a national holiday in [REDACTED]. Such request was granted by the Dispute Committee and Computershare was also given an extra-day to present its observations, *i.e.* for Wednesday 13 November 2019.
26. On 5 November 2019, the Claimant presented its observations on the participation of additional parties in the Dispute.
27. On 13 November 2019, Computershare presented its observations on the same.
28. On 21 November 2019, Ageas submitted written observations to the Dispute Committee on its own initiative.
29. On 25 November 2019, and in view of such initiative, the Dispute Committee decided that (i) by 3 December 2019, Deminor and VEB would be invited to confirm their initial wish to participate in the proceedings and, in the affirmative, to justify such request including its extent and modalities and that (ii) by 13 December 2019, the Claimant and Computershare would be invited to comment on the submission received from Ageas on 21 November 2019 and on the submissions to be received, as the case may be, from Deminor and VEB.
30. On 26 November 2019, the Claimant sought an extension of its deadline to comment on the submissions until 6 January 2020.
31. Such extension was granted by the Dispute Committee by e-mail of the same day.
32. On 27 November 2019, Mr Charles DEMOULIN (Deminor) also sought an extension of Deminor's deadline to submit its observations until 10 December 2019.
33. Such extension was granted, for Deminor and VEB, by the Dispute Committee by e-mail of 28 November 2019.
34. On 29 November 2019, Mr Paul COENEN (VEB) submitted VEB's observations by e-mail.
35. On 10 December 2019, Deminor submitted its observations.
36. By letter of 6 January 2020, Computershare indicated to the Dispute Committee that it had no further comment and stood by its submission of 13 November 2019.
37. On 6 January 2020 as well, the Claimant sent its second submission.

III. SUMMARY OF THE DISPUTE

A. On the merits

38. The Claimant submitted, on 28 December 2018, claims concerning ██████████ Fortis shares which it deemed eligible for compensation and qualifying for early distribution of the Fortis Settlement Amount.

The Claimant held these shares as a trust bank. The Claimant therefore sustained that it was holding the shares on its own account and that it accordingly qualifies as an Eligible Shareholder within the meaning of the Settlement Agreement.

39. Computershare, as claims administrator, indicated that the treatment of the Claimant's claims was part of a general discussion between Computershare and the Foundation, between the end of 2018 and the beginning of 2019, on the status to be given to certain incomplete claim submissions that were filed without meeting the essential requirements of the Settlement Agreement and which could reasonably be considered as to have been submitted with the intent to toll the filing period while additional information/documentation was gathered (a so-called **Placeholder Claim**).
40. Ultimately, Computershare received guidance from the Foundation that, if a claim had been submitted without supporting and appropriate documentation of holdings, such claim should be considered a Placeholder Claim and therefore be rejected without any opportunity to cure the deficiency.
41. On that basis, Computershare decided that the Claimant had not provided sufficient "reliable evidence" of its ownership of the shares nor properly executed claim forms for each underlying account. Computershare therefore rejected the claims.
42. As it stems from the above, the Parties are essentially in dispute about the definition of a "Placeholder Claim" and on the consequences that such qualification would entail.

B. On the participation of additional parties in the proceedings

43. The Parties are in dispute with respect to whether or not entities other than the Claimant and Computershare should be given the opportunity to participate in the proceedings before the Dispute Committee.
44. This question arose after Ageas, VEB and Deminor (the **Entities**) expressed their intention to present observations in the Dispute and Ageas, on its own motion, sent a submission to the Dispute Committee and the Parties on 21 November 2019.
45. The present interim Binding Advice has as purpose to address this specific procedural issue exclusively and not to rule on the merits of the case, which will be addressed at a later stage of the proceedings.

IV. POSITIONS OF THE PARTIES

A. Position of the Claimant

46. The Claimant objects against the participation of the Entities, which have expressed an interest in taking part in the proceedings before the Dispute Committee for this Dispute. In its first submission of 5 November 2019, the Claimant expresses its view that the intervention of such Entities in the Dispute would make the proceedings more complicated, more time-consuming and more expensive. With respect to the latter, the Claimant points out that this is particularly worrying considering that the Regulations of the Dispute Committee do not provide for compensation for legal costs.
47. The Claimant also underlines that the procedure for obtaining compensation under the Settlement Agreement has been validated by the Amsterdam Court of Appeal in its current form, *i.e.* not providing for any third party to be involved, and that such applicable procedure can therefore not be changed.
48. In its second submission of 6 January 2020, the Claimant relies on the Dutch Collective Settlement Act (*Wet Collectieve Afwikkeling Massaschade*, the **WCAM**), as examined by the Amsterdam Court of Appeal when reviewing the Settlement Agreement, the core principle of which being to ensure a simple and expedient way to obtain reasonable financial compensation. The Claimant contends that allowing third parties to participate in the proceedings before the Dispute Committee would not comply with that requirement. Rather, according to the Claimant, this would result in an “all-out” litigation entailing additional costs, complications, delays and uncertainties which would not safeguard the rights of the Eligible Shareholders.

In addition, the Claimant underlines that the Entities jointly drafted the Settlement Agreement and the Regulations of the Dispute Committee and that, therefore, they do not have a subsequent right to actively participate in individual claims for compensation of Eligible Shareholders as they request.

49. The Claimant also contends that a confidentiality obligation would apply to the proceedings before the Dispute Committee, notably by virtue of Article 4.21 of the Regulations of the Dispute Committee, and that such confidentiality obligation should have prevented the Entities from being informed of the existence and content of a particular dispute in the first place.

It also sustains that such confidentiality duty would have been breached by Computershare in that the latter would have shared information about the Dispute with the Entities which, even if these are parties to the Settlement Agreement, do not have a right to participate in the proceedings before the Dispute Committee.

The Claimant rebuts the argument, formulated by Ageas and Computershare, that section “IV. Privacy” of the claim form would constitute an appropriate basis for justifying sharing information about the Claimant, as that privacy provision would not be applicable to a legal entity but only to natural persons within the meaning of Regulation 2016/679 of 27 April

2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the **GDPR**) .

In addition, the Claimant also argues that the Foundation's supervisory role would not, contrary to what Ageas alleges, allow Computershare to share information (including submissions or correspondence) during the proceedings with such entity. In any case, should Computershare nonetheless do so, the Claimant argues that the Foundation, including its board members, should also be bound by confidentiality and, therefore, be prevented from circulating information about a dispute to third parties such as VEB and Deminor. Again, in any event, the Claimant claims that even if there existed a right to receive information, this would not entail a right to participate in the current proceedings.

Such breach of confidentiality by Computershare would, according to the Claimant, also go against the basic principle of due process.

50. The Claimant moreover claims that the Dispute Committee would not have any authority to allow additional entities to take part in the proceedings before it. This would, in its view, stem from the restricted nature of the consent given by Eligible Shareholders in their claim forms with respect to their claim for compensation and, *a fortiori*, with respect to the jurisdiction and powers of the Dispute Committee.
51. It also refers to the Regulations of the Dispute Committee which, it sustains, do not contain any possibility for any party other than the Claimant and Computershare to join or otherwise be involved in the proceedings and therefore would exclude any intervention of such other party.
52. According to the Claimant, Article 4.10 of the Regulations would not give authority to the Dispute Committee to allow the intervention of third parties in the proceedings: first, the Regulations would at least implicitly exclude such intervention and would therefore contain no gap; second, Article 4.10 would only grant a flexibility to rule on procedural issues (such as the number of hearings) while the issue of intervention of third parties would concern the scope of jurisdiction, the extension of which would require the explicit consent of the parties.
53. The Claimant also argues that all provisions identified by Ageas and Computershare in these texts to justify the participation of third parties in the proceedings do not in fact provide for such right. Rather, according to the Claimant, no right of participation for third parties has been provided, anywhere, in the Regulations or in the Settlement Agreement, and therefore cannot be deemed to exist. If it had been intended for third parties to be given a participation right, that would have been explicitly provided.
54. It is also sustained by the Claimant, in its first submission of 5 November 2019, that, since the current proceedings only affect the Claimant's interests, the Entities that wish to participate in the proceedings do not have a legally relevant interest in doing so.
55. With respect to VEB and Deminor's positions, the Claimant essentially emphasizes that the Settlement Agreement has to be interpreted objectively on the basis of its wording, thereby excluding the taking into account of the subjective intentions of the parties, such as Deminor.

B. Position of Computershare

56. Computershare's position is that the Entities should be allowed to participate in the proceedings before the Dispute Committee in this case.

57. Computershare disputes having breached confidentiality in this matter. First, it relies on section "IV. Privacy" of the claim form that has to be signed by any claimant – and therefore binding on such claimant – and which provides that, for the administration and assessment of a claim, all information provided by the claimant shall be processed, *inter alia*, by Ageas and the Foundation (incl. the active claimant groups which make up the board of the Foundation). The sharing of such information to these entities is therefore permitted on that basis, according to Computershare, and it has therefore not breached any confidentiality obligation by doing so.

58. The confidential nature of the proceedings before the Dispute Committee, as interpreted by the Claimant, is also challenged by Computershare. In particular, Computershare sustains that the confidentiality undertaking of Article 4.21 of the Regulations of the Dispute Committee does not require that the proceedings be confidential only to the parties, so as to exclude the Foundation, active claimant groups and Ageas. In Computershare's view, active claimant groups and Ageas would qualify as "persons involved indirectly" in the proceedings as per that article and should thus not be excluded from such proceedings on the basis of that confidentiality obligation.

To support this argument, Computershare also refers to the fact that the Regulations of the Dispute Committee explicitly provide for the Foundation to receive an original copy of any binding advice rendered by the Dispute Committee. This provision would confirm that the confidentiality should not be opposed to the Foundation.

59. In continuity of the above, Computershare also underlines that the Entities are not third parties to proceedings before the Dispute Committee. It refers in that respect to Articles 4.2.1, 4.2.2 and 4.2.4 of the Settlement Agreement. The Foundation's role would not fall away once Computershare is appointed, and would continue to supervise, monitor and administer the distribution of the Settlement Amount until full distribution is complete. By definition, the Foundation would thus be an interested party and should be given the opportunity to make representations on matters in dispute should it so wish.

60. Computershare challenges the Claimant's allegation that the Dispute Committee would not have the power to determine whether additional parties should be allowed to be involved in proceedings before it. It refers to Article 4.10 of the Regulations of the Dispute Committee which, it sustains, gives the latter discretion to allow the participation of third interested parties if it deems it appropriate.

61. With respect to the Claimant's argument that participation of additional parties in the proceedings would render such proceedings more costly and time-consuming, Computershare responds that costs alone should not constitute a substantive objection to the involvement of such additional parties. Moreover, the proceedings will not necessarily be lengthier by reason of such involvement if, for example, a restricted timetable is acted.

Finally, Computershare adds that the Claimant has no knowledge of the position which would be adopted by the Entities in this case, should these be allowed to take part in the proceedings. Therefore, it cannot conclude that such participation would automatically increase its costs, since the Claimant may not have to respond to such Entities if they endorse its position.

62. As a concluding remark, Computershare underlines that it considers of value to have the Entities' views heard on matters of policy, such as that at stake in the Dispute, if these parties have opinions and knowledge which may be relevant, it being understood that their participation may be limited (*e.g.* their submissions may be limited to such issues of principle and policy at the exclusion of any detailed matters of the Claimant's case).

V. POSITIONS OF THE ENTITIES

A. Position of Ageas

63. In its submission of 21 November 2019, Ageas expresses its position that it should be entitled to intervene in the present proceedings or, at least, be granted an "*amicus curiae*" status.

64. With respect to the alleged breach of confidentiality, Ageas emphasizes that Article 4.21 of the Regulations of the Dispute Committee provides for the possibility that certain persons be involved "indirectly" in the proceedings before the latter. It adds that Ageas should be considered as such an "indirectly involved" party.

In response to the Claimant's argument that Ageas should never have been made aware of the Dispute, Ageas first recalls that the Foundation and its board members supervise Computershare's work and, in that context, are made aware of difficulties encountered by Computershare. Typically, that includes questions such as those in the Dispute. Ageas then states that neither the Foundation nor its board members are bound by a confidentiality undertaking with respect to the knowledge they gained in that context. Nothing therefore prohibits them from sharing information with Ageas.

Similarly to Computershare, Ageas also refers to section "IV. Privacy" of the claim form which it deems demonstrates the absence of any confidentiality obligation.

65. With respect to Ageas' right to intervene in the current proceedings, Ageas first states that it holds a legitimate interest for such participation, *i.e.* ensuring that the Settlement Agreement is implemented in a correct manner.
66. It then refers to Articles 4.3.3(h) and 10.4.1 of the Settlement Agreement which, it argues, support the view that Ageas should be allowed to intervene in the proceedings. In particular, Ageas makes the argument that the scope of the Dispute Committee's jurisdiction, while limited *ratione materiae*, would not be limited *ratione personae* and would, in some cases, include Ageas.
67. Ageas also makes another argument that Article 4.10 of the Regulations of the Dispute Committee would allow the Dispute Committee to allow intervention by third-parties where it deems appropriate, as it states that "[...] *the Dispute Committee shall determine the manner in which and the time limits within which the proceedings will be conducted [...]*".

68. Finally, should Ageas not be allowed to intervene in the proceedings, Ageas makes a claim in the alternative, asking the Dispute Committee to grant Ageas the status of “*amicus curiae*”. In that respect, Ageas underlines that it could bring an interesting perspective that would assist the Dispute Committee in the determination of the issues raised in the proceedings.

B. Position of Deminor

69. In its submission of 10 December 2019, Deminor’s position is that it should be entitled to intervene in the present proceedings and confirms its wish to intervene in the proceedings.

70. At the outset, Deminor indicates that the circumstances in which it became aware of, and received information about the Dispute, did not constitute a breach of confidentiality. It refers to Ageas’ arguments brought forward in the latter’s submission of 21 November 2019.

71. To justify its request to intervene, Deminor first refers to Ageas’ submission of 21 November 2019. It specifies that Articles 4.3.3(h) and 10.4.1 of the Settlement Agreement, as invoked by Ageas, are similarly relevant for Deminor.

72. Deminor also concurs with Ageas that the Dispute Committee has the power and authority to allow the intervention of the Entities in its proceedings.

In that last respect, Deminor emphasizes that there are moreover compelling reasons for allowing such intervention, *i.e.* the correct implementation and interpretation of the Settlement Agreement which the Dispute Committee will necessarily have to carry out, of which it was a drafting party. Indeed, Deminor underlines that it is generally accepted under Dutch law that the intention of the parties to an agreement is a relevant criterion to take into account when interpreting such agreement.

73. In conclusion, it is Deminor’s standpoint that preventing Deminor from intervening in the proceedings would deprive the Dispute Committee of valuable and relevant input which would help it interpret and apply the Settlement Agreement.

C. Position of VEB

74. VEB’s position is that it should be entitled to intervene in the present proceedings. In that respect, VEB endorses the legal bases laid down in Ageas’ observations of 21 November 2019.

VI. DISCUSSION AND FINDINGS

A. The confidential character of the proceedings before the Dispute Committee and the alleged breach thereof by Computershare

75. The Claimant contends that Computershare, by sharing certain information about the Dispute with Ageas and active claimants groups, would have breached the confidentiality obligation provided by Article 4.21 of the Regulations of the Dispute Committee.

This Article reads as follows: *“The proceedings before the Dispute Committee are confidential and all persons involved either directly or indirectly shall be bound to secrecy, except and insofar as disclosure ensues from the law or the parties' agreement. The Dispute Committee and/or the Foundation may publish an anonymized version of the Binding Advice on www.forsettlement.com”*.

76. It stems from that Article that all persons involved (directly or indirectly) in the proceedings before the Dispute Committee have an obligation to keep such proceedings confidential with respect to third parties to such proceedings.

77. However, this provision does not formally prevent Computershare from sharing certain information on such proceedings within the closed circle of the parties to the Settlement Agreement.

The reference to persons involved “indirectly” in the proceedings supports this interpretation of Article 4.21.

78. In addition, it is true that, as sustained by Computershare, the confidentiality of the proceedings before the Dispute Committee cannot be interpreted as applying with respect to the Foundation as it does apply with respect to other “non-privileged” third parties.

This is because the Foundation and its board members have a specific status and responsibility under the Regulations of the Dispute Committee and under the Settlement Agreement. In that capacity, the Foundation and its board members are authorized to be provided with certain information (e.g. the Foundation receives an original copy of each binding advice from the Dispute Committee, whether such binding advice is published or not).

79. Computershare’s argument that the Foundation has an ongoing supervising, monitoring and administering role with respect to the distribution of the Settlement Amount, in parallel of Computershare, similarly supports the above interpretation of the scope of Article 4.21. Moreover, as outlined by Ageas, the Foundation and its board members are indeed involved to some extent in Computershare’s work (exemplified in the issuance of Guidance notes for the interpretation of the Settlement Agreement) and can thereby be made aware of difficulties encountered by Computershare in the treatment of claims. A strict confidentiality obligation can therefore not apply with respect to the Foundation.

80. Nonetheless, the Dispute Committee does not agree with Computershare and Ageas that Article “IV. Privacy” of the claim forms would constitute an adequate basis to justify such

sharing of information. That Article concerns the processing of personal data which by definition do not include the content and/or the facts of the Dispute and can only relate to natural persons (and not legal entities such as the Claimant). This provision is therefore not relevant for the present debate.

81. However, the Dispute Committee underlines that the sharing by Computershare of certain information with the above-mentioned entities should respect and align with the principles of the Settlement Agreement and serve the purpose of the proper application of the latter. In that respect, the Dispute Committee is of the opinion that this sharing of information should be limited to information reasonably needed by the Entities in connection with the implementation of the Settlement Agreement.
82. Similarly, the entities with which such information has been shared should also refrain from using this information unless this would serve a specific purpose aligned with the objectives of the Settlement Agreement or its correct application.
83. In view of the above and in consideration of the arguments exchanged, it is the Dispute Committee's view that there is no principle or provision that would prohibit Computershare from informing the parties to the Settlement Agreement of the existence (and brief subject matter) of a particular recourse filed with the Dispute Committee. It is therefore not evidenced that Computershare would have breached confidentiality in doing so in this case.
84. Furthermore, it is the Dispute Committee's view that the Entities, once in possession of such information, may use that information for requesting from the Dispute Committee an opportunity to present observations on the application of the Settlement Agreement in a specific case, even if that request would not be ultimately granted by the Dispute Committee.
85. As a conclusion, the Claimant's request to order Computershare to comply with its confidentiality obligations is rejected.

B. The participation of additional parties to the proceedings before the Dispute Committee

a) *The Dispute Committee's discretion to invite additional parties to participate in the proceedings*

86. It has been sustained by the Claimant that the Dispute Committee would have no authority or jurisdiction to allow additional parties to participate in the proceedings. The Claimant has substantiated this statement with two grounds: (1) the WCAM does not allow "*complicated litigation*", and thus leaves "*no role for third parties*", and (2) the Settlement Agreement – which has to be interpreted objectively, that is according to the meaning of its actual words – does not mention the intervention of third parties.
87. The Claimant's arguments are not found to be convincing by the Dispute Committee. The WCAM does not exclude the organization of a dispute resolution mechanism such as the one provided for by the Settlement Agreement even if it may entail a degree of complexity. The WCAM also does not exclude the intervention of third parties in such dispute resolution

mechanism. In such circumstances, it is up to the Dispute Committee to safeguard fair and efficient proceedings.

88. The fact that the Settlement Agreement does not mention the intervention of third parties in the proceedings before this Dispute Committee does not exclude such an intervention either.
89. Also, the interpretation of the Settlement Agreement in conformity with the principles under Dutch law regulating the interpretation of contracts does not make such intervention of third parties necessarily deprived of any interest. The Dispute Committee refers to paragraph 60 of its Binding Advice of 31 May 2019³, according to which the meaning of the words used in the Settlement Agreement carry special weight but do not exclude, to fill the gaps, an appreciation by the Dispute Committee of any other relevant circumstance to be evaluated according to standards of equity and reasonableness.
90. Contrary to what is sustained by the Claimant, the Dispute Committee believes that it cannot be inferred from its Regulations and from the fact that these only provide for a debate between two parties, the Claimant and Computershare, that participation (including a restricted participation limited to submitting observations or a technical opinion) of potential additional parties in the proceedings has to be excluded. At the most, this gap in the Regulations demonstrates that such eventuality had not been anticipated. The Dispute Committee therefore does not concur with the Claimant's view that the Regulations would actually prohibit the intervention of third parties and would contain no gap in this respect.

Article 4.10 of the Regulations of the Dispute Committee provides that *"Unless these regulations provide otherwise, the Dispute Committee shall determine the manner in which and the time limits within which the proceedings will be conducted [...]"*. This is interpreted by the Dispute Committee as a general provision enabling it to determine the rules of procedure it deems appropriate to apply, when the Regulations are silent on a specific matter. The Dispute Committee disagrees with the Claimant's contention that authorizing the intervention of third parties would modify the scope of its jurisdiction. The intervention of third parties, in so far as such third parties do not claim the benefit of any right for themselves, but limit themselves to make observations on a dispute that is submitted to the Dispute Committee within its scope of jurisdiction, remains an issue of procedural nature. It does not amend the scope of the jurisdiction of the Dispute Committee.

As a consequence, and in accordance with Computershare and Ageas' contention, since the Regulations neither allow nor exclude the possibility for additional parties to participate in the proceedings, the Dispute Committee finds that it has discretion to decide whether or not (and if so, under which form) such participation should be allowed, on a case-by-case basis.

91. This discretionary power of the Dispute Committee is also justified in light of Article 4.17 of the Regulations which provides that *"The Dispute Committee shall decide in accordance with Dutch law, the provisions of the Settlement Agreement and these regulations and, if relevant, in accordance with other rules of law or any applicable trade usages which it considers appropriate in view of the nature of the dispute"*.

³ Published on <https://www.forsettlement.com/page/documents>.

92. Moreover, as a dispute resolution body, the Dispute Committee should be given sufficient investigative powers in order for it to properly perform its entrusted mission and issue a reasoned decision. Such investigative powers should include, without limitation, seeking additional insight from third parties, such as, for instance, the parties to the Settlement Agreement, should the Dispute Committee deem it useful or necessary.
93. Such insight may already, indirectly, be given by such parties to the Settlement Agreement through their Guidance notes⁴, which then give a valuable indication of the suggested interpretation of the Settlement Agreement by the parties to that Settlement Agreement. These Guidance notes can, at the Dispute Committee's discretion, be taken into account or not by the Dispute Committee when deciding on a dispute. These parties therefore already have a certain degree of influence on the distribution of the Settlement Amount and on the interpretation of the principles governing such distribution.
- 94. In that context, the Dispute Committee rules that it, alone, has full authority and discretion to admit or invite third parties (such as active or non-active claimants groups) to present observations and provide certain insight, should it deem it useful or necessary, within the limits described below. Considering the practice of the parties to the Settlement Agreement to suggest a common interpretation of the Settlement Agreement through Guidance notes, it is the Dispute Committee's view that under special circumstances only should these parties be individually granted the possibility to intervene or participate, under any form and to any extent, in a particular dispute.**
- 95. The Dispute Committee also underlines that such authority and discretion entail that such third parties can only be admitted into the proceedings on the Dispute Committee's allowance upon request, or invited by the Dispute Committee upon its own initiative.**
96. However, the Dispute Committee agrees with the Claimant that only the Claimant and Computershare can be considered as effective parties to the Dispute within the meaning of Articles 4.11, 4.12, 4.13, 4.19 of the Regulations.

It follows from that finding that, should additional entities be granted a right to participate in proceedings before the Dispute Committee, such participation would necessarily be limited. In that respect, the Dispute Committee underlines that it is for it to decide on a case-by-case basis on such limits which may apply both to the subject-matter for which the participation is solicited and to the modalities of such participation.

The circumstance that the parties to the Settlement Agreement may have an interest in the outcome of a particular dispute does not give them the right to participate in a dispute submitted to the Dispute Committee. By agreeing on a dispute resolution mechanism that in principle does not involve their participation to such disputes, it must be considered that the parties to the Settlement Agreement have bound themselves to the terms of their own agreement and to its consequences. It is even more so that such agreement has been approved by the Amsterdam Court of Appeal due to its nature.

⁴ Guidance notes (in full: Guidance to Computershare with regard to the interpretation of the amended and restated settlement agreement dated 13 April 2018) are explanatory documents issued by the settling parties to Computershare which are intended to reflect the common interpretation of the Settlement Agreement by the settling parties.

97. The Claimant also expressed its concern that allowing additional parties to participate in the present proceedings would alter its right to a due process and to access to justice.

The Dispute Committee agrees that the Claimant should benefit from the principles of due process and of equality of arms in the proceedings before it. Nonetheless, it is the Dispute Committee's view that the participation of one or more additional parties in the proceedings would not necessarily unduly advantage or disadvantage the Claimant or Computershare and would thus conflict with these principles.

For the sake of clarity, the Dispute Committee also underlines that the additional parties which could potentially be granted a certain degree of participation in the proceedings before it are not limited to the active claimant groups, nor are they limited to parties which would support Computershare's arguments.

98. In any event, the Dispute Committee shall ensure that – should an access to the proceedings be granted to certain additional entities – such participation shall respect the principle of due process and the rights of defense of the parties to the proceedings, *i.e.* the Claimant and Computershare. For the sake of clarity, the Dispute Committee finds that no right of defense or right to a due process apply in such context to the additional parties, as these are not to be considered as effective parties to the proceedings.
99. As a conclusion, the Dispute Committee rules (1) that only the Claimant and Computershare are effective parties to the proceedings, (2) the Dispute Committee has the authority and discretion to admit or invite a third party into the proceedings if deemed useful or necessary, (3) that such admittance or invitation is bound to limits that are drawn, on a case-by-case basis, by the Dispute Committee, (4) and in accordance with the principles of due process and with the rights of defense of the effective parties to the proceedings.

b) The Claimant's arguments of costs and time efficiency

100. Costs and time efficiency issues, as raised by the Claimant in its first submission of 5 November 2019, are not an argument that the Dispute Committee deems decisive in respect of the present question submitted.
101. However, in any event, the allegation that allowing additional parties to intervene in the proceedings would adversely impact the Claimant's position is not demonstrated. It cannot indeed be presumed that the more the parties to the proceedings the more time such proceedings will take (and the more costs it will entail). Ultimately, the timing of the proceedings depends on the extent to which the additional parties, if any, are allowed to participate and on the procedural calendar set by the Dispute Committee.

In that respect, the Dispute Committee notes that, in some instances, allowing additional insight to be provided – for example by way of observations to be submitted by additional parties – may facilitate the Dispute Committee's reasoning and lighten its workload, thereby actually saving time to all parties involved. Ultimately, it remains for the Dispute Committee to decide on whether or not additional parties are allowed to take part in the proceedings.

102. With respect to the Claimant's argument that the WCAM would require that the proceedings before the Dispute Committee be simple and expedient, and that the requests for intervention of the Entites go against such principle, the Dispute Committee recalls the following.

First, it is correct that – to the extent possible – the Dispute Committee tries to ensure that, in accordance with Article 4.14 of its Regulations, a binding advice is rendered in each case within twenty business days after a dispute has been submitted. Nonetheless, and as also stated in that Article, *“the Dispute Committee shall be authorized to extend this time limit if reasonableness and fairness so require”*.

Second, and in that respect, the statement made by the Claimant that *“nearly three months have passed since [the Claimant] submitted its claim on 10 October 2019 to the Dispute Committee. The assessment on the merits of [REDACTED]'s claim has not even started yet”* should be read in conjunction with the facts that (i) it is the Claimant itself which opposed any intervention of third parties in the current proceedings, which led the Dispute Committee to ask the Parties to comment on such intervention and (ii) it is the Claimant which requested a time-extension to present its final observations, from 13 December 2019 to 6 January 2020.

c) *Appreciation in concreto*

103. On the basis of the above principles, as clarified by the Dispute Committee, and for the purposes of the case at hand, the Dispute Committee decides that it does not admit or invite the Entites to participate in the current proceedings.
104. Although the Dispute Committee finds that it is competent to admit or solicit, on its own motion, such participation, it is of the opinion that, at this stage and after a high-level review of the Parties' respective submissions on the merits, an additional and external input from third parties is not deemed necessary for the Dispute Committee to resolve the Dispute.
105. In addition, since no Guidance note has been issued on the subject-matter, the Dispute Committee infers that the parties to the Settlement Agreement do not necessarily share the same view on the issues at hand. Consequently, authorizing multiple individual submissions on the merits of the Dispute might not help the Dispute Committee in rendering a decision and might even render its task unduly more complicated.
- 106. For these reasons, the Dispute Committee does not deem appropriate to admit or invite the Entites to participate in the proceedings, in the case at hand and at this stage.**

VII. DECISION

On the basis of the above, the Dispute Committee:

- rejects the Claimant's request to order Computershare to comply with its confidentiality obligations;
- rules that it does not admit or invite, at this stage and in the circumstances, the Entities to participate or be heard in these proceedings and that, therefore, the proceedings in this Dispute shall resume accordingly between the Claimant and Computershare;

and, as a consequence, invites the Parties to participate in a conference call with the Dispute Committee, on a close date to be agreed between the Parties and the Dispute Committee in order to discuss the procedural calendar for the continuation and for the closing of the proceedings.

This interim Binding Advice is issued in 6 original copies, one for each of the Parties, one for the Foundation and one for each of the members of the Dispute Committee.

Done on 6 February 2020

The Dispute Committee:

Mr Marc LOTH

Mr Harman KORTE

Mr Jean-François TOSSENS