

## 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 to 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.

Table of Contents

Executive Summary .....	1
Table of Contents.....	2
Document History .....	3
Organization & Corporate Governance.....	4
Finance Management .....	13
Demand Management .....	14
Version Management (software).....	15
Travel Policy .....	16
Communication Channels & Actors .....	17
Document Management.....	18
Intellectual Property Policy.....	19
Appendix 1: Roles and responsibilities of CNA Permanent Team members.....	20
Appendix 2: External communication process of validation.....	24
Appendix 3: Liability of Directors.....	25

## Document History

Document name	20170324_CNA_Internal_Regulations_v1.08.docx
Document author	Filip François + comments from Philippe Vappereau, Ralph Gambetta & Erik Baele
Document version V1	24-03-17 « V1.09 final version 2017 »
Document version V2.2	27-09-23 « V2.2 new CNA organisation 2023 »
Document version V2.3	05-01-24 « V2.3 new IP text and new title COO »
Document date	05-01-24

## 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 December 19<sup>th</sup> 2023 deposited on January 30<sup>th</sup> 2017 with the Court of Commerce in Brussels & published in the Belgian Official Journal on February 10<sup>th</sup> 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:

- An Operations Team;
- A Steering Committee.

The various Actors of the Association are:

- Founding Members;
- Effective Members;
- Adhering Members;
- Chair;
- General Secretary;
- Treasurer;
- Vice-Chairs;
- Operations Manager Member of the Operations Team (by their function);
- Operational Manager 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

Board Members Code of Conduct:

Board members are ambassadors of Calypso (having CNA business cards, ensuring representation and promotion of Calypso in events etc.)

CNA is filed in the EU Transparency Register and consequently the association has to comply with the set legal framework.

Any potential conflict of interests of a Board member shall be self-declared prior to a Board meeting in accordance with the defined rule set in the statutes of the association.

Delegation of tasks to Board members who are not part of the Steering Committee is encouraged in order to increase their commitment and involvement (e.g. set up of negotiations teams).

Availability of documentation to Board members one working weeks before the Board meetings including a list of decisions to be taken.

Co-working space for Board members (Teams)

Reinforce the roles of the Vice-Chairs, with dedicated meetings with the Chair and General Secretary, Treasurer and Chief Operations Officer in form of monthly Steering Committees meetings (see SteerCo section).

Limited connectivity (e.g. use of computers) for other activities during the Board meetings

Allowance of remote participation to Board meetings for extra Europe participants only. All others need to be present in person. The allowance of remote participation is granted also to European members of the Board of Directors when Board Meetings are held outside of Europe.

Avoid systematic absence of Board members (unexcused absence for three consecutive times will lead to revoking of Board membership status) . (Statutory change)

Board members can always provide a power of attorney in case of absence or any other reason

Four board meetings in a calendar year. One of them mandatorily aligned with the General Assembly.

#### *The Operations Team*

The Operations Team falls under the responsibility of the Chief Operations Officer 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 Operations Team can contain both staff under contract with CNA and consultants governed by service contracts with CNA.

The Operations 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 Operations 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 Operations Team is composed of the following functions:

- Chief Operations Officer
- Technical Manager;
- Marketing and Communication Manager;
- Promotion and Relations Manager;
- Administrative and Communication Officer;
- Financial Officer.

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

The members of the Operations Team are obliged to adhere to the security rules set by the owner of the premises in which they operate. The members of the Operations Team comply with the work guidelines given by the Chief Operations Officer, 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 Operations Team (except the Chief Operations Officer) do not have a delegation of powers or signature. The members of the Operations Team cannot bind the Association, apart from signing the receipts for the subcontracted services for which they monitored the implementation.

The members of the Operations 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 Chief Operations Officer /Steering Committee.

All members of the Operations 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 Chief Operations Officer before using and/or communicating the information.

The functional missions of the members of the Operations 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 Chair. Besides the Chair the participants to the Steering Committee are:

- The Vice-Chairs;
- The General Secretary who may be either a Board Member or may be an outsourced position;
- The Treasurer who may be either a Board Member or may be an outsourced position
- The Chief Operations Officer who may be either a Board Member or may be an outsourced position
- The Operations Team;
- The Working Groups Chairs.

All participants of the Steering Committee can identify agenda-topics. If needed for the topics on the agenda, other participants may be invited 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 monthly or 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 Responsibilities of the Steering Committee include:

- To steer and maintain sufficient alignment between the various bodies of the Association
- Orients the Board of Directors in discussions and decisions regarding the strategic direction of the organization
- Mandates the Chief Operations Officer / Operations Team on the day-to-day operations of the association
- Coordinates with the Chief Operations Officer / Operations Team to provide oversight and direction for the promotion, marketing, technical and membership management activities
- Approval of missions of the Operations Team.
- Meets monthly to ensure the forward progress of the Association

### *The Chair*

The powers of the Chair are defined in the Statutes.

The Chair is empowered to represent the Association in all acts of civil life. In this capacity, the Chair 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 Chair authorises expenses and ensures compliance with the legal regulations, including the rules of safety.

The Chair 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 Operations Manager or the Chairman.

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

The mandate of a Chair is a once renewable term of three years. Exemptions from this rule have to be agreed by vote of the General Assembly. If a Chair retires or resigns before the end of her/his mandate a new Chair should be appointed to finish the mandate. If the replacement happens in the first 18 calendar months of the mandate, it will be considered a full mandate. If the replacement occurs in the second 18 months of the mandate, this will count as “mandate zero”, meaning that the board member in question would be eligible to act as Chair for two subsequent full mandates.



The replacement of Chair during the course of a mandate should be done according to those principles:

- the most senior (in terms of time spent in committee and age) Vice-Chair will be – appointed
- If there is only one Vice-Chair, then She / He will be automatically designated
- If the Vice-Chair(s) are unwilling or unable to perform the role of Chair, a new Chair will be decided by the Board of Directors.
- If there is no Vice-Chair then new Vice-Chair will be decided by the Board of Directors.

#### *The Vice-Chairs*

The Vice-Chairs assist the Chair in the realisation of his missions.

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

A Vice-Chair ensures the thematic link between the Operations Manager and the Board of Directors. The Vice-Chairs contribute to the Working Group's orientations provided by the Board of Directors and report to the Board of Directors, together with the Chief Operations Officer, on the progress of the work and requests for decision.

The Vice-Chairs participates in the Steering Committee.

The mandate of a Vice-Chair is a once renewable term of three years. Exemptions from this rule have to be agreed by vote of the General Assembly. If a Vice-Chair retires or resigns before the end of her/his mandate a new Vice-Chair should be appointed to finish the mandate. If the replacement happens in the first 18 calendar months of the mandate, it will be considered a full mandate. If the replacement occurs in the second 18 months of the mandate, this will count as "mandate zero", meaning that the board member in question would be eligible to act as Vice-Chair for two subsequent full mandates.

The replacement of Vice-Chair during the course of a mandate should be done by decision of the Board of Directors.

#### *The General Secretary*

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

The General Secretary is responsible for keeping the various registers of the Association, drafting the minutes of the Boards of Directors and General Assemblies. The drafting of the minutes is done with the Administrative and Financial Officer.

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

The General Secretary prepares, in cooperation with the Chair, 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 Chief Operations Officer and the Chair the right of signature on the bank accounts of the Association. The Treasurer makes payments and collects revenue according to the financial management of the Association. The Treasurer operates the accounts of the Association and is responsible for holding them.

If the Chair is incapacitated (e.g. conflict of interest, sickness, absence, etc.) and necessary, the Treasurer may sign contracts or authorise expenses in place of the Chair.

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 offices 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 Chief Operations Officer (COO)

The Board of Directors, in accordance with the Statutes, decided to entrust the management of the Operations Team of the Association to an Chief Operations Officer (COO). The COO can be selected from among the members of the Board of Directors, via recruitment or contracted externally. The day by day activities of the association is under the responsibility of the COO.

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

The COO 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 executed by the COO are to be carried out in strict observance of 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 COO has the powers to carry out the tasks described in the Statutes, namely:

- The COO signs the daily correspondence, signs any receipts for registered letters, documents or parcels addressed to the Association
- The COO makes any order in the name of the Association within a limit of hundred fifty thousand (150,000) 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 COO assigns tasks to each member of the Operations Team, follows up and validates the according execution, reports to the various governing bodies of the Association (namely the Board of Directors).
- The COO supervises and ensures consistency with regards to the objectives of the tasks performed by each of the contributors. The OM reports to the various governance bodies (namely the Board of Directors) on the progress of the work.
- The COO ensures the daily management, with regards to the execution of the missions, of each member of the Operations Team. The COO exercises hierarchical authority over the Operations Team and staff employed by the Association.
- The COO ensures that the members of the Operations Team are provided with the necessary tools and resources to carry out their activities.
- The COO is empowered to identify missing staff or the need for external expertise as well as to stop employment contracts or service contracts. The COO suggests human resources needed to the Steering Committee. From the moment the decision is taken by the board the COO has the responsibility to propose appropriate candidates for selection.

- The COO ensures the organisational management of the Steering Committee, meaning logistical support in terms of organization, preparation, reporting and the follow-up of actions.
- The COO is authorised to approve missions of the members of the Operations Team, meaning the COO can approve the travel associated with a mission within the limits of the corresponding post in the budget.

The COO is assisted throughout its missions by the members of the Operations Team.

The COO 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 COO 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 Operations Team.

### Overview responsibilities Operations Team

See appendix 1

## Finance Management

The Association adopts the 'four eyes principle' with regards to outgoing payments. Hence any payment of supplier invoices and expenses notes on the bank accounts of the Association needs two signatures among the Financial Officer, the Treasurer, the General Secretary, the COO or the Chair.

All financial commitments more than one thousand (1,000) euros must be supported by a formal order document, which must be signed by the COO or 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). The internal process document "210415-QP-Sales&Purchases Procedure\_FR" is applicable on all Sales and Purchases for CNA.

Expense notes will be signed by the COO or the Treasurer and are treated by good practice according practical guidelines as defined by the COO & the Treasurer.

## 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 COO before actual execution (within the limits of 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 OM & must comply with the guidelines as defined by the COO.



## 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 COO and, in some cases, requires validation from the Board. It is seconded by the Marketing and Communication Manager.

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 COO, the Marketing and Communication Manager, 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').

When a Member participates in the activities of an Association working group, it accepts that the Association is the sole owner of all intellectual property rights to the results obtained as part of this collaboration.

When a Member uses tools, methods, software or other elements covered by an intellectual property right belonging to it during its participation in the activities of a working group of the Association, these elements remain the property of this Member and this Member grants the Association a non-exclusive, free, perpetual and worldwide license to use these elements for the purposes of exploiting the results obtained within the framework of the activities of the working group.

Any Member may object to the provisions of paragraphs 1 and 2 above. To do so, the Member in question must formally record this objection in the minutes of the first session of its collaboration within the working group. As a result, the Member is automatically excluded from the working group in question without being able to claim any compensation or recourse to challenge this measure. Alternatively, the Association may, at its sole discretion, agree to negotiate an agreement with the Member concerned specifying that, despite the Member's objection, the Member is not excluded from the Working Group.

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 "*Calypso Trademark Policy*", see Appendix 4.

## Appendix 1: Roles and responsibilities of CNA Permanent Team members

### Technical Manager

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

The Technical Manager proposes the technical development strategy, and the definition of ... 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 of all contracts and subcontracting contracts of the Work Group n° 1 (WG1).

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

The Technical Manager coordinates the 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.

The Technical Manager prepares and encourages the Board 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 Manager tracks and updates documentary evolutions.

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

The Technical Manager manages the specifications of Calypso, and Hoplink, and the procedures for accessing it.

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

### Marketing and Communication Manager

The Marketing and Communications Manager's mission is to design a marketing plan in each of the Association's development themes, implement it and ensure its follow-up.

To this end, and in general, the Marketing and Communications 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 Communications Manager oversees defining the marketing actions to be implemented, in terms of communication and promotion.

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

The Marketing and Communications Manager develops the communication strategy, in consultation with the Promotion & Relations Manager, the Operations Manager and the Chair.

The Marketing and Communications Manager defines the yearly communications plan and manages its execution.

The Marketing and Communications Manager motivates encourages the editorial committee.

The Marketing and Communications Manager and updates the Association's communication tools and manages and administers the website & social media (such as Twitter, Facebook, Google+, YouTube, LinkedIn, etc.).

The Marketing & Communications Manager prepares presentation materials for some seminars / speeches of the Chair of the Association.

#### Promotion and Relations Manager

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

The Promotion and Relations Manager proposes to the 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 Board of Directors.

The Promotion and Relations Manager represents the Association 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 the Association's services and products.

#### Administrative and Financial Officer

The Administrative & Financial Officer manages the accounts of the association.

The Administrative & Financial Officer prepares, ensures the logistical organization and participates in events organized by the Association or in which the Association participates (open session, conference, exhibitions, information days, etc.).

The Administrative & Financial Officer organizes the logistics of meetings held by the Association in Paris (Board of Directors in Paris, meeting of industrialists, etc.).

The Administrative & Financial Officer is the interface between the Operations Team and the headquarters in Brussels.

The Administrative & Financial Officer processes the orders and invoices of the Operations Team.

The Administrative & Financial Officer reports to the Treasurer of the Association.

The Administrative & 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, preparation of the management of transfers, follow-up of the budget preparation, all the account activities in co-operation with the treasurer and of the payment cards for the Chairman and Treasurer, etc.

The Administrative & 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 Administrative & Financial Officer liaises with the accounting firm in charge of establishing the annual accounts of the Association.

The Administrative & Financial Officer manages the membership of the Association, the establishment of contribution invoices and the follow-up of payments. In case of deviations Administrative & Financial Officer puts this on the agenda of the SteerCo. The Administrative & Financial Officer manages the list of Members in good standing of their subscription.

The Administrative & Financial Officer assists the General Secretary in drafting the minutes of the Board of Directors and General Assembly, and in the proceedings with authorities (such as for instance the filing of the Statutes).

### Appendix 2: External communication process of validation

Existing communication tools & Media	Content Provider	Content, Design, Broadcast Definition & Validation	Content, Design, Broadcast Management	Mandatory validation by the CEO	Extra Mandatory validation	Mandatory Board validation
<b>CNA Corporate Digital Production</b> - e-mailing : News / technical News / invitation /STD - CNA corporate website content and news - CNA Video on Youtube <b>CNA Corporate Printings Production</b> - Brochure - Products description - Roll Up Banner, Stand booth, leaflet ... <b>Advertise</b> - CNA Press Advertise	CNA members Permanant team Operational manager working group	CNA Marketing & Communication Manager	CNA Communication Officer	Yes	Content provider	No
<b>Social Media Communication *</b> - CNA Twitter Account - CNA LinkedIn page - CNA Google + account				No	No	No
<b>CNA "event" communication</b> - printings : Visit cards, Invitation, Roll Up Banner - Calypso dedicated event website				No	Content provider	No
<b>Triangle Communication</b> - Triangle website & Digital Content - Triangle Printings				No	Triangle chairman	No
<b>Triangle Communication *</b> - Triangle Twitter Account				No	No	No
<b>Calypso Networks Association &amp; Range of products Brand Image</b> New Logos for CNA, Calypso & Products New Names for CNA, Calypso & Products				No	No	Yes
<b>Event Participation</b> - speaker - exhibitor - Sponsor				Yes	General Secretary	No
* All social media could be deleted or modified on CNA Member request, with the validation from the CNA Ceo						



Appendix 3: Liability of Directors

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**To:** Calypso Networks Association

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

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**Date:** 4 November 2016

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

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You have requested us to provide you with a high-level memo on the duties and liabilities of directors and the delegate for daily management 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 are similar. Please note however that directors are entrusted with their mandate by the general assembly of members, whereas a delegate for daily management 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 delegate for daily management 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.<sup>1</sup>

Directors are appointed and dismissed by the ASBL's general meeting of members.<sup>2</sup> 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 chair 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 (Chief Operations Officer) 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 chooses), 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 Chief Operations Officer.

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

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<sup>1</sup> 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**").

<sup>2</sup> Article 4, 2° of the Law of 27 June 1921.

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 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 the delegate for daily management)**

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.<sup>3</sup> 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.<sup>4</sup> In principle, directors will therefore not be personally liable for the commitments of the ASBL.<sup>5</sup> The same principles apply to the person entrusted with daily management.<sup>6</sup>

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.

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

- Mismanagement ("*faute de gestion / bestuursfout*");<sup>7</sup>
- Tort liability ("*faute extracontractuelle / buitencontractuele aansprakelijkheid*").<sup>8</sup>

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<sup>3</sup> Article 13, paragraph 2 of the Law of 27 June 1921.

<sup>4</sup> Article 14 of the Law of 27 June 1921.

<sup>5</sup> Article 14bis of the Law of 27 June 1921.

<sup>6</sup> Article 15 of the Law of 27 June 1921.

<sup>7</sup> Article 1991 *et seq.* of the Belgian Civil Code.

<sup>8</sup> Article 1382 of the Belgian Civil Code.

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.

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;<sup>9</sup>
- some case law has held directors of ASBLs personally liable in the area of tax.<sup>10</sup>

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 or a holder of a power of attorney;
- entrusting the daily management to a manifestly incompetent person;

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<sup>9</sup> Article 26septies of the Law of 27 June 1921.

<sup>10</sup> 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.

- 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.

(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.<sup>11</sup>

## 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<sup>13</sup>;

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<sup>11</sup> 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*").

- forgery<sup>14</sup> (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<sup>15</sup>;
- abuse of ASBL property<sup>16</sup>;
- extortion<sup>17</sup>;
- corruption<sup>18</sup>.

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*")<sup>12</sup> releases the director (or the delegate for daily management) 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.<sup>13</sup> 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.

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<sup>12</sup> 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.

<sup>13</sup> Article 4, 4° of the Law of 27 June 1921.

### **3.2 Statute of limitation**

Civil actions against directors for acts performed in the exercise of their function expire after ten (10) years.<sup>14</sup>

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.<sup>15</sup>

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 willful 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.

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<sup>14</sup> Article 2262*bis*, §1, paragraph 1 of the Belgian Civil Code.

<sup>15</sup> Article 2262*bis*, §1, paragraph 2 and 3 of the Belgian Civil Code.



### **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 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,<sup>16</sup> 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.

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## Appendix 4: Calypso Trademark Policy

<https://calypsonet.org/wp-content/uploads/2020/11/Calypso-Trademark-Policy-2019.pdf>

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<sup>16</sup> 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.