

# CONSTITUTION OF A FOUNDATION

This ninth day of October nineteen hundred and ninety-six, there appeared before me, Prof. Dr Aart Adriaen van Velten, civil law notary practising in Amsterdam (the Netherlands):

1. Prof. Dr Luigi Ferrari Bravo, President of the International Institute for the Unification of Private Law (UNIDROIT) and Judge at the International Court of Justice, residing in Rome (Italy), Via Cassia 1004, born in Naples (Italy) on 5 August 1933, married, bearer of Italian Diplomatic passport number 015787 issued on 13 January 1995 in Rome;

2. Prof. Dr Arthur Severijn Hartkamp, Advocate-General at the Supreme Court of the Netherlands and member of the Governing Council of UNIDROIT, residing in the Hague (the Netherlands), Van Weede van Dijkveldstraat 105, born in Amsterdam (the Netherlands) on 10 January 1945, married, bearer of Dutch passport number 790877 C;

Prof. Ferrari Bravo and Prof. Hartkamp, acting in a personal capacity, have stated their intention to constitute a foundation. The articles of this foundation read as follows:

## **Name, corporate seat, term**

### **Article 1**

1. The name of the foundation – hereinafter referred to as: the ‘**foundation**’– is: Stichting ter ondersteuning van UNIDROIT/Foundation for the support of UNIDROIT.
2. The short name of the foundation is: UNIDROIT Stichting/The UNIDROIT Foundation.
3. The seat of the foundation is The Hague.
4. The foundation has been created for an indefinite term.
5. The foundation is a not-for-profit organisation in that it may not distribute its receipts otherwise than for the purposes set out in Article 2.

## **Purposes**

### **Article 2**

The objects of the foundation are to support the activities of the International Institute for the Unification of Private Law ("UNIDROIT"), in the advancement of education in the field of international uniform law and comparative law both in the Netherlands and elsewhere, and the promotion of the development of international uniform law, in particular (but without prejudice to the generality of the foregoing) by facilitating and providing support for:

- (i) research into uniform law and comparative law and the dissemination of the results of such research by the means stated in (ii), (iii) and (iv) below;

(ii) the formulation, through study, research and international consultation, of international conventions, model laws and restatements, and the promotion of an awareness and understanding of such activities and instruments by means of meetings, courses, conferences and seminars and the publication of books, guides, journals, articles and other publications in the fields of uniform and comparative law;

(iii) fellowships, studentships, scholarships and bursaries for those engaged in the study, teaching or preparation of uniform and comparative law; and

(iv) the establishment and expansion of databases, library materials and other information systems and facilities to support and make generally available such education, study and research,

and in pursuit of any of the above objects to undertake any activities, not having a commercial purpose, which are connected with or may be conducive to the attainment of these objects, all the above in the widest sense of the word.

## **Capital**

### **Article 3**

1. The capital of the foundation shall consist of donations, grants, gifts and property obtained through testamentary dispositions and legacies, as well as other income.

2. The funds raised by the foundation, after making provision for its proper expenses, will be remitted or applied exclusively to support the activities of UNIDROIT.

## **Board of Governors**

### **Article 4**

1. The Board of Governors of the foundation is composed of no less than five and no more than fifteen members who shall include:

(a) at least one person elected and appointed by the Governing Council of The International Institute for the Unification of Private Law (UNIDROIT), an independent, intergovernmental organisation with its seat in Rome, Italy (this institute hereinafter to be called: '**UNIDROIT**', and the aforementioned council hereinafter to be called: the '**Governing Council**');

(b) the Secretary-General of UNIDROIT; and

(c) a Dutch citizen resident in the Netherlands, as appointed by the Board of Governors.

2. The members of the Board of Governors are appointed by the Board of Governors. The Board of Governors will fix the number of Governors unanimously, with due observance of the provisions of section 1 of this article.

3. Members of the Board of Governors are eligible for re-appointment for successive periods of five years.

4. The President of the Board of Governors shall be such person as may be designated by the Board in consultation with the Governing Council. The President shall serve for a period of five years and shall be eligible for re-appointment for successive periods of five years.

5. The Board shall elect from its membership a Vice-President, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by the same person.

6. As soon as one or more vacancies occurs on the Board of Governors, the latter shall fill the vacancy or vacancies. In respect of any member of the Board who was elected by the Governing Council, such vacancy or vacancies shall be filled by election by the Governing Council.

7. The Members of the Board of Governors shall receive no remuneration for their activities. They are not entitled to the reimbursement of any costs incurred by them in the course of their duties, nor can they be granted any attendance fees.

## **Policy plan**

### **Article 4a**

The foundation has an up-to-date policy plan, which provides insight into the activities carried out by the foundation, its way of fundraising, its management of assets of the foundation and its spending of those funds.

## **Board meetings and resolutions of the board**

### **Article 5**

1. The meetings of the Board shall be held in Rome unless otherwise determined by the majority of the members of the Board.

2. At least one meeting shall be held each year. At any meeting five members of the Board shall constitute a quorum.

3. Meetings shall be held when the President thinks fit or if any three members address to the President a request in writing to that effect, precisely stating the intended business of that meeting. Should the President fail, in accordance with such a request, to call a meeting to be held within three weeks of the request being made, the members making the request shall be entitled to issue notices convening a meeting subject to the observance of the requisite formalities.

4. Notices convening a meeting shall be issued at least seven days before the meeting, not counting the day on which the meeting is called and the day of the meeting, or at shorter notice if so agreed by the majority of the members of the Board.

5. The notices convening the meeting shall state its place, time and agenda.

6. The meetings shall be chaired by the President of the Board or in the absence of the President by the Vice-President.

7. Each member of the Board of Governors is entitled to one vote. Any member may designate another member to represent him or her at a meeting.

8. Except as otherwise required by these articles, all Board resolutions shall be adopted by an ordinary majority of the votes validly cast by those present or represented at the meeting.

9. As long as all members are present or represented at a Board meeting, resolutions may validly be adopted on any subject coming up for discussion, provided that they are adopted unanimously, even though the formalities for calling and holding meetings may not have been observed.

10. A resolution in writing of which seven days' notice has been given and which is signed by the majority of the Board shall be as valid as if it had been duly passed at a meeting. For this purpose writing and signature mean a record of information (including information communicated by tele-transmission) which is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person's approval of the record.

11. All votes at a meeting shall be by show of hands unless a secret ballot is required by law or by a majority of the members present and voting.

A secret ballot shall be held by means of unsigned, closed ballot papers.

12. When the votes are equally divided the person chairing the meeting shall have the casting vote.

13. Any disputes regarding votes not provided for in these articles shall be decided by the person chairing the meeting.

14. Minutes of the proceedings of meetings shall be taken by the Secretary, or by one of the other members present if requested to do so by the President. The minutes shall be approved and signed by the President and Secretary of the meeting.

## **Powers of the board and representation**

### **Article 6**

1. The Board of Governors shall represent the foundation.

2. The foundation may also be represented by two members of the Board acting jointly.

### **Article 7**

1. The Board of Governors is authorised to conclude agreements to acquire, to dispose of or to encumber register-bound assets, to conclude agreements whereby the foundation binds itself as surety for a debt solely or jointly, guarantees that a third party will pay a debt or undertakes to provide security for the payment of a debt of a third party, provided that the Board has adopted that resolution by a two-thirds majority of members present or represented, on condition that such majority constitutes an absolute majority of the members of the Board.

2. The Board of Governors is also authorised to perform all such other acts and execute all such other documents as can be validly be performed or executed by a natural person, including the making of donations and the allotment of funds for any of the purposes set out in Article 2.

## **Termination of board membership**

## **Article 8**

Membership of the Board shall terminate:

- a. with the death of a member;
- b. with the loss of the free control of that member's property;
- c. with resignation in writing;
- d. with dismissal by virtue of Section 2:298 of the Netherlands Civil Code;
- e. with dismissal by virtue of a Board resolution adopted by a two-thirds majority of members present or represented, provided that such majority constitutes an absolute majority of the members of the Board. Reasons for the adoption of the resolution shall be stated;
- f. in the case of a Board member elected by and a member of the UNIDROIT Governing Council, when that member ceases to be a member of the Governing Council;
- g. when the period of appointment of a member expires under Article 4(4) without that member having been reappointed.

## **Financial year and annual account**

### **Article 9**

1. The financial year of the foundation shall correspond to the calendar year unless otherwise determined by the Board.
2. The books of the foundation shall be closed at the end of each financial year.  
The treasurer shall then draw up a balance sheet and a receipts and payments account for the past financial year, which annual accounts, accompanied by a report drawn up by a chartered accountant or by an accountant-administration consultant, shall be submitted to the Board of Governors within six months of the close of the financial year.
3. The annual accounts shall be approved by the Board of Governors.
4. An annual report on the activity of the foundation shall be prepared by the Secretary and, after approval by the Board of Governors, shall be communicated to the Governing Council.

## **Counsellors**

### **Article 10**

1. The Board of Governors may avail itself of the advice of one or more counsellors or experts in the exercise of its duties.
2. A counsellor or expert may be present at Board meetings if so requested without the right to vote.

## **Regulations**

## **Article 11**

1. The Board is authorised to draw up regulations dealing with matters for which provision has not been made in these articles.
2. The regulations shall not conflict with the law or with any of these articles.
3. The rules governing amendments to these articles shall apply *mutatis mutandis* to the regulations.

## **Amendment of the articles**

## **Article 12**

1. The Board of Governors may amend these articles after consultation with the Governing Council. A resolution to this effect shall be adopted unanimously at a meeting at which all the Board members are present or represented or unanimously in writing as defined in Article 5(10).
2. Amendments to the articles shall not take effect until they have been registered in the Netherlands by notarial deed. Any Board member may sign the deed amending the articles.

## **Dissolution and winding up**

## **Article 13**

1. The Board of Governors is authorised to wind up the foundation. The provisions of article 12 section 1 are applicable to a resolution to that effect.
2. The foundation will continue to exist after it has been wound up, to the extent that this is necessary in order to liquidate its assets.
3. The Board of Governors will liquidate the foundation.
4. The liquidators must ensure that the fact that the foundation has been wound up is recorded in the Dutch Trade Register.
5. The provisions of the present articles of association will remain effective to the extent possible during the liquidation.
6. Any credit balance left by the defunct foundation will be payed out to an institution as meant in article 5b of the State Taxes Act (*Algemene wet inzake rijksbelastingen*) (public benefit organization/*algemeen nut beogende instelling*) in conformity with the foundation's objects.  
Resolutions to that effect must be adopted unanimously.
7. After the liquidation has been completed, the books, records and data carriers of the defunct foundation will remain in the custody of a person or persons appointed by the Board of Governors for a period of seven years.

## **Final clause**

## **Article 14**

The Board of Governors is empowered to take decisions in respect of all matters for which provision is made neither in the law nor in these articles.

### **Interpretation of these articles of association**

## **Article 15**

This foundation aims to be a public benefit organisation (*algemeen nut beogende instelling*) as meant in article 5b of the State Taxes Act (*Algemene wet inzake rijksbelastingen*). These articles of association should be interpreted in accordance with that as much as possible.

Conclusion of the deed

The person appearing, whose identity I, Notary, have established by means of the document referred to in this Deed, is known to me, Notary.

WHEREOF RECORD,

the substance of which was stated to the Appearer, drawn up and executed in Amsterdam, on the date mentioned in the heading hereof.

I, Civil-Law Notary, informed the person appearing before me of the substance and subsequently explained the contents of the present Deed. I also informed that person of the consequences which the present Deed would have on the party to the Deed. The person appearing before me subsequently declared that he had taken note of the contents of the present Deed, that he consented thereto and that he did not require it to be read out in full.

After some passages of the present Deed had been read out, it was then signed by the person appearing before me and by me, Civil-Law Notary