Executive Summary

These Internal Regulations are to be considered as a complement to the CNA Articles of Association (‘Statutes’ throughout the remainder of this document). Hence the members of the Calypso Networks Association (‘CNA’ or ‘Association’ throughout the remainder of this document) commit themselves to respect these Internal Regulations as accordingly stipulated in the Statutes. Eventual non-respect of the Internal Regulations will be treated according the provisions of the Statutes (conform ‘Article 6.4. Obligations of members’).

These Internal Regulations give a clear guidance on CNA’s corporate governance, yet the detailed instructions are intentionally not covered in this document. In other words, the ‘why’ (= the underlying reasons) & ‘what’ (= the means) are covered in this document, whereas the ‘how’ (= the detailed instructions) isn’t.

All CNA staff – being permanently or temporarily working for the Association – is also bound to respect these Internal Regulations.
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## Document History

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<th>20170324_CNA_Internal_Regulations_v1.08.docx</th>
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<td>Document author</td>
<td>Filip François + comments from Philippe Vappereau, Ralph Gambetta &amp; Erik Baele</td>
</tr>
<tr>
<td>Document version</td>
<td>v1.08 (reviewed version after the discussion of Friday 17-Feb-17 in Lisbon)</td>
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Organization & Corporate Governance

General principles

CNA is a not for profit organisation governed by Belgian law, which means the following sources are to be respected in order of importance (starting with the most importance source):

- All obligations fixed by Belgian law;
- The Statutes as adopted by the General Assembly of November 30th 2016 deposited on January 30th 2017 with the Court of Commerce in Brussels & published in the Belgian Official Journal on February 10th 2017;
- The CNA Internal Regulations.

The CNA Internal Regulations are to be respected by all Members of the Association except in case of contradiction with legal provisions and/or the CNA Articles of Association. The respect of the CNA Internal Regulations is mandatory to obtain and maintain the Member status, whether this relates to a Founding Member, Adhering Member or Associated Member.

CNA is organised and works as an association. Through the Statutes, CNA has put in place the General Assembly & Board of Directors as governance bodies in the sense these bodies have the formal decision powers within the Association.

To assist the governance bodies in the execution, CNA identified the following executive bodies:

- A Permanent Team;
- A Steering Committee.

The various Actors of the Association are:

- Founding Members;
- Effective Members;
- Adhering Members;
- Chairman;
- Secretary-General;
- Treasurer;
- Vice-Presidents;
- Chief Executive Officer (CEO);
- Members of the Permanent Team (by their function);
- Operational Managers of the Working Groups.
Each Body or Actor has a distinct role and according responsibilities. Where needed, the delimitation and/or shared responsibilities between Actors or Bodies are specified.

As these CNA Internal Regulations are a complement to the Statutes, the details of the Members of the Association, General Assembly and Board of Directors will not be repeated in this document.

Roles and Responsibilities

The Permanent Team

The Permanent Team is composed under the responsibility of the CEO, in accordance with the budget approved by the Board of Directors and in line with the objective of having the adequate resources to carry out the work program of CNA. The Permanent Team can contain both staff under contract with CNA and consultants governed by service contracts with CNA.

The Permanent Team ensures the implementation of the development and support program of Calypso in the following domains: technical, marketing, promotional, institutional, commercial, communication and administrative management. The Permanent Team’s efforts are complemented with efforts provided by the Members of the Association and can also be realised through efforts covered by sub-contracting by CNA.

The Permanent Team is composed of the following functions:

- CEO;
- Technical Manager;
- Technical Coordinator;
- Marketing and Communication Manager;
- Promotion and Relations Manager;
- Administrative and Communication Officer;
- Financial Officer.

The composition of the Permanent Team may be adapted in function of the objectives and the work program as decided by the Board of Directors. It is the CEO’s responsibility to make the necessary adjustments.

The members of the Permanent Team are obliged to adhere to the security rules set by the owner of the premises in which they operate. The members of the Permanent Team comply with the work guidelines given by the CEO, provided such work guidelines are not related to
the hierarchical authority of the employer in case of consultants working for CNA via a service contract.

The members of the Permanent Team do not have a delegation of powers or signature. The members of the Permanent Team cannot bind the Association, apart from signing the receipts for the subcontracted services for which they monitored the implementation.

The members of the Permanent Team can represent CNA in different external bodies (normative, institutional, etc.) or in events (conferences, trade shows, etc.) provided they respect the external communication process (as articulated in the section ‘Communication Channels & Actors’ of these Internal Regulations), which includes prior approval by the CEO.

All members of the Permanent Team must respect confidentiality with regards to the information they have access to. In case of any doubt with regards to the (potential) confidential character of information they must seek prior approval from the CEO before using and/or communicating the information.

The functional missions of the members of the Permanent Team are specified in Annex 1 of this document.

**The Steering Committee**

To steer & maintain sufficient alignment between the various content contributing organisational components, a Steering Committee is organised by CNA, presided by the CEO. Besides the CEO the participants to the Steering Committee are:

- The Chairman;
- The Secretary-General;
- The Treasurer;
- The Vice-Presidents;
- The Permanent Team;
- The Operational Managers of the Working Groups.

All participants of the Steering Committee can identify agenda-topics. If needed for the topics on the agenda, other participants may be invited by the CEO to the Steering Committee. Supporting documents should be made available in a timely manner (namely at the latest 3 business days – according to the Belgian calendar – prior to the session).

The sessions of the Steering Committee will be organised in function of the frequency & timing of the Board of Directors & General Assembly as the Steering Committee is the forum in which the Board of Directors & General Assembly are being prepared. However, if deemed necessary additional sessions of the Steering Committee can be organised.

Risks, Issues, Actions & Decisions as treated by the Steering Committee are recorded and made available according the ‘Communication Channels & Actors’ and the ‘Document Management’ (both discussed further in these Internal Regulations).
For practical reasons, participation to the Steering Committee may be done physically, electronically or over the phone.

*The Chairman*

The powers of the Chairman are defined in the Statutes.

The Chairman is empowered to represent the Association in all acts of civil life. In this capacity, the Chairman may sign the contracts on behalf of the Association, unless they relate to a deed of disposition, for which he must first be authorised to act either by the Board of Directors or by the General Assembly.

The Chairman authorises expenses and ensures compliance with the legal regulations, including the rules of safety.

The Chairman has the right of opening the bank accounts of the Association.

Any payment on the bank accounts of the Association needs two signatures among the Financial Officer, the Treasurer, the Secretary-General, the CEO or the Chairman.

The representation of CNA in matters of justice (e.g. in court) is done by the Chairman or a Vice-President.

*The Secretary-General*

The Secretary-General ensures the proper functioning of the Association with regards to material, administrative and legal matters.

The Secretary-General is responsible for keeping the various registers of the Association, drafting the minutes of the Boards of Directors and General Assemblies. The Secretary-General signs the minutes to certify their conformity.

The Secretary-General prepares and proposes to the Chairman the agendas of the Boards of Directors and General Assemblies. The Secretary-General ensures the convening of Boards of Directors and General Assemblies.

The Secretary-General prepares, in cooperation with the Chairman, the report of the Association to be presented to the General Assembly.

*The Treasurer*

The Treasurer is responsible for the financial and accounting management of the Association.
The Treasurer has together with the Financial Officer, the CEO and the Chairman the right of signature on the bank accounts of the Association. The Treasurer makes payments and collects revenue according the financial management of the Association. The Treasurer operates the accounts of the Association and is responsible for holding them.

In case of inability of the Chairman (e.g. conflict of interest, sickness, absence, etc.) and necessity, the Treasurer may sign contracts or authorise expenses in place of the Chairman.

The Treasurer proposes, and seeks validation by the Board of Directors, placement of the funds of the Association in case of surplus cash.

The Treasurer reports to the Board of Directors and prepares the annual accounts and the annual budget to be presented by Board of Directors on the ordinary General Assembly.

The Treasurer also manages:

- The accountant office for the Association which will be responsible to generate all official financial declarations (vat, annual balance, etc.) of the Association;
- The auditor designated to review the annual accounts of the Association.

The Vice-Presidents

The Vice-Presidents assist the Chairman in the realisation of his missions.

The Vice-Presidents actively participate and support the various activities of the Association and its Working Groups.

A Vice-President is a content sponsor of a Working Group, in that he ensures the link between the Operational Manager of a Working Group and the Board of Directors. The Vice-President contributes to the Working Group’s orientations provided by the Board of Directors and reports to the Board of Directors, together with the Operational Manager, on the progress of the work and requests for decision.

The Vice-President participates in the Steering Committee in the role of content sponsor of a Working Group.

The Chief Executive Officer (CEO)

The Board of Directors, in accordance with the Statutes, decided to entrust the day-to-day management of the Association to a Chief Executive Officer (CEO). The CEO can be selected from among the members of the Board of Directors, via recruitment or contracted externally. The Board of Directors also decided to establish an operational structure to have the resources
required for the success of the transformation program of Calypso and CNA. This operational structure, called "Permanent Team", is under the responsibility of the CEO.

If the CEO performs other functions in the Association, these are combined with the functions as CEO.

The CEO is mandated by the Board of Directors to implement a work program to ensure the achievement of the objectives as set annually by the Board of Directors.

All the actions the CEO undertakes are to be carried out in strict respect with all the following:

- The legal obligations of CNA being association governed by the Belgian law on not for profit organisations;
- The Statutes of the organisation;
- The Internal Regulations;
- The budgetary framework as decided annually by the Board of Directors;
- The decisions as recorded in the minutes of the General Assembly and the Board of Directors.

The CEO has the powers to carry out the tasks described in the Statutes, namely:

- The CEO makes any order in the name of the Association within a limit of three hundred thousand (300,000) euros (excluding VAT) as fixed in these Internal Regulations. Above this amount a prior approval of any financial engagement by the Board of Directors is required.
- The CEO assigns tasks to each member of the Permanent Team, follows up and validates the according execution, reports to the various governing bodies of the Association (namely the Steering Committee and the Board of Directors).
- The CEO supervises and ensures consistency with regards to the objectives of the tasks performed by each of the contributors. The CEO reports to the various governance bodies (namely the Steering Committee and the Board of Directors) on the progress of the work.
- The CEO ensures the daily management, with regards to the execution of the missions, of each member of the permanent team. The CEO exercises hierarchical authority over the staff employed by the Association.
- The CEO ensures that the members of the permanent team are provided with the necessary tools and resources to carry out their activities.
The CEO is empowered to recruit staff under contract with CNA or stop the employment contract of CNA staff, from the moment the decision of principle to employ staff is taken by the Board of Directors. From a practical perspective, this means the CEO needs to seek approval for the open position, but doesn’t a nominative approval for the candidate.

- The CEO ensures the management of the Steering Committee, meaning organisation, preparation, animation, reporting and the follow-up of actions.

- The CEO is authorised to approve missions of the members of the permanent team, meaning the CEO can approve the travel associated with a mission within the limits of the corresponding post in the budget.

The CEO is assisted throughout its missions by the members of the Permanent Team.

The CEO will always display ethical business conduct.

**Operational Manager Working Group**

The Operational Manager of a Working Group is appointed by the Board of Directors and reports to the CEO from a hierarchical perspective. The Operational Manager has no hierarchical responsibility over the participants of the Working Group. The Operational Manager ensures that the targets as set forward for the Working Group are met and organises the required activities accordingly.

The Operational Manager reports the Working Group’s progress to the Steering Committee and requests formal approval from the Board of Directors for the deliverables of the Working Group. For the link with the Board of Directors, the Operational Manager of a Working Group can get support from the Vice-President who is content-sponsor of the Working Group.

In addition to the specific provisions set out here, the Operational Manager of a Working Group is bound to the same provisions set forward for the Permanent Team.

**Overview responsibilities**

The Responsibility & Assignment Matrix is joined in annex 4.
Finance Management

The Association adopts the ‘four eyes principle’ with regards to outgoing payments. Hence any payment on the bank accounts of the Association needs two signatures among the Financial Officer, the Treasurer, the Secretary-General, the CEO or the Chairman.

All financial commitments more than one thousand (1,000) euros must be supported by a formal order document, which must be signed by the CEO & the Treasurer.

The financial commitments less than one thousand (1,000) euros must be communicated in a timely manner to the financial officer and must always mention the correct section for registration in the budget.

The acceptance of a delivery (to CNA) must be formalised by the according responsible (e.g. Operational Manager of a Working Group) and is mandatory to release the payment of the according invoice(s).

Expense notes will be signed by the CEO or treated according practical guidelines as defined by the CEO.
Demand Management

To avoid work that is not in line with the Association’s strategy, any demand for a new project, new activity or new process should be formally approved by the CEO before actual execution (within the limits of his powers).
Version Management (software)

From a generic perspective, (software) version management is the management of changes to documents, computer programs, large web sites, and other collections of information. As CNA has some important software assets, such (software) version management is critical for the Association.
Travel Policy

All travel by CNA staff and/or collaborators must be subject to an upfront approval by the CEO & must comply with the guidelines as defined by the CEO.
Communication Channels & Actors

External communication on behalf of CNA/Calypso, such as – but not necessarily limited to – newsletters, articles on the website, communication from members co-branded with CNA: communication sent out / published by (or on behalf of) the Chairman or a member of the Permanent Team or a member of CNA must always follow a process of validation which is summarized below.

The external communication is managed by the Marketing and Communication manager, under the control of the CEO and, in some cases, requires validation from the Board. It is seconded by the Communication Officer.

The Editorial Committee is an instance dedicated to CNA communication strategy and plan, which meets at least twice a year. It is animated by the Marketing and Communication manager, who has responsibility to convene the meetings. The other participants to the Editorial Committee are the CEO, the Communication officer, the responsible of the Promotion working group, the responsible of the Technical working group and Board members on a voluntary basis, preferably accompanied or represented by a representative of their communication staff.

The objectives of the Editorial Committee are to examine and validate the communication plan of the coming months, the campaigns to realize, the main messages, the results and achievements of the past communication actions. The Editorial Committee conforms to the strategy defined by the Board and the allocated budget. It can be asked to validate the content of the main campaigns of communication, whatever the media used. It does not intervene in the day-to-day process of communication which is under the responsibility of the Marketing and Communication manager, in respect with the defined strategy and process of validation.

Every communication actions, concerning the brand, the products and the promotional aspects (digital, print, event) follow the rules of validation which are defined in the table attached in annex 2.

Furthermore, presentations of Calypso made in conferences or other kind of equivalent events, by members of CNA, should be submit to the Marketing and Communication Manager to ensure integrity of the design and compliance of messages to the validated strategy of communication.
Document Management

Given the international characteristics of the Association, meaning members are literally scattered throughout the globe, it is imperative to introduce a clear Document Management. This document doesn't describe the detailed CNA Document Management (the ‘how’), but focusses on the ‘why’ & the ‘what’ (as already stipulated in the section ‘Executive Summary’ of this document).

The Association maintains a lot of information related to its proper administration, but also continuously generates content. This content can be technical, marketing, etc. Given the international characteristics of the Association, a maximum of information should be digitalised allowing as such an efficient accessibility to all stakeholders. Obviously, this doesn’t mean to simply put all content online, but it requires a CNA Document Management process which covers the following dimensions:

- Documents need to be editable & for CNA software the source documentation is required as well;
- Efficient document storage (ideally electronically, but anyhow with proper access controls and a clear overview on which information can be found where);
- Document naming convention;
- Document versioning;
- Document qualification (e.g. indication whether already approved on Working Group level or already by the Board of Directors);
- Document update process (e.g. who / which body can initiate the update of a document?).
Intellectual Property Policy

This section of the Internal Regulations is to be considered jointly with the according Article of the Statutes (‘Article 6.4.3. Intellectual Property Policy’).

Whenever one of the members engages in a collaboration in the context of a CNA Working Group, the Intellectual Property Rights as used and/or created during this collaboration become usable at no expense by Calypso (meaning Calypso automatically obtains a perpetual license free of cost should the Intellectual Property Rights be held by the member). Should a member desire not to agree with this approach, it should clearly and formally state this during the first session of the collaboration (formalised via the according meeting minutes). The member and the Association should in such event expedite the definition & duly approval of a convention specifying the exception to this Internal Regulation. In cases where the Intellectual Property Rights are created during the actual collaboration and/or brought to the table by the Association, members agree that a valorisation model will be discussed to the benefit of the Association.

The Calypso brand name, specifications & software are protected; they can only be used by CNA members upon explicit approval of the Board of Directors. For the usage refer to the specific document …
Appendix 1: Roles and responsibilities of CNA Permanent Team members

**Technical Manager**

The Technical Manager is responsible for the overall technical development program of Calypso, in all its aspects.

The Technical Manager proposes the technical development strategy, and the definition of Calypso's product range, in alignment with the Marketing Manager.

The Technical Manager proposes the annual development plan and the associated budget in alignment with the Technical Coordinator.

The Technical Manager prepares, facilitates and reports to the Steering Committee for all aspects of the technical program.

The Technical Manager supervises and ensures the follow-up, with the assistance of the Technical Coordinator, of all contracts and subcontracting contracts of the CNA Work Group n° 1 (WG1).

The Technical Manager carries out technical studies and monitors technological innovations useful for the development of Calypso.

**Technical Coordinator**

The Technical Coordinator coordinates the CNA Work Group n° 1 (WG1): organization of Work Packages, animation of working groups, dissemination of reports, management of the technical contents of the website, etc.

In cooperation with the Technical Manager, the Technical Coordinator prepares and animates the Boards of Directors to report on the technical work, obtain validation and to realize the files of technical decisions to be taken by the Board of Directors.

The Technical Coordinator tracks and updates documentary evolutions.

The Technical Coordinator follows the certification activities of portable objects and terminals.

The Technical Coordinator manages the specifications of Calypso, and Triangle, and the procedures for accessing it.

The Technical Coordinator provides technical support for the interoperability work of the CNA Working Group n° 2 (WG2). The Technical Coordinator pilots the governance of Triangle.
Marketing and Communication Manager

The Marketing and Communication Manager’s mission is to design a marketing plan in each of Calypso’s development themes, implement it and ensure its follow-up throughout the entire period of the CNA transformation.

To this end, and in general, the Marketing and Communication Manager oversees collecting all the information necessary for the knowledge of the market, conducts studies on targets, identifies opportunities and analyses competition. Based on this market intelligence, commercial actions and technical developments can be prioritised.

The Marketing and Communication Manager oversees defining the marketing actions to be implemented, in terms of communication and promotion.

The Marketing and Communication Manager accompanies the sales process, more precisely the Marketing and Communication Manager contacts all prospects regarding new areas of application of Calypso outside transport.

The Marketing and Communication Manager develops the communication strategy, in consultation with the Promotion Manager and the CEO.

The Marketing and Communication Manager defines the yearly communication plan and manages its execution.

The Marketing and Communication Manager animates the editorial committee.

Promotion and Relations Manager

The Promotion and Relations Manager identifies the targets for the international deployment of Calypso.

The Promotion and Relations Manager proposes to the CNA Board of Directors promotional activities to be carried out (e.g. organization of events, participation in trade shows and conferences).

The Promotion and Relations Manager meets identified prospects.

The Promotion and Relations Manager manages local relays in the identified target countries.

The Promotion and Relations Manager maintains relations with the institutional and political authorities in the countries concerned.

The Promotion and Relations Manager identifies and proposes potential local partners to the CNA Board of Directors.
The Promotion and Relations Manager represents CNA in international bodies: UITP, IT Trans, Smart Ticketing Alliance (STA), eTSAP, etc.

In cooperation with the Technical Manager and the Marketing Manager, the Promotion and Relations Manager implements the sales and distribution channels for CNA’s services and products.

Assistant and Communication Officer

The Assistant and Communication Officer manages and updates CNA’s communication tools, manages and administers the website & social media (such as Twitter, Facebook, Google+, YouTube, LinkedIn, etc.). The Assistant and Communication Officer manages the messaging accounts of CNA. The Assistant and Communication Officer manages and supervises the realization of the video media.

The Assistant and Communication Officer prepares, ensures the logistical organization and participates in events organized by CNA or in which CNA participates (open session, conference, exhibitions, information days, etc.).

The Assistant and Communication Officer organizes the logistics of meetings held by the association in Paris (boards of directors in Paris, meeting of industrialists, etc.).

The Assistant and Communication Officer is the interface between the permanent team and the CNA Financial Officer in Brussels.

The Assistant and Communication Officer prepares presentation materials for some seminars / speeches of the Chairman of CNA.

The Assistant and Communication Officer processes the orders and invoices of the permanent team.

Financial Officer

The Financial Officer reports to the Treasurer of the Association.

The Financial Officer is responsible for all aspects related to the day-to-day financial management of the Association, follow-up of orders, invoices and payments, management of the Association’s bank accounts, prepare the management of transfers, follow-up of payment cards for the Chairman and Treasurer, etc.

The Financial Officer ensures that all orders, purchase orders and invoices have followed the intended approval cycle per their amount and reports to the Treasurer any anomalies found.
The Financial Officer liaises with the accounting firm in charge of establishing the annual accounts of the Association.

The Financial Officer manages the membership of the Association, the establishment of contribution invoices and the follow-up of the according payments. In case of deviations the Financial Officer puts this on the agenda of the Steering Committee. The Financial Officer manages the list of members in good standing of their subscription.

The Financial Officer assists the Secretary-General in drafting the minutes of the Board of Directors and General Assembly, and in the proceedings with the authorities (such as for instance the filing of the Statutes).
## Appendix 2: External communication process of validation

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*All social media could be deleted or modified on CNA Member request, with the validation from the CNA CEO*
Appendix 3: Liability of Directors

To: Calypso Networks Association

From: Jean-François Germain, Louis-François du Castillon and Charlotte Schaumans

Date: 4 November 2016

Our Ref: CS8/CS8/59971-00002/57399405 v1

You have requested us to provide you with a high-level memo on the duties and liabilities of directors and CEOs of non-profit associations ("associations sans but lucratif / verenigingen zonder winstoogmerk") (hereafter "ASBL") under Belgian law.

EXECUTIVE SUMMARY

1. Director’s liability
   As a matter of introduction, please note that the liability of directors and of persons entrusted with daily management (CEOs) are similar. Please note however that directors are entrusted with their mandate by the general assembly of members, whereas a CEO is entrusted with his or her mandate by the board of directors. This implies that the triggering of the liability of directors towards the ASBL is a power of the general assembly, whereas the triggering of the liability of the CEO can as a matter of principle also be triggered by the board of directors.
   As regards civil liability, the ASBL is, in principle, bound by the acts performed by its management body, i.e. the board of directors, and thus will also be bound by the faults that such body commits. Nevertheless, exceptions exist pursuant to which directors may personally incur liability. The main grounds for civil liability of directors are mismanagement ("faute de gestion / bestuursfout") and tort liability ("faute extracontractuelle / buitencontractuele aansprakelijkheid").
   In addition to civil liability, directors may incur criminal liability on the basis of various criminal offenses under both the Belgian Criminal Code and specific legislation.
   Please note that neither resignation nor dismissal releases the director from liability for acts performed before the resignation or dismissal. A claim for liability can still be filed against a (former) director for faults committed during the period prior to resignation or dismissal.

2. Mitigating director’s liability
   A director is released from (civil) liability towards the ASBL if he or she is granted discharge by the general meeting of members. Moreover, actions against directors for acts performed in the exercise of their function expire after ten (10) years. Civil actions for tort expire after five (5) years as of discovery of the damage incurred and the identification of the person liable for this damage and in any event, twenty (20) years after performance of the act causing damage. Director’s liability may be further mitigated by implementing limitation or exoneration clauses in service agreements, concluding an indemnification agreement and/or subscribing to an insurance policy covering director’s liability.
1. MANAGEMENT OF AN ASBL

1.1 Board of directors

An ASBL's principal body of management is the board of directors, which must in principle be composed of at least three directors. If, however, the ASBL should count only three members, the board may be composed of two directors. In any event, the number of directors must always be less than the number of members of the ASBL.¹

Directors are appointed and dismissed by the ASBL's general meeting of members.² Unless otherwise provided by the statutes of association, directors must not necessarily be a member of the ASBL themselves. Both legal entities (including commercial companies) and individuals may be director.

The board of directors is subject to the rule of collegiality, pursuant to which management decisions must, in principle, be made by majority voting. Management decisions cannot be made by a director individually. On the other hand, the articles of association are free to organise the representation of the ASBL, which they may entrust to specific persons, e.g. the chairman of the board of directors, any two directors acting jointly, etc. By default, however, the board as a whole will always have the power to represent the ASBL.

In other words, in order to validly represent the ASBL, an agreement with a third party must be signed by the person(s) so authorised by the statutes of association. The decision to enter into the agreement, however, must be taken by the board of directors as a whole (in principle, by majority voting).

1.2 Daily management (CEO) and delegation of powers

While the board of directors may never grant a general delegation (as this would result in an invalid full divestment of its management powers), it may decide to delegate specific powers of management.

In this way, it may entrust the daily management of the ASBL to one or more persons (acting alone or jointly, as the board choses), who must not necessarily be director. The board or statutes of associations are free to accord a title to this person, who is often referred to as a managing director or CEO.

Pursuant to case law of the Belgian Court of Cassation, the powers of the person entrusted with daily management are restricted to (i) the execution of decisions made by the board of directors and (ii) acts which do not exceed the ASBL's day to day business and which, in light of their little importance and urgency, do not warrant the intervention of the board of directors. The board of directors will, however, always be required to supervise.

In addition, the board of directors may also decide to delegate certain powers for specific transactions to one or more persons. This can be done via a clearly defined power of attorney. The person entrusted

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¹ Article 13, paragraph 1 of the law of 27 June 1921 on non-profit associations, international non-profit associations and foundations, as amended from time to time (hereafter the “Law of 27 June 1921”).

² Article 4, 2° of the Law of 27 June 1921.
with daily management may delegate certain of his or her powers in the same way. However, the grantor will remain liable for the actions of the holder of the power of attorney.

2. LIABILITY OF DIRECTORS (AND CEOS)

Two forms of directors' liability must be distinguished: civil and criminal liability. We will first discuss civil liability and then briefly touch on criminal liability.

2.1 Civil liability

2.1.1 General principles governing the civil liability of directors of an ASBL

The board of directors is entrusted with the management and representation of the ASBL. The law has granted the board residual powers, meaning it has the power to perform all acts necessary or useful for realizing the corporate purpose, except for those acts reserved by law or the statutes of association to the general meeting of members. The board of directors is therefore the principal management body of an ASBL.

As a body of the ASBL, the acts performed by the board of directors are binding upon it. This implies that the ASBL may incur liability for faults committed by the board of directors. In principle, directors will therefore not be personally liable for the commitments of the ASBL. The same principles apply to the person entrusted with daily management (CEO).

Nevertheless, exceptions to the principle set out above exist. Directors may personally incur liability (i) on the basis of specific rules regarding a director's civil liability, (ii) in case of criminal offense or (iii) if they are bound in another capacity (e.g. as guarantor). Again, these also apply (mutatis mutandis) to the person entrusted with daily management (CEO).

The following faults are the main grounds for civil liability of a director of an ASBL:

- Mismanagement ("faute de gestion / bestuursfout").
- Tort liability ("faute extracontractuelle / buitencontractuele aansprakelijkheid").

The first ground is a result of the mandate relationship ("mandat / lastgeving") between a director and the ASBL: directors have an obligation of best efforts ("obligation de moyens / inspanningsverbintenis") to manage the ASBL in a due and proper manner and in accordance with the mandate granted to him. The second ground is general tort liability for damages inflicted upon another party.

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3 Article 13, paragraph 2 of the Law of 27 June 1921.
4 Article 14 of the Law of 27 June 1921.
5 Article 14bis of the Law of 27 June 1921.
6 Article 15 of the Law of 27 June 1921.
7 Article 1991 et seq. of the Belgian Civil Code.
8 Article 1382 of the Belgian Civil Code.
In addition to these main grounds, several specific liability clauses are included in various provisions included both in the Law of 27 June 1921 and in other legislation. These include but are not limited to:

- insufficient net assets in the event of a transformation of the ASBL into a company with a social purpose;\(^9\)
- some case law has held directors of ASBLs personally liable in the area of tax.\(^10\)

In the context of this high-level memo, we will limit our discussion to the main grounds of liability.

2.1.2 Mismanagement ("faute de gestion / bestuursfout")

Mismanagement by a director may result in liability of such director towards the ASBL. It covers both errors made in management of the ASBL (best-efforts obligations) and violations of the Law of 27 June 1921 and the ASBL's statutes of association (obligations of result).

(a) Errors in management

This includes both serious and simple errors, but excludes slight mistakes. The general standard consists of evaluating whether a reasonably cautious and diligent director placed in the same circumstances would have performed (or omitted to perform) the act in question.

It is up to the judge to evaluate on a case-by-case basis whether mismanagement has been committed. Nevertheless, it should be noted that directors do retain leeway in making certain decisions. In that regard, the judge may only carry out a marginal evaluation, i.e. only on the basis of elements which were known or should have been known at the time of making the decision.

Some examples include but are not limited to:

- concluding a contract under manifestly unfavourable conditions;
- systematic absence from the board of directors (i.e. failure to actively participate in the ASBL's management);
- payment of sums not due;
- not recovering recoverable and due debts
- granting a loan without sufficient guarantees;
- exercising insufficient supervision on the person entrusted with daily management (CEO) or a holder of a power of attorney;
- entrusting the daily management to a manifestly incompetent person;
- failure to conclude adequate insurance;
- failure to undertake measures to mitigate the negative consequences of the non-performance of an agreement.

A director must always act with the interest of the ASBL in mind. The mandate granted to him or her is in fact to manage the ASBL to the best of its interests.

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\(^10\) For example, case law exists which holds directors of ASBLs liable for payment of professional withholding tax ("précompte professionnel / bedrijfsvoorheffing") not paid by the ASBL, on the basis of article 86 of the Royal Decree for the implementation of the Code on Income Tax 1992.
(b) Violation of the Law of 27 June 1921 or the articles of association

A director is also liable towards the ASBL for loss resulting from breaches of (i) the Law of 27 June 1921 (and its implementing Royal Decrees) and other applicable legislation and (ii) the ASBL's statutes of association and any internal house rules that may exist.

Most legal obligations or obligations under the statutes of association are considered obligations of results. This means that there is no marginal evaluation of the act performed by the director, as above for errors in management. A violation will exist if the result has not been attained, unless the director in question demonstrates that he or she committed no fault.

Some examples include but are not limited to:

- failure to maintain accounting books and documents in accordance with applicable accounting legislation;
- drawing up the annual accounts and budget in a timely manner;
- failure to convene or hold the annual general meeting of members (in a timely manner);
- late filing of the annual accounts;
- violation of the convocation formalities;
- amending the statutes of association in violation of the procedure set out in the Law of 27 June 1921;
- not respecting a member's right to consult the register of members, accounting documents and minutes of meetings;
- distributing profit to members;
- enabling or allowing the ASBL to perform acts which fall outside of its purpose as described in the statutes of association;
- violation of the powers of representation as set out in the statutes of association;
- violation of the conflict of interest rules set out in the statutes of association;
- delegating powers of powers-of-attorney which may not be delegated pursuant to the statutes of association.

2.1.3 Tort liability ("faute extracontractuelle / buitencontractuele aansprakelijkheid")

The Law of 27 June 1921 does not provide a specific provision governing liability of directors towards third parties (as it is the case in the Belgian Company Code). Such liability can therefore only arise from tort ("faute extracontractuelle / buitencontractuele aansprakelijkheid").

A director can be held liable towards a third party for a personal fault causing loss to that third party. A fault will have been committed if the director did not act as a reasonably cautious and diligent director placed in the same circumstances. The person claiming liability must demonstrate (i) the damage suffered, (ii) the director's fault, and (iii) a causal relationship between the fault and the damage.

Some examples include but are not limited to:
• violation of any law or regulation (including a violation of the Law of 27 June 1921);
• breach of a general duty of care;
• etc.

A director could also be personally liable towards the ASBL on the basis of tort. In that case, however, the fault committed by the director may not also qualify as an error in management, or a violation of the Law of 27 June 1921 or statutes of association. In that case, the ASBL must claim liability on either of these latter two grounds.

Some examples include but are not limited to:

• embezzlement at the ASBL’s expense;
• payment carried out in violation of a seizure in the ASBL’s hands;
• misappropriating or concealing part of the ASBL’s assets.

2.1.4 Who may claim civil liability and against whom?
Claims for liability towards the ASBL, whether for errors in management, violations of the Law of 27 June 1921 or the statutes of association, or tort, are brought by the ASBL upon decision by the general meeting of members deciding by simple majority. Claims for liability towards a third party must be brought by that third party.

The claim must be brought against the director who committed the fault. Each director is individually responsible for the exercise of his or her mandate. There is no joint liability of the other directors for a fault committed by one single director. Nevertheless, joint liability may arise for directors who acted together to commit a fault.\footnote{A several ("solidaire / hoofdelijk") liability or an "in solidum" liability could be declared against directors in case of a joint fault ("faute commune / gezamenlijke fout") or contributory negligence ("faute concurrente / samenlopende fout").}

2.2 Criminal liability
Directors may also incur criminal liability on the basis of various criminal offenses both under the Belgian Criminal Code and specific legislation.

Some common criminal offenses include but are not limited to:

• theft\footnote{13};
• forgery\footnote{14} (e.g. drawing up fake invoices, false statements in the annual accounts, using a straw man to incorporate a legal entity, etc.)
• abuse of trust\footnote{15};
• abuse of ASBL property\footnote{16};
• extortion\footnote{17};
• corruption\footnote{18}.

In addition to these common criminal offenses, directors should also take into account the various criminal sanctions attached to certain breaches of labour law, tax law and real estate law.
Going into detail on criminal liability transcends the scope of this high-level memo, but we are happy to provide further information should you so wish.

2.3 Impact of resignation on liability
Neither resignation ("démission / ontslag") nor dismissal ("révocation / afzetting") releases the director (or the CEO) from liability for acts performed before the resignation or dismissal. A claim for liability can still be filed against a (former) director for faults committed during the period prior to resignation or dismissal.

A director will however, not be liable towards the ASBL for any actions that occur entirely after his or her resignation or dismissal, as he will no longer have a mandate relationship with the ASBL.

3. MITIGATING DIRECTOR’S LIABILITY
There are several ways to release or mitigate a director’s liability.

3.1 Discharge
The general meeting of members held for the approval of the annual accounts and budget, will vote on the discharge to be granted to the directors. Discharge is a post factum approval of the directors’ performance of their management duties during the preceding financial year. It implies a waiver by the ASBL of any claims it may have against the directors for any faults they may have committed in performing their duties.

Discharge only releases a director’s civil liability towards the association. That director may, however, still be held liable towards third parties. Individual members who did not approve the discharge may also retain their claim against the director.

Moreover, discharge does not cover faults which a director kept intentionally hidden nor does it release a director from criminal liability.

3.2 Statute of limitation
Civil actions against directors for acts performed in the exercise of their function expire after ten (10) years.

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12 Under Belgian law, a distinction must be made between the resignation of director — which happens voluntarily — and the dismissal of a director — which implies that the director is asked by the ASBL to leave his or her function.

13 Article 4, 4° of the Law of 27 June 1921.

14 Article 2262bis, §1, paragraph 1 of the Belgian Civil Code.
Civil actions for tort expire after five (5) years as of discovery of the damage incurred and the identification of the person liable for this damage. In any event, civil actions for tort expire after twenty (20) years after performance of the act causing damage.\textsuperscript{15}

In case of criminal offenses, expiration will never intervene before prescription of any criminal claims.

3.3 Limitation or exoneration of liability clauses
The ASBL and the director can conclude an agreement (or include a clause in the director’s service agreement) providing that the ASBL will not hold the director liable. Such limitations on or exoneration of liability will, however, only apply with regard to the director's liability towards the ASBL (i.e. liability towards third parties cannot be limited or exonerated in an agreement concluded between the ASBL and the director). Moreover, liability for wilful misconduct or criminal acts cannot be limited or exonerated and clauses to the effect will be null and void.

It is also important to note that the validity of limitation or exoneration clauses remains debated in case law. Some courts consider the rules governing director's liability to be mandatory and therefore do not accept such clauses, whereas others have upheld limitations or exonerations.

3.4 Guarantee / Indemnification agreement
It is possible for the ASBL to provide the director with a guarantee (often referred to as an indemnification letter). Such an agreement provides that the ASBL shall indemnify the director in the event that the latter is held to be liable (towards a party other than the ASBL). The extent, terms and conditions of the guarantee can be agreed upon between parties, and can cover serious errors, simple mismanagement, violations of the Law of 27 June 1921 or the statutes of association, tort liability and other grounds of liability.

However, liability stemming from wilful misconduct or fraud, or criminal liability cannot be indemnified.

3.5 Insurance
The ASBL can subscribe to an insurance policy covering director’s liability. Such insurance policies are in fact broadly applied in a corporate context today.

Insurance policies can cover both simple mismanagement and serious misconduct. Wilful misconduct and fraud, as well as criminal wrongdoing, are, however, excluded.

3.6 Management company
An individual can also mitigate his or her liability as director by exercising its director's mandate via a limited management company. Contrary to what is provided for companies in the Belgian Company

\textsuperscript{15} Article 2262bis, §1, paragraph 2 and 3 of the Belgian Civil Code.
Code, the Law of 27 June 1921 does not require the appointment of an individual as jointly and severally liable permanent representative for a legal entity appointed as director.

If an individual performs his or her director's mandate in an ASBL via a limited management company, the holder of the director's mandate will be the management company and not the individual him- or herself. Therefore, faults committed in the performance of this director's mandate will, in principle, result in the liability of the management company rather than of the individual directly.

16 In Belgium, private limited liability companies ("société privée à responsabilité limitée / besloten vennootschap met beperkte aansprakelijkheid") are often used as the legal form for a management company, as they have smaller share capital requirements.