

## 4. Corporate governance

### 4.1 GENERAL

Gemalto N.V. (“Gemalto N.V. or the “Company”) is the parent company of the Gemalto group (“Gemalto” or the “Group”). The Company was incorporated in the Netherlands as a private company with limited liability on December 10, 2002. The Company was formerly named Axalto Holding N.V. and changed its name on June 2, 2006 in connection with the combination with Gemplus International S.A. (“Gemplus”), hereinafter the “Combination”. The Company’s shares have been listed on Eurolist by Euronext Paris S.A. (formerly named *Premier Marché*) (Euronext NL 0000400653) since 2004. The corporate seat of the Company is Amsterdam, the Netherlands, and as of December 1, 2008 its registered office address is Barbara Strozilaan 382, 1083 HN, Amsterdam, the Netherlands. The Company is registered with the trade register in Amsterdam, the Netherlands under No. 27.25.50.26.

The Company is required to comply with, *inter alia*, Dutch law, Dutch corporate governance rules, Dutch AFM rules, French AMF rules and Euronext Paris Stock Exchange rules and related regulations, insofar as applicable to the Company.

The Company is of the opinion that the majority of the principles and best practice provisions of the Dutch Corporate Governance Code as applicable during the 2008 financial year (the “Corporate Governance Code”) that are addressed to the Board, as interpreted and implemented in line with the best practices followed by the Company, are being applied. Some recommendations are not or only partially applied and these deviations are set out in section 4.2.

Further to the amended Corporate Governance Code dated December 10, 2008 that will be applicable to Annual Reports of financial years starting on or after January 1, 2009, the Company will include in its 2009 Annual Report a chapter on the broad outline of its corporate governance structure and compliance with the amended Corporate Governance Code for discussion by the Annual General Meeting of Shareholders (“AGM”) of 2010.

The AGM of May 14, 2008 resolved to amend the Company’s articles of association (“Articles of Association”).

The amendments related to:

- a decrease of the general quorum of 25% required for the adoption of resolutions at General Meetings of Shareholders (“General Meetings”) to 10%, keeping the existing quorum of 25% required for the dismissal or suspension of Board members other than at the proposal of the Board;
  - amending certain articles in order to include that the General Meeting appoints the Executive Board member and that the Non-Executive Board members appoint the Executive Board member as Chief Executive Officer (“CEO”) and may revoke such appointment. If the appointment as CEO of the Executive Board member is revoked, the Non-Executive Board members may temporarily appoint an ‘Acting CEO’ with the powers and duties of the CEO;
  - amendments to the objects clause to include a more general description of the objects of the Company;
  - renaming the Selection and Appointment Committee of the Board to the Nomination and Governance Committee.
- The full text of the Articles of Association is posted on Gemalto’s website.

### 4.2 COMPLIANCE WITH THE DUTCH CORPORATE GOVERNANCE CODE

The Company complies with the Corporate Governance Code by applying most of its principles and best practice provisions that are addressed to the Board or by explaining why it deviates from such provisions. The Company applies such principles and best practice provisions, with the exception of the following best practice provisions:

- Provision II.1.6: a whistleblower procedure has been established compliant with the French legal requirements and as a consequence with a restricted scope. See section 4.3.4;
- Provision II.2.5: amendment of the vesting date of options granted to Mr. O. Piou, as CEO in accordance with the Combination Agreement. See section 6.7.7;
- Provision II.2.7: maximum remuneration in the event of dismissal of Mr. O. Piou, as CEO reflecting his accrued seniority with Gemalto. See section 6.7.7;
- Provision II.2.10: content of the Remuneration Report; i.e. non-disclosure of the companies of the Comparison Group (as defined in section 6.7.1) and non-disclosure of the non-financial targets of the CEO. See section 6.7.7;
- Provision III.5.1: two of the three members of the



Nomination and Governance Committee are not independent within the meaning of best practice provision III.2.2. See section 6.4;

- Provision III.8.1: appointment of the former Executive Chairman as Non-Executive Chairman of the Board. See section 4.3.6;
- Provision III.8.4: until May 28, 2008 only five of the ten Board members and as of May 28, 2008 only four of the nine Board members are considered to be independent. However the Board will propose to the AGM of May 20, 2009, the appointment of Mr. Buford Alexander as new Non-Executive Board member, as a consequence of which, as of that date, five of the ten Board members are considered to be independent. See section 6.1.5.

## 4.3 BOARD OF DIRECTORS

### 4.3.1 One-tier Board

The Company has a one-tier Board, comprising one Executive Board member, the CEO, and a majority of Non-Executive Board members. The Board has ultimate responsibility for the management, general affairs, direction and performance of the business as a whole.

The CEO conducts the day-to-day management. The CEO does not require the approval or consent of the Board for any decisions in respect of day-to-day management. The duties and powers of the Board include those matters specified in the Articles of Association. The Board may delegate powers regarding matters that fall outside the area of the day-to-day management to the CEO and consequently these matters do not require a resolution of the Board.

The Board charter was updated in 2006 and is posted on Gemalto's website.

### 4.3.2 Meetings of the Board

The Board meets at least four times per year, including a meeting on the strategy and risks of the business, the assessment of the structure and operation of the internal risk management and control systems, as well as any significant changes in such matters. The tasks and functions of the Board, as described in the Articles of Association and the Board charter, include the duties recommended in the Corporate Governance Code. The Board discusses at least once a year the evaluation of the performance of the Board and the Board Committees, and of the CEO and the individual Non-Executive Board members. The Non-Executive Board members meet regularly, at least once a year, in the absence of the CEO and members of the management.

### 4.3.3 Operational and financial objectives and strategy

During 2008, the Board discussed and confirmed Gemalto's strategic plans, adopted the operational and financial objectives of Gemalto for 2009 and the parameters to be used for measuring performance.

#### Strategy

The Board discussed at several meetings Gemalto's strategic plans and their implementation, reviewed the development of business activities and various investment opportunities, including the acquisition of the Multos business from Keycorp and of NamlTech South Africa from Allied Technologies Ltd, and the offer on Wavecom. For more information on Gemalto's strategy, please refer to section 3.2.

#### Operational and financial objectives – Budget

The Board sets the framework and key objectives of the budget, which includes the operational and financial objectives of Gemalto. Budgets are constructed bottom-up, assessed by the Board and adjusted top-down where necessary to meet Gemalto's objectives. The budget for 2008 was approved by the Board at the November 2007 Board meeting. The budget for 2009 was approved by the Board at the December 2008 Board meeting.

### 4.3.4 Internal risk management and control systems

Gemalto maintains operational and financial risk management systems and procedures and has monitoring and reporting systems and procedures.

Among those procedures Gemalto has a Code of Ethics, which provides standards and guidelines for the conduct by all employees. The Board has established a whistleblower procedure for the receipt, retention and treatment of complaints received by Gemalto regarding suspected financial irregularities. Departing from the Corporate Governance Code, to be in line with EU and French rules regarding data protection, suspected irregularities of a general or operational nature are not covered by the whistleblower code, but shall be reported internally to the relevant manager. Gemalto has an insider trading policy.

The statement of the Board in accordance with best practice provision II.1.4 of the Corporate Governance Code, as well as more details on the risk management and internal control systems are set forth in section 3.3.

### 4.3.5 Sensitivity of the results to external factors and variables

Reference is made to section 3.3.

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#### 4.3.6 Composition of the Board — (term of appointment)

At the AGM of May 22, 2007, the maximum number of Board members was set at eleven to allow the Board to determine from time to time its optimal size. Until May 28, 2008 the Board consisted of ten Board members, but due to the demise of Mr. J. de Wit, Non-Executive Board member, on May 28, 2008, the Board currently consists of nine Board members; eight Non-Executive Board members and one Executive Board member, the CEO. In view hereof there is one vacancy to be filled on the Board at the AGM of May 20, 2009. The Board resolved to propose to the AGM of May 20, 2009, to appoint Mr. Buford Alexander as new Non-Executive Board member for a first term ending at the end of the AGM to be held in 2013. Upon appointment, Mr. B. Alexander would be proposed to become member of the Strategy and M&A Committee.

Executive and Non-Executive Board members are appointed by the General Meeting on the proposal of the Board, by an absolute majority of votes cast at a General Meeting without a quorum required, unless the Board has drawn up a binding nomination. So far the Board has not made use of the option to make a binding nomination. Board members are appointed for a maximum term of four years and may be reappointed, although Non-Executive Board members may only be reappointed twice. The Non-Executive Board members appoint the Executive Board member as the CEO and can at any time revoke such appointment. If the appointment as CEO of the Executive Board member is revoked, his powers and duties shall be carried out by an 'Acting CEO', temporarily appointed by the Non-Executive Board members, whether or not from among their midst. The Board appoints one of its Non-Executive Board members as Chairman of the Board.

Although the appointment of a former Executive Board member as Chairman of a one-tier Board is not in line with the Corporate Governance Code, after Mr. A. Mandl's reappointment by the AGM of May 22, 2007 as Non-Executive Board member as of December 2, 2007 for a first term ending at the end of the AGM to be held in 2011, the Board appointed Mr. A. Mandl as Non-Executive Chairman of the Board, as of December 2, 2007. The Board is pleased to be able to capitalize further on the knowledge and experience of Mr. A. Mandl within the Group, which is of particular added value for Gemalto and its stakeholders.

At the AGM of May 14, 2008, Mr. O. Piou was reappointed as Board member with the title of CEO for a term ending at the end of the AGM to be held in 2012 and Messrs. G. Fink and A. van der Poel were reappointed as Non-Executive

Board members for a second term ending at the end of the AGM to be held in 2012.

At the AGM of May 20, 2009, the present term of Messrs. K. Atkinson, D. Bonderman, J. Fritz and J. Ormerod will end. The Board welcomes the fact that Messrs. K. Atkinson, D. Bonderman, J. Fritz and J. Ormerod are available for an additional term. The Board resolved to propose to the AGM of May 20, 2009 to reappoint Messrs. K. Atkinson, D. Bonderman and J. Ormerod as Non-Executive Board members for a second term ending at the end of the AGM to be held in 2013 and to reappoint Mr J. Fritz as Non-Executive Board member for a second term ending at the end of the AGM to be held in 2012. If reappointed, Mr. K. Atkinson would continue to be a member of the Strategy and M&A Committee and of the Audit Committee. If reappointed, Mr. D. Bonderman would continue to be a member of the Nomination and Governance Committee. If reappointed, Mr. J. Fritz would continue to be chairman of the Strategy and M&A Committee and a member of the Audit Committee. If reappointed, Mr. J. Ormerod would continue to be chairman of the Audit Committee and a member of the Compensation Committee.

Except on the proposal of the Board, the General Meeting may suspend or dismiss Board members only by an absolute majority of votes cast representing at least one-fourth of the Company's issued share capital. If Dutch law so permits, the Executive Board member may also be suspended by the Board. For further details on the appointment and dismissal of Board members, please refer to article 16 of the Articles of Association (posted on Gemalto's website).

A profile setting out the desired expertise and background of the Non-Executive Board members has been prepared by the Board and is posted on Gemalto's website. At least one of the Non-Executive Board members can be regarded as a financial expert within the meaning of best practice III.3.2 of the Corporate Governance Code. On May 13, 2008 the Board adopted a new retirement schedule, posted on Gemalto's website, in order to avoid, as far as possible, a situation in which many Board members retire at the same time.

For more information on the individual Board members, please refer to section 5.1.

#### 4.3.7 Board Committees

The Board has formed an Audit Committee, a Compensation Committee, a Nomination and Governance Committee and a Strategy and M&A Committee from among its own members. The Board Committees have as their main role to provide a focused analysis and preparation of the subjects within their respective areas of expertise and to report



and make recommendations to the Board, subject always to the overall responsibility of the Board. The Board Committees do not have executive powers. The duties of each Board Committee are described in their respective charters.

#### **4.3.7.1 Audit Committee**

The Committee assists the Board with respect to the quality and integrity of Gemalto's financial statements, overall risk management and internal control arrangements, compliance with legal and regulatory requirements, the performance, qualifications and independence of the external auditor, and the performance of the internal audit function. The Committee consists of at least three Non-Executive Board members with not more than one person being non-independent. At least one member of the Committee is a financial expert within the meaning of best practice III.3.2 of the Corporate Governance Code. The Committee meets at least four times per year.

#### **4.3.7.2 Compensation Committee**

The Committee assists the Board with a proposal for a Remuneration Policy for the CEO and for the remuneration of the Non-Executive Board members to be adopted by the General Meeting. The Committee proposes the remuneration of the CEO within the limits of the Remuneration Policy. Furthermore, the Committee oversees the general remuneration policy of Gemalto and discusses the grant of options, restricted share units and / or share appreciation rights and the opportunity for eligible employees to purchase discounted shares of Gemalto. The Committee consists of at least three Non-Executive Board members with a majority being independent and meets at least three times per year.

#### **4.3.7.3 Nomination and Governance Committee**

The Committee assists the Board with respect to compliance with corporate governance and overseeing new candidates for service on the Board, as well as new members of the senior management of Gemalto. The Committee reviews the corporate governance principles applicable to Gemalto and advises the Board on any changes to these principles as it deems appropriate. The Committee consists of at least three Non-Executive Board members with a majority being independent and meets at least three times per year. The Company temporarily deviates from this principle having three Non-Executive Board members with a majority being non-independent. For more information on this deviation, please refer to section 6.4.

#### **4.3.7.4 Strategy and M&A Committee**

The Strategy and M&A Committee assists the Board with respect to Gemalto's strategy and the major features of merger, acquisition and divestiture activities. The Strategy and

M&A Committee consists of at least three Non-Executive Board members and meets at least twice per year.

#### **4.3.8 Board mandates with third parties**

With respect to the number and type of supervisory board memberships that the Board members may hold, Board members shall comply with the recommendations of the Corporate Governance Code, as set out in best practice provisions II.1.7 and III.3.4.

#### **4.3.9 Conflicts of interest**

The Articles of Association state the conditions under which potential conflicts of interest exist and Gemalto has formalized rules to avoid conflicts of interests between Gemalto and Board members. For more information on these rules, please refer to article 17 of the Articles of Association.

The Company complied with best practice provisions II.3.2 through II.3.4 of the Corporate Governance Code in relation to conflicts of interest. For a complete overview, please refer to note 32 of the consolidated financial statements.

#### **4.3.10 Remuneration of the Board – Share ownership**

##### **4.3.10.1 Remuneration of the CEO, including his function as Executive Board member**

The General Meeting, upon the proposal of the Board, determines the Remuneration Policy for the CEO, including his function as Executive Board member. The remuneration of the CEO shall, with due observance of the Remuneration Policy, be determined by the Board. Remuneration of the CEO in the form of shares or rights to acquire shares, as well as major changes thereto, shall be proposed by the Board to the General Meeting for approval. The Remuneration Policy is published on Gemalto's website. For information on the Remuneration Policy and the implementation thereof for 2008, please refer to section 6.7.

##### **4.3.10.2 Remuneration of the Non-Executive Board members**

The Board, determines the remuneration of the Non-Executive Board members. The remuneration of a Non-Executive Board member is not dependent on the results of Gemalto. For information on the remuneration of the Non-Executive Board members, please refer to section 6.2.

##### **4.3.10.3 Loans or guarantees**

Gemalto does not grant personal loans, guarantees or the like to Board members, and no such loans and guarantees, waivers of loans or guarantees were granted to the Board members in 2008, nor are outstanding as of December 31, 2008.

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#### 4.3.10.4 Shares owned and rights to acquire shares

##### Gemalto shares

Certain Board members are shareholders of the Company. On December 31, 2008, they jointly held 170,555 shares, of which Mr. O. Piou owned 165,055 shares. At the beginning of 2008, Mr. O. Piou was holding 139,000 shares of the Company, having progressively acquired them since 2004 on the market. During 2008, Mr. O. Piou acquired 161,000 shares: 11,000 shares were acquired on the market, and 150,000 shares were acquired through the exercise of options. To finance a portion of this options exercise, Mr. O. Piou sold on the market 34,945 shares of the Company that he owned. He then deeded 100,000 of the shares he had received from this options exercise to several third parties. Mr. G. Fink received 2,800 shares resulting from the exchange of Gemplus shares following the voluntary public exchange offer for the shares of Gemplus (the "Offer"), Mr. J.Ormerod received 1,200 shares resulting from the exchange of Gemplus shares following the Offer and Mr. M. Soublin purchased 1,500 shares in 2004.

##### FCPE units

On December 31, 2008 Mr. O. Piou owned 3,548.16 units in a FCPE (*Fonds Commun de Placement d'Entreprise*), which units were purchased by his contribution to the Global Employee Share Purchase Plan in 2004, 2005 and 2008.

##### Gemalto options

On December 31, 2008, Mr. O. Piou held 950,000 Gemalto options. He exercised 150,000 Gemalto options during 2008. On December 31, 2008, Mr. A. Mandl (through a company controlled by him) held 200,000 Gemalto options. He did not exercise Gemalto options during 2008.

##### Gemplus options

On December 31, 2008, the following Board members held Gemplus options: Mr. A. Mandl held 6,812,400 (through a company controlled by him), Mr. D. Bonderman held 11,302 and Mr. J. Fritz held 11,302. Those Gemplus options can potentially be exchanged for Gemalto options (at a ratio of 25/2), resulting in 544,992 Gemalto options for Mr. A. Mandl, 904 Gemalto options for Mr. D. Bonderman and 904 Gemalto options for Mr. J. Fritz.

During 2008, Mr. A. Mandl exercised 6,750,000 Gemplus options for which he received 6,750,000 Gemplus shares. Those Gemplus shares were exchanged for 540,000 Gemalto shares (at a ratio of 25/2), which Gemalto shares he then sold.

The Company does not grant shares or options by way of remuneration to Non-Executive Board members. Board

members hold shares in the Company for the purpose of long-term investment and are required to comply with Gemalto's insider trading policy, as posted on Gemalto's website.

#### 4.3.10.5 Shares or other Financial Instruments in listed companies other than Gemalto N.V.

Gemalto's insider trading policy contains regulations concerning the ownership of and transactions in securities by Board members in listed companies other than Gemalto N.V. and is posted on Gemalto's website.

#### 4.3.11 Indemnification of Board members

To the extent permitted by Dutch law, the Board members shall be indemnified by the Company against expenses, such as the reasonable costs of defending claims, as formalized in article 19 of the Articles of Association. Under certain circumstances, such as a claim, issue or matter as to which a Board member has been held liable for gross negligence or willful misconduct in the performance of his duty to the Company, there will be no entitlement to this reimbursement. Gemalto has a liability insurance (Directors & Officers — D&O) for the Board members and corporate officers.

#### 4.3.12 Chairman of the Board and Company Secretary

The Chairman of the Board determines the Board agendas in consultation with the CEO and presides over Board meetings and General Meetings. The Chairman is responsible for the proper functioning of the Board and the Board Committees. Furthermore, the Chairman arranges for the induction and training program for the Board members and initiates the evaluation of the performance of the Board members.

The Board is assisted by a Company Secretary, also General Counsel and Central Officer of the Group. Mr. J-P. Charlet was appointed as Company Secretary by the Board in July 2005.

#### 4.3.13 Senior Management Team

For an overview of the members of the senior management team, please refer to section 5.2.

## 4.4 LONG TERM INCENTIVE PLANS

### 4.4.1 Global Equity Incentive Plan

In 2004, the General Meeting adopted a Global Equity Incentive Plan ("GEIP") for eligible employees. Under the GEIP, ending on March 18, 2014, eligible employees may receive options, restricted share units and/or share appreciation rights



("Awards"). As adopted by the AGM of May 22, 2007, a total number of 14 million shares are available for grant and issue under the GEIP. On September 25, 2008, the Board granted 1,410,000 options to eligible employees, including to the CEO. For more information on the grant of options to the CEO, please refer to section 6.7.3.

The AGM of May 22, 2007 adopted a stock option plan, as approved by the Board in 2006 ("GEIP 2006"), further to the undertakings by the Company in the Combination Agreement, to exchange options to acquire Gemplus or Gemplus S.A. (now Gemalto S.A.) shares for options to acquire Company shares. A total number of 7 million shares are available for grant and issue under the GEIP 2006.

In the event the Company and/or its affiliates are absorbed by merger and liquidated, or undergo a change of control, each outstanding Award, whether vested or not, shall automatically vest and become exercisable immediately prior the effective date of the event, and each restricted share unit will be refunded or compensated through the granting of shares, except to the extent such Award is maintained in effect by the Company, or assumed by a successor corporation or otherwise substituted by a plan giving substantially equivalent rights to the employees.

For more information, please refer to the notes to the financial statements.

#### 4.4.2 Global Employee Share Purchase Plan

In 2004, the General Meeting adopted a Global Employee Share Purchase Plan ("GESPP") for eligible employees. Under the GESPP, ending on April 21, 2014, Gemalto may offer eligible employees the opportunity to purchase discounted shares in the Company. As adopted by the AGM of May 22, 2007, a total number of 3.2 million shares are available for issue or transfer under the GESPP. In 2008, the Board offered eligible employees the opportunity to purchase discounted shares in the Company and 96,178 shares were purchased by employees, including by the CEO. The number of shares purchased by the CEO is disclosed in section 6.7.3.

In order to benefit from preferential tax treatment, employees of Gemalto's French subsidiaries are able to participate in the GESPP through a *Fonds Commun de Placement d'Entreprise* ("FCPE"), in which case the FCPE subscribes to Gemalto shares and employees receive in exchange units of the FCPE. Participation in the FCPE does not give rise to direct ownership of shares or the right to acquire shares in the Company. The FCPE has an independent board of directors and owns 215,723 shares of

Gemalto as of December 31, 2008. The FCPE exercises the voting rights on these shares, without instructions from the employees who participate in the FCPE.

For more information, please refer to the notes to the financial statements.

## 4.5 SHAREHOLDERS AND GENERAL MEETINGS

### 4.5.1 Share capital and shares of the Company

The Company's authorized share capital amounts to €150,000,000 and is divided into 150,000,000 ordinary shares, with a nominal value of €1 per share. On January 1, 2008 the Company's issued and paid-up share capital amounted to €91,015,844, consisting of 91,015,844 ordinary shares.

During 2008 the following movements in the issued share capital of the Company took place:

- July 24, 2008: three million shares were cancelled following a decision of the AGM of May 14, 2008

As of December 31, 2008 the Company's issued and paid-up share capital amounted to 88,015,844, consisting of 88,015,844 ordinary shares, of which 5,719,652 shares were held in treasury; as a consequence of which 82,296,192 shares were in circulation, *i.e.* outstanding.

Based upon the authorization to purchase the Company's own shares granted by the AGM of May 22, 2007, which authorization was renewed by the AGM of May 14, 2008, shares were purchased during 2008 to provide liquidity in the secondary market, to have shares available for employees under the GEIP and GESPP, and to cancel shares for the purpose of reduction of the Company's issued share capital. As of December 31, 2008, 5,719,652 shares were held in treasury, acquired at an average price of €20.10 with a market value as of December 31, 2008 of €102,381,770.80. There are no voting rights for shares when held by the Company in treasury.

The Company has only issued ordinary shares, all of the same category, and all in registered form. No certificates representing shares have been issued. Shares are listed on Eurolist by Euronext Paris S.A. Company shares can be held in two ways:

- as registered shares, the shareholders being included in the Company's shareholders register kept by Netherlands Management Company B.V.; or

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- in an account with an account holder or intermediary through Euroclear France S.A., these shares then being included in the Company's shareholders register in the name of Euroclear France S.A.

#### 4.5.2 AGM held in 2008

The AGM was held on May 14, 2008. No shareholders exercised their right to place items on the agenda for the General Meeting in 2008.

At the AGM of May 14, 2008, among other things, the following items were dealt with, all as separate agenda items: the 2007 annual report, the adoption of the 2007 financial statements, the Company's dividend policy, reappointments of Board members and the discharge of the CEO, the (Executive) Chairman and the Non-Executive Board members for the fulfillment of their respective duties during the financial year 2007. In addition, other items were dealt with, among other things, an amendment of the Articles of Association, which proposal was adopted. The English minutes of the meeting are posted on Gemalto's website.

All shares carry equal rights of voting at the General Meeting. Votes may be cast directly or through a proxy. Unless otherwise required by Dutch law or the Articles of Association, resolutions are adopted by an absolute majority of votes cast in a General Meeting where at least one-tenth of the issued share capital is represented.

#### 4.5.3 Authorizations to the Board

The AGM of May 14, 2008 has renewed the following authorizations of the Board:

- to issue shares or grant rights to acquire shares in the Company, as well as to limit or exclude pre-emptive rights accruing to shareholders as from March 18, 2009 for a period of five years up to and including March 17, 2014. The authorization relates to all shares that can be issued as allowed by the authorized share capital as expressed in the Articles of Association as they may provide from time to time, *i.e.* 61,984,156 shares as of December 31, 2008.
- to acquire shares in the share capital of the Company up to the maximum of 10% of the issued share capital of the Company, within the limits of the Articles of Association and within a certain price range, up to and including November 13, 2009. On December 31, 2008, the Company's issued and paid up share capital consisted of 88,015,844 shares, of which 5,719,652 shares were held in treasury, based on which on that date the authorization related to 3,081,932 shares.

The AGM of May 14, 2008 resolved to cancel three million shares, which cancellation occurred on July 24, 2008. In

addition, the AGM of May 14, 2008 resolved that the Board is entitled to cancel a number of shares not exceeding 9,101,584 shares (*i.e.* 10% of the Company's issued share capital as per March 31, 2008), which cancellation may be executed in one or more tranches and the number of shares that may be cancelled (whether or not in one tranche) shall be determined by the Board.

#### 4.5.4 Distribution of profits

The dividend policy of the Company was dealt with and explained as a separate item on the agenda for the first time at the AGM of May 11, 2005. The Company's current dividend policy is that the amount of dividends to be paid by the Company to its shareholders shall be determined by taking into consideration the Company's capital requirements, return on capital, current and future rates of return and market practices, notably in its business sector, as regards the distribution of dividends. The Company did not pay a dividend in 2008 in respect of the 2007 financial year. With due observance of the dividend policy, no dividend will be paid in 2009 in respect of the 2008 financial year. For more information on the distribution of profits or reserves, please refer to articles 32 to 35 of the Articles of Association.

#### 4.5.5 Shareholders' disclosures

As at December 31, 2008, the following disclosures of holdings in the share capital of the Company were posted on the website of the Dutch market authorities:

- TPG Advisors III Inc: 12.24% (notification made as per November 1, 2006). On November 1, 2006, the Company's issued and paid-up share capital amounted to €88,522,098.
- Gemalto N.V.: 5.17%. For more information on the number of shares held in treasury by the Company, please refer to section 4.5.1.

On February 18, 2009, FMR LLC disclosed a holding of 5.04% in the share capital of the Company, as posted on the website of the Dutch market authorities.

## 4.6 SPECIFIC PROVISIONS OF THE ARTICLES OF ASSOCIATION

### 4.6.1 Amendment of the Articles of Association

The General Meeting, upon the proposal of the Board, has the authority to amend the Articles of Association by resolutions adopted by a majority of at least two-thirds of the votes cast at such General Meeting at which at least one-third of the issued share capital is represented.



#### **4.6.2 Appointment of the external auditor**

The Audit Committee and Board review the functioning of the external auditor annually. Upon proposal of the Board, at the AGM held on May 14, 2008, PricewaterhouseCoopers Accountants N.V. was appointed as the Company's external

auditor for the financial year 2008. The Board will propose at the AGM of May 20, 2009 to reappoint PricewaterhouseCoopers Accountants N.V. as the Company's external auditor for the financial year 2009.