

# **An Admiralty for Asia.**

## The Corporate Governance of the Dutch East India Company

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Second draft, March 2010

### **Abstract**

This paper challenges the idea that the VOC was a fundamental or evolutionary step towards the creation of the modern corporation. We demonstrate that the company was a hybrid organization which combined elements from the traditional partnership with a governance structure modeled on the Dutch admiralty boards. The VOC's mixed character allowed its directors to invest heavily in military operations to the detriment of the company's commercial operations. The perceived public interest of a strong military presence in Asia prevented shareholders' protests from changing the corporate governance, but investors learned their lesson and never returned to the VOC model to fund permanent, capital-intensive projects.

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## The Corporate Governance of the Dutch East India Company<sup>1</sup>

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### INTRODUCTION

The Dutch Republic's successful entry into the Asian trade during the seventeenth century is often considered a direct result of the creation in 1602 of the Dutch East India Company (VOC) with a permanent capital, transferable shares, and a separation of ownership and management.<sup>2</sup> The company charter allowed the shielding of firm assets from creditors and also limited the liability of shareholders to the value of their

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<sup>1</sup> We thank Matthijs de Jongh and Judith Pollman for pointing us to sources which helped to develop the argument of this paper.

<sup>2</sup> For England: W.R. Scott, *The Constitution and Finance of English, Scottish, and Irish Joint-Stock Companies to 1720*, 3 vols., Cambridge 1912, 3 vols. (Cambridge: 1912; reprint, Gloucester Mass. P. Smith 1968).; Ron Harris, *Industrializing English Law. Entrepreneurship and business organization, 1720-1844*, ed. Randall Calvert and Thrainn Eggertsson, *Political Economy of Institutions and Decisions* (Cambridge/New York: Cambridge University Press, 2000).; Harris\*\*\*; For the Dutch Republic: Van Brakel, Van der Heijden; Gaastra; Den Heijer.

subscription. These features allowed the company to set up permanent trading posts for administration, storage and ships' maintenance; to coordinate the activities of employees working in a variety of locations; and to mobilize the resources to establish a strong military presence in Asia. The long-lasting, capital intensive commercial enterprise thus created, and the huge profits it generated between 1640 and 1760, have led many economic and legal historians to consider the governance structure of the Dutch company a necessary precondition for its economic success, and an important step in the evolution of the modern corporation.

During the early years, however, the company's policy and corporate governance attracted sharp criticism from shareholders. Within a few years a number of prominent shareholders left the board in disagreement. In 1609 Isaac le Maire sent a long memo to the Republic's highest civil servant, Grand Pensionary Johan van Oldenbarnevelt, complaining about the board's highhanded and misguided policy.<sup>3</sup> Subsequently Le Maire attempted to force the board to change tack by launching his famous bear raid on VOC shares.<sup>4</sup> The debate on the formation of a Caribbean trade company, the West-Indische Compagnie or WIC, show a keen awareness that its corporate governance structure should be fundamentally different from that of the VOC. Indeed, the main advocate for a WIC, Willem Usselinx, hammered time and again on the need to give shareholders power over the companies they owned.<sup>5</sup> Finally, during the 1620s disgruntled shareholders fought hard to get more power over policy, ultimately in vain.<sup>6</sup>

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<sup>3</sup> Original in NA \*\*\*; Dutch text published in Van Rees, *Koloniale politiek*, English translation in Yale booklet.

<sup>4</sup> J.G. van Dillen, 'Isaac le Maire en de handel in actiën der Oost-Indische Compagnie', in: *Economischhistorisch jaarboek* 16 (1930) 1-165.

<sup>5</sup> Van Rees, *Koloniale politiek*, \*\*\*.

<sup>6</sup> Van Rees, *Koloniale politiek*, \*\*\*.

In this paper we confront the VOC charter with corporate governance norms and practices in the late 16<sup>th</sup> and early 17<sup>th</sup> century and we emphasize the role of Isaac le Maire and of Willem Usselinx as shareholder rights advocates. Paul Frentrop's 2002 book did important groundwork here, but he took the foundation of the VOC in 1602 as his point of departure, whereas, to gain perspective, we would want to know what went on before and connect this with what came later.<sup>7</sup> We compare the governance structure of the VOC with that of other long-distance ventures around 1600 to show its deviation from mercantile practice.

We also want to take a fresh look at the alleged character of the VOC as one of the first joint-stock limited liability company (*naamloze vennootschap* or NV). Traditionally, the historiography of Dutch corporate development regards the VOC as the first example of an NV and sees this form of organization as crucial to its economic success. Scholars broadly agree about the legal pedigree of the VOC. The company was essentially a private partnership with additional features, such as the limited liability for directors and for shareholders derived from various older forms of business organization.<sup>8</sup> However, opinions differ as to the precise evolutionary path, i.e. which feature emerged why, when, and whence; and about origins, motivations and evolutions of particular

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<sup>7</sup> P.M.L. Frentrop, *A History of Corporate Governance, 1602-2002* (Deminor: Brussels 2003).

<sup>8</sup> \*\*\*Den Heijer, Harris, De Vries and Van der Woude. S. van Brakel, *De Hollandsche handelscompagnieën der zeventiende eeuw, hun ontstaan, hunne inrichting* (Den Haag 1908); idem, 'Bijdrage tot de geschiedenis der naamlooze vennootschap', in: *Rechtsgeleerd magazijn* 31 (1912) 261-306; idem, \*\*\*; E.J.J. van der Heijden, *De ontwikkeling van de naamlooze vennootschap in Nederland vóór de codificatie* (Van der Vecht: Amsterdam 1908); idem, \*\*\*; W.D.H. Asser, *In solidum of pro parte, een onderzoek naar de ontwikkelingsgeschiedenis van de hoofdelijke en gedeelde aansprakelijkheid van vennoten tegenover derden* (Brill: Leiden 1983). A different interpretation linking the trading companies to *partenrederijen* or the part-owning of ships is represented by K. Lehmann, *Die geschichtliche Entwicklung des Aktienrechts bis zum Code de Commerce* (Heymann: Berlin 1895); W.M.F. Mansvelt, *Rechtsvorm en financieel beheer bij de VOC* (Swets & Zeitlinger: Amsterdam 1922). A good survey of the debate in H.J. den Heijer, *De geöctroieerde compagnie, de VOC en de WIC als voorlopers van de naamloze vennootschap* (Kluwer: Deventer 2005) 35-36.

features, such as limited liability.<sup>9</sup> Looking at the relationship between agents and various principals should help clear up the reigning confusion as to the provenance of these features but, more importantly, comparing such arrangements will give us a better understanding of where exactly the VOC fits in the evolutionary path of Dutch corporate law. Indeed, we find, for instance, that the corporate governance norms which Le Maire and Usselinx wanted applied were common in others business organizations, such as the partnerships with additional features, and also normal today.

This finding turns the VOC from a famous first specimen into a mutant deviating from the evolutionary path. We emphasize that the company was a hybrid organization which combined elements from the traditional partnership with a governance structure modeled on that of the local admiralty boards which coordinated the activities of the Dutch navy from the late sixteenth century onwards. This combination of public and private elements created a situation in which the company directors had to answer to two principals: the shareholders and the Estates General. With the investors' capital tied up for ten years and local regents dominating the general board of directors, the Estates General quickly emerged as the company's first principal, which led the directors to direct company resources to military operations in Asian waters. Commercially oriented shareholders scorned the company's policy but they were no match for the war-party, which controlled the general board, had direct access to the Estates General, and made incidental dividend payments to appease disgruntled investors.

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<sup>9</sup> According to De Vries and Van der Woude the directors of the predecessors did not enjoy third-party limited liability, whereas Den Heijer thinks they did: J. de Vries, A. van der Woude, *The first modern economy, success, failure, and perseverance of the Dutch economy, 1500-1815* (Cambridge UP: Cambridge 1997) 385; Den Heijer, *Geoctroieerde compagnie* 27, 35-36.

## TRADITIONAL PARTNERSHIPS

In the second half of the sixteenth century merchants in England and the Habsburg Netherlands began to explore new markets in Russia, the Eastern Mediterranean, and the coast of West-Africa. The financial risks of these ventures were high because of violence at sea, stark fluctuations in supply and demand, and the difficult monitoring of partners and employees trading in the distant markets. To manage these risks English and Dutch merchants wrote partnership contracts with additional clauses about the purpose and duration of operation, the capital invested by the partners, the division of work between them, and for those who only contributed their labor, their share in profits and losses. The earliest English trade with Guinea, for instance, was funded by temporary partnerships which between 1553 and 1567 organized a number of voyages each with between two and five ships. Upon the return of these ships accounts were drawn up and profits, if any, were divided according to a predetermined scheme.<sup>10</sup> The Flemish merchants who pioneered Antwerp's trade with Narva in the 1560s also set up temporary partnerships with a limited number of participants, often close relatives but also business friends, and sometimes even foreign investors. The lifespan and capital invested in these companies increased with the familiarity between the partners but even the closest relatives seem to have preferred contracts for a limited time period with a clearly defined purpose.<sup>11</sup>

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<sup>10</sup> Scott, *Constitution.*, II, 3-9.

<sup>11</sup> Eric Wijnroks, *Handel tussen Rusland en de Nederlanden, 1560-1640* (Hilversum: Verloren, 2003). 65-105. Brulez, Della Faille\*\*\*; Denuce, Hanze\*\*\*; Pelus, Wolter van Holsten\*\*\*; Van Der Wee, Growth\*\*\*; Genard, Un acte de societe commerciale\*\*\*; Meulleners, De Antwerpse bankier Schetz\*\*\*; De Groote, Vermogensbalans van Melchior Schetz\*\*\*; Compare: Jeannin, Lubecker Handelsunternehmen\*\*\*

The partnership with limited purpose, *compagnia* in Italian parlance, was ideally suited to fund commercial ventures into unknown territory.<sup>12</sup> It could be legally established by private contract and in its most restrictive form comprised a single voyage only. Just like the general partnership defined in Roman law, the partners in a *compagnia* remained severally and jointly liable for each others' actions as long as these actions coincided with the purpose and duration of the company contract.<sup>13</sup> This application of the rules of the general partnership is explicitly confirmed by the author of an accounting manual published in Antwerp in 1537: "There is no difference between the rule of partnership with time (*metter tyt*) and the rule without time (*sonder tyt*), except that shares are taken for a certain period, and the product is calculated according to this share."<sup>14</sup>

Partnerships sometimes did have a division of labour, notably if the partners were separated by distance, if the partnership employed an agent elsewhere, or if the collaboration was a sideline for one or more partners.<sup>15</sup> This latter case happened very often indeed. Merchants commonly had numerous and constantly shifting partnerships with one another, some short-term and for particular purposes, a shipping voyage or the

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<sup>12</sup> Robert S. Lopez, *The commercial revolution of the Middle Ages, 950-1350*. (Englewood Cliffs: Prentice-Hall, 1971)., 74; Robert S. Lopez and Irving W. Raymond, *Medieval trade in the Mediterranean world* (New York: Columbia University Press, 1955)., 175, 291; {Roover, 1949 #1819} 61-62, 64-65; Raymond De Roover, *The rise and decline of the Medici bank 1397-1494, Harvard studies in business history ; 21* (Cambridge, Mass ; London: Harvard University Press 1963, 1963)., 139-140, 260-261. E.S. Hunt, *The Medieval Super-companies. A Study of the Peruzzi Company of Florence* (Cambridge: Cambridge University Press, 1994).; {Padgett, #2124}; {Lazzareschi, 1947 #1833}, 11-13; To be sure, this kind of adaptation of the general partnership can be traced back to the Justinian code already: Reinhard Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition* (Oxford: Clarendon, 1990). 457-459.

<sup>13</sup> De Roover, *De Roover, Medici.*, 142, 145

<sup>14</sup> Gielis vanden Hoecke, *Een sonderlinghe boeck in dye edel conste arithmetica: met veel schoone perfecte regulen als Die numeracie vanden ghetale metten specien int gheheele ende int ghebroken .../ Ghecalculeert ende versaemt met grooter naersticheyt bi Gielis vanden Hoecke, En geprent Thantwerpen op die Lombaerde veste. By mi Symon Cock.* (Antwerpen 1537, revised edition 1545), cited in: {Goris, 1925 #479} 105n.

<sup>15</sup> \*\*\*Ex brandy venture Spain, Brazil; iron foundry Sweden, Cunertorff & Snel.

joint purchase or sale of a cargo load, others for longer terms and broader purposes, say the trade in a commodity with a particular country or the manufacturing of one thing or another. To forestall potential agency problems, merchants could fall back on a range of tried solutions drawn from experience. Remuneration schemes were jiggled to provide incentives, while partnership contracts stipulated the obligations of the partner-manager towards the joint enterprise in broad terms, referring to a general obligation to manage a business and its administration in good faith, with due diligence and in conformity with the style or custom of merchants. During the second half of the sixteenth century a very important form of limited liability developed for partnerships, in that the principal could claim not to be liable for obligations which his agent had incurred outside his remit, i.e. the purpose of the partnership.<sup>16</sup> With so many partnerships being for particular purposes and terms, this served to help check the impact of agent misbehaviour on principals. As for the custom of merchants, this large and flexible body of business norms served as an efficient guideline of conduct since in case of need courts called on expert witnesses to testify on the customs in the local community.<sup>17</sup>

One such custom was the requirement for proper account keeping coupled to the acceptance of ledgers, account books, and supporting documentation such as bills, account extracts, and correspondence as legal proof in litigation. The status of legal proof made archives valuable, so contemporary depictions of merchant offices always show voluminous archives, sometimes even boxed and labelled.<sup>18</sup> The gradual adoption of double-entry bookkeeping, facilitated by the publishing of practical handbooks such as

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<sup>16</sup> Van Brakel \*\*\*, Van der Heijden; Asser; extent and timing of this limited liability.

<sup>17</sup> Ref doleantens; on the question of to what extent such norms amounted to a *lex mercatoria* see Gelderblom, *Violence, Opportunism and Growth* (Forthcoming Princeton UP 2010).

<sup>18</sup> \*\*\*ref Fugger, Jan Luyken.



the manuals of Jan Ympyn (Antwerp 1543) and Claes Pietersz (Amsterdam 1576), made business accounts far more transparent and thus easier to check.<sup>19</sup> Proper account keeping provided the basis for other self-evident norms. Partners in a venture had a right of access to all documents at all times plus a mutual obligation to draw up comprehensive annual accounts. Such annual reckoning was so normal that contracts only mentioned exceptions, for instance the settling of accounts after the liquidation of a shipping expedition of uncertain length, or after the number of years a particular venture was planned to run.<sup>20</sup> Similarly, merchants keeping current accounts with each other customarily exchanged account extracts for approval.

Contrary to the Asian trade in later years, the rulers of England and the Netherlands kept some distance from the new commercial ventures. Philip II left the Antwerp companies to their own devices as long as they did not impinge on the Spanish monopoly in the Americas. Nothing changed in 1577 when Calvinist took control of Antwerp's magistrate. In England Queen Elizabeth did contribute ships to the first African voyages but her participation was considered equal to that of other investors. She also granted a corporate charter to the Muscovy Company in 1555 to allow its members to negotiate exclusive trade privileges in Russia. The incorporation, however, did not alter the company's financial organization. The merchants continued to organize separate voyages which were liquidated upon their return. In 1581 the Russian model was transplanted to the Mediterranean trade with the merger of the Levant Company and the Venice Company into one joint-stock enterprise with a seven years' monopoly for the trade with the eastern Mediterranean. The Crown earned a considerable fee with the

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<sup>19</sup> Jonker & Sluyterman, *At Home* 18; Gelderblom, *Violence, Opportunism and Growth* (Forthcoming Princeton UP 2010).

<sup>20</sup> Voorcompagnieen; \*\*\*Brazil venture Van Brakel.

incorporation but it did not renew the charter and by 1592 the Levant company was transformed into a licensing agency which merely coordinated protection of the trade of numerous private companies.<sup>21</sup>

After the fall of Antwerp in 1585 Amsterdam emerged as the new long-distance trade centre in the Low Countries. Antwerp merchants migrated and continued their trade with Russia, the Levant, and Africa in the Dutch port. Until then merchants in Holland had largely concentrated their efforts on trade with the Baltic Sea and the Atlantic Coast of France, Spain en Portugal. This trade was organized by individual merchants, small family partnerships, and shipping companies. It is tempting to view these shipping companies as a distinct legal entity but the term *partenrederij*, used so often to describe them, is a 19<sup>th</sup> century invention. The underlying contract was a partnership with a clearly circumscribed purpose – the ownership and use of a ship – and only one peculiarity: the arithmetical division of shares (1/2, 1/4, 1/8<sup>th</sup>, etc.). The accounts of the shipping companies were settled after one voyage or one trading season, and then participants were free to reinvest or not. Just like other specific-purpose partnerships the owners were, in principle, jointly and severally liable for debts related to the purpose of the company, but at this very point maritime law kicked in. According to this law, which, albeit with local variations, applied to shipping everywhere in Europe, any loss of cargo would be apportioned among all freighters, while a total loss of the ship would free all owners from any claims on the company.<sup>22</sup> The latter provision combined with the liquidation after one voyage or one season led to the wide spread of shares in a single ship.

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<sup>21</sup> Willan\*\*\*, Scott\*\*\*

<sup>22</sup> Daarnaast voorzag maritime law in evenredige verdeling van schade aan lading in case cargo of some, but not all freighters was damaged or lost (Schoffer, Averij Grosse)

In Amsterdam merchants trading with other parts of Europe were mostly left to their own devices. The Russia trade continued to be dominated by Antwerp firms, and the earliest voyages to Genoa and Venice in the 1590s were also organized by Flemish companies. To support the trade with the Levant the government sometimes supplied arms to individual ships, and it negotiated commercial privileges with the Ottoman sultan, but it refrained from any further interference. The same was true for the Atlantic world. The early sugar trade to the Canaries, Madeira, and Brazil were organized by special purpose partnerships, and the salt trade to the coast of Venezuela was organized by shipping companies.<sup>23</sup> The early voyages from Zeeland and Holland to West-Africa were also organized by specific-purpose partnerships.<sup>24</sup> In 1593 the first ship set sail from Enkhuizen and returned nine months later, after which a spate of initiatives created similar companies in several ports.<sup>25</sup> Until 1598 at least thirty ships sailed to West-Africa from Amsterdam, Enkhuizen, Hoorn, Rotterdam, Middelburg and Delft.<sup>26</sup>

Surviving accounts reveal that investments were typically made for one voyage, with the capital raised in advance and spent on the ship, its equipment, crew, armament, and merchandise.<sup>27</sup> One or a few partners coordinated the shipment for which they were compensated with a small fee. Upon the return of the ship the same men notified the other participants, sold the cargo and sometimes also the ship, and then distributed the proceeds among their fellow investors according to the value of each of their shares.<sup>28</sup>

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<sup>23</sup> Everaert\*\*\*; Van Goor, 18-23.

<sup>24</sup> [check Frijhoff; *Ratelband, Reizen naar West-Africa*]

<sup>25</sup> Henk den Heijer, *De geotrooieerde compagnie. De VOC en de WIC als voorlopers van de naamloze vennootschap, Ars Notariatus* (Deventer: Kluwer, 2005). 31.

<sup>26</sup> Van Goor, *De Nederlandse koloniën*, 22

<sup>27</sup> H.E. van Gelder, "Scheepsrekeningen van enkele der vroegste Guinea-vaarten," *Economisch Historisch Jaarboek* 2 (1916), W.S. Unger, "Nieuwe gegevens betreffende het begin der vaart op Guinea," *Economisch Historisch Jaarboek* 21 (1940). 208

<sup>28</sup> Voor veel participanten was het eenvoudig om met eigen ogen waar te nemen wanneer en in welke staat

Soon enough these early African companies ran into trouble, however. The attraction of the Gold Coast was such that the pioneers started worrying about competition. In 1598 the then eight companies trading between Amsterdam and Africa decided to merge into a General Guinea company. In a letter from 12 November 1598 one director, Jacques de Velaer, explained the decision to his shareholder Daniël van der Meulen:<sup>29</sup>

“...The 8 companies, trading here with Guinea, have agreed last week to become one company in order not to ruin each others’ trade, as has happened before. We intend to send two ships there every 2 months, and upon their return we will partition and draw up accounts; for every voyage we will nominate one person from each of the companies, and so on, and so forth...”

Spreading the voyages over the year, De Velaer believed, would make trade more profitable because ships would no longer arrive all at the same time on the African coast. The merchants maintained the governance structure of the previous companies, however, organizing single voyages only.<sup>30</sup>

Government support in the African trade was initially limited to naval escorts in European waters for incoming and outgoing ships.<sup>31</sup> Until 1598 the companies were exempt from import and export duties but once a regular trade had been established they had to pay customs the Admiralty boards to help finance their protection at sea.<sup>32</sup> In

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schepen terugkwamen maar degenen die elders verbleven werden vaak ook middels brieven door de directeuren op de hoogte gebracht. Gelder, "Scheepsrekeningen van enkele der vroegste Guinea-vaarten." 244-257. Unger, "Nieuwe gegevens." 200-209

<sup>29</sup> “...De 8 compagniën, die van hier op Guinea handelden, sijn de voorleden weeck met malcanderen verdraegen ende een compagnie geworden om malcandere dese negotie soo niet te bederven, alst voor desen wel geschiet is. Wy sijn van meyninge alle 2 maenden twe schepen derwaerts te senden, waeraf ter wedercompste telcken repartitie en rekening sal gedaen worden; tot elcke equipagie wort uuyt elcke compagnie een persoen genomineert, en soo voorts ander...” Unger, "Nieuwe gegevens."\*\*\*\*

<sup>30</sup> Unger, "Nieuwe gegevens." 208-209.

<sup>31</sup> Gelder, "Scheepsrekeningen van enkele der vroegste Guinea-vaarten." 241.

<sup>32</sup>

addition to this Prince Maurice in 1596 and 1598 secretly supported two expeditions by the Antwerp merchant Balthasar de Moucheron to establish a fortified trading post on the Ilha de Principe and São Tomé of the coast of Guinea. Both attempts failed and the same happened to a fleet equipped by the Estates General in 1599. In the meantime the various companies sailing to Africa continued to arm their own ships while sailing in convoy whenever this was possible.<sup>33</sup>

## THE EARLY VOYAGES TO ASIA

The government played a more active role in the trade with Asia.<sup>34</sup> In 1593 Prince Maurice backed Balthasar de Moucheron's request to the Estates of Holland and Zeeland to give their support to an expedition to find a northern route to Asia. The estates then equipped two ships "to explore the northern passage to the kingdom of China", and in their wake followed a group of Amsterdam merchants with two more ships.<sup>35</sup> The fleet sailed in the spring of 1594 but got stuck in the ice and had to return home. Almost immediately a new fleet set out, consisting of seven ships paid for by the local admiralties from customs revenues. The freighting of the ships with money and merchandise was left to merchants, whose trade would be exempted from any duties. Again the ships did not find a passage and the central government lost interest. However, the city of Amsterdam

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<sup>33</sup> Zelfs samenwerking tussen schepen van vreschillende compagnien, blijkens een contract of admiraltyship signed in 1601 between two shipmasters from Rotterdam and Amsterdam. Zij beloofden, onder verband van hun schepen en met boetes oplopend tot 1000 gulden, gezamenlijk terug te varen en elkaar te beschermen en te helpen. Unger, "Nieuwe gegevens." 214-217.

<sup>34</sup> The following is based on: Den Heijer, Geoctroyeerde compagnieën, 21.

<sup>35</sup> Resoluties Staten Generaal, RGP 57, p. 337 (resolution 16 May 1594)

decided to fund a third fleet in 1596, the now famous expedition of Willem Barentz which ended in long wintering on Nova Zembla.

The government also supported the companies traveling on the traditional route to Asia via the Cape of Good Hope. The local admiralties gave ordnance on loan and sold one or two ships on favorable terms; in addition the first companies were exempt from customs duties.<sup>36</sup> The boards of the admiralty also drafted regulations to secure discipline on board and to coordinate the individual efforts of the ships' captains.<sup>37</sup> The directors of the early companies also borrowed ordnance from various cities, sometimes with explicit guarantees from the Estates General.<sup>38</sup> The funding of the early voyages to Asia was a private matter, however, and one very similar to the exploration of new markets in Russia, the Levant, and Africa. All the 66 ships which sailed from Amsterdam, Middelburg, Rotterdam between 1595 and 1601 were financed by special purpose partnerships.

In each city small groups of merchants organized the voyages to Asia.<sup>39</sup> They invested their own money and collected subscriptions from relatives and other traders in their network. The lead merchants divided the company's work between them and received a percentage of the value of the money and goods handled as compensation.<sup>40</sup> In the *Oude Compagnie* in Amsterdam the directors – *bewindhebbers* – sat on four committees, responsible for the equipment and armament of ships, the hiring crew members, the purchase of victuals, and the loading of money and merchandise. The tasks were divided according to the directors' knowledge and skills: the local merchants took

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<sup>36</sup> Den Heijer, *Geotroyeerde compagnieën*, 29.

<sup>37</sup> NA 1.04.01 Inv. Nrs. 3 and 4 (*printed in De Jonge*\*\*\*)

<sup>38</sup> NA 1.04.01, Inv. Nr. 27, fol. 4v (30 November 1598), fol. 12v (2 September 1599); fol. 30 (3 September 1600); NA 1.04.01 Inv. Nr 29, fol. 2 (13 October 1601).

<sup>39</sup> (Nog raadplegen: Van Dillen, *Nieuwe Gegevens* (TvG 45 1930))\*\*\*

<sup>40</sup> NA 1.04.01, Inv. Nr. 27, fol. 2 (16 November 1598); Compare a resolution on the submission of accounts by individual directors. NA 1.04.01 Inv. Nr 28, fol. 7 (4 October 1600).

care of shipping matters, and the Antwerp traders Dirck van Os and Jan Jansz Karel were in charge of the ships' cargo. Upon the return of the ships all directors were expected to send their own lighters to Texel to unload the spices, and some of them were charged with the storage of the remaining provisions and victuals.<sup>41</sup>

A vital ingredient in the governance of the early companies was the personal credit of the directors. They paid for supplies from their own purse, for which they charged interest, or through loans from their suppliers.<sup>42</sup> After the first shipments of spices had returned from Asia, rebates on cash payments provided an additional source of short-term capital.<sup>43</sup> Shareholders also advanced money to their company. In November 1601 the directors of the *Verenigde Amsterdamse Compagnie* paid interest to participants who paid up their share before the ships sailed.<sup>44</sup> The directors of this company also borrowed money on the Amsterdam market to purchase specie for shipment to Asia.<sup>45</sup> These various credit transactions reveal the boundaries of the partnerships that organized the early voyages. The participants were jointly and separately liable for company debts but to shield their personal assets from creditors' claims before and after the return of the ships, the directors interposed their own credit, for which they in returned received a financial compensation.<sup>46</sup>

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<sup>41</sup> On storage: NA 1.04.01. Inv. Nr. 28, Fol. 1 (19 July 1599); On Texel: NA 1.04.01, Inv. Nr. 27, fol. 29 (12 June 1600); See also: NA 1.04.01 Inv. Nr 29, fol. 2 (13 October 1601), fol. 3 (29 October 1601).

<sup>42</sup> NA 1.04.01, Inv. Nr. 89; See also Inv. Nr. 27, Fol 5 (4 January 1599). Ook namen bewindhebbers soms financiële risico's over, bijvoorbeeld toen 6 bewindhebbers in July 1600 tot het moment van uitvaren een nieuw gekocht schip voor 10,000 gulden verzekerden. De verzekering liep uiteindelijk tot Juli 1601. NA 1.04.01 Inv. Nr. 27, Fol 29v (7 July 1600). Fol 30v-31, 16 april 1601

<sup>43</sup> The Oude Compagnie in Amsterdam set the rate for these rebates at 8-9 per cent in 1599 and 8 per cent in 1600 and 1601. In 1599 tegen 4% per half jaar, or 9 per cent per year (NA. 1.04.01, Inv. Nr 27, fol. 16v (7 October 1599); Inv. Nr. 28, fol. 7 (7 October 1599). In 1600 tegen 8% per jaar (NA 1.04.01, Inv. Nr. 27, Fol 34 (12 August 1600). In 1601 ook tegen 8%: NA 1.04.01 Inv. Nr. 29, fol. 10 (2 October 1601)

<sup>44</sup> (NA 1.04.01, Inv. Nr 29, fol. 4 (26 november 1601)

<sup>45</sup> (NA 1.04.01, Inv. Nr 29, fol. 4 (15 november 1601)

<sup>46</sup> See, for instance, NA 1.04.01 Inv. Nr. 1 (3 December 1594), waarin bewindhebbers van de Oude Compagnie in Amsterdam zich severally and jointly aansprakelijk stellen voor geschut dat ze voor de

The participants were not involved in the daily management of the early companies. This is very clear from the resolutions of the directors of the *Oude Compagnie* in Amsterdam, which survive for the period from November 1598 to April 1602. Only on December 7, 1598, the book of resolution mentions a ‘general assembly’ but whether this truly implied a meeting of all shareholders is doubtful, as the remainder of the document is exclusively concerned with the decision making between directors.<sup>47</sup> However, between the directors, the balance of power may have shifted slightly. The *collegie*, the four directors responsible for the recruitment of personnel, seem to have evolved into the company’s executive committee.<sup>48</sup> The other three committees had complete authority over their own tasks but in case of difficulties or disagreement they could ask the *collegie* for advice.<sup>49</sup> Not all directors seemed happy with this development and several resolutions were passed to secure that the appointment of the admiral of the voyage, the captains of individual ships, and the principal merchants was made by the assemble of all directors.<sup>50</sup> It is also noteworthy that several directors belonged to

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compagnie leenden; Zie ook Inv. Nr. 2 (*printed in De Jonge\*\*\**).

<sup>47</sup> “Adi 7 december @ 98 is bovengemelde (..?) geschut in die generale vergaederynghe en spetialijcken die bewynthebberen daer op geroepen, gheproponeert, en oock by alle geaccepteert en geapproveert”. NA. 1.04.01 Inv. Nr. 27, fol 4v (7 December 1598). Het verschuiven van de macht naar de bewindhebbers wordt mooi geïllustreerd door een beschrijving van de schrijver van de kladresoluties: “Aen 7 december @98 is gearresteert dat yder ~~particip~~ bewynthebber zal tot zynen laste neemen voor reeckenynghe van tgeresikeerde gheschut die somme van sehondertenvyfftyck gl corent” (NA. 1.04.01 Inv. Nr. 27, fol 4v (7 December 1598). Andere ‘generaele vergaderinghe’ worden vermeldt op 14 december en 25 february, maar de toevoeging ‘ter presentie van alle die bewynthebberen, alleenlyck absent synde [names]’ zou kunnen betekenen dat het hier om een vergadering van alleen de directors gaat (NA. 1.04.01 Inv. Nr. 27, fols. 5 and 6). By August 1599 the term general meeting stands for a meeting of the directors: ‘vergadering vande generale bewinthebbers’ (NA 1.04.01, Inv. Nr. 27, fol. 12v)

<sup>48</sup> NA 1.04.01, Inv. Nr. 28, Fol. 5 (23 August 1599). On March 1, 1599, “‘vergaderingynghe van die colleganten en diverse der bewynthebberen’ (NA 1.04.01, Inv. Nr. 27, fol. 6). See also: NA 1.04.01, Inv. Nr. 28, fol. 6 (30 August 1599).

<sup>49</sup> NA 1.04.01 Inv. Nr 28, Fol. 5: “Dat ijegelick particulier Collegie volcomen macht heeft om aff te doen t’geene aen haer werck dependeert ende swaricheyt maeckende, ofte onder haer discorderrende, vermogen den Raedt vant Collegie te hulpe te nemen” This clause is added to the resolution of 23 August 1599 in a different handwriting, hence one cannot be entirely certain about the date.

<sup>50</sup> Fol. 22v (11 January 1600) Fol. 33 (25 July 1600); See also: Inv. Nr. 28, fol. 19 (11 January 1600); See also the resolution, struck through in the ‘kladregister, stating that all directors regardless their specific



Amsterdam's magistrate, and at least from 1599 onwards one of them, Reynier Pauw, was the president of the *collegie*, a position which allowed him to convene the board of directors and probably also to act in public on behalf of the company.<sup>51</sup>

Pauw was also appointed president of the *Verenigde Compagnie* in 1601. Two years earlier Flemish immigrants had established the *Nieuwe compagnie* in Amsterdam sending six ships to Asia in June 1600. Just like the Africa trade, the directors of both companies understood competition could easily ruin their trade and already in November 1599 they were discussing the conditions of a merger.<sup>52</sup> In 1601 the companies jointly organized a fourth voyage to Asia, and in 1602 they contributed eight ships to a fleet of fourteen which would sail under admiral Van Warwick. The First United East India Company (*Eerste Verenigde Compagnie op Oost-Indië*) had 23 directors and in order to keep it manageable the *collegie* led by Pauw was given greater discretion, witness the instructions it wrote in November 1601 concerning the payment of interest on shareholders' subscriptions, and the accounts which had to be rendered by the various subcommittees.<sup>53</sup>

Amsterdam's early companies were very successful. Not a single ship was lost and merchants who invested in all voyages earned an average annual return of 27 per cent. Consequently directors had no difficulty in getting their participants to reinvest profits from one voyage into the next. After every voyage the directors rendered accounts and split the profits, before asking investors whether they wanted to transfer part of their

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tasks had equal voting power (NA 1.04.01, Inv. Nr. 27, fol. 2 (16 November 1598);

<sup>51</sup> NA 1.04.01, Inv. Nr. 27, fol. 6 (25 February 1599), fol. 17 (9 October 1599); NA 1.04.01 Inv. Nr. 28, fol. 5 (23 August 1599), fol. 8 (9 October 2009). See also Menno Witteveen. *Een onderneming van landsbelang. De oprichting van de Verenigde Oost-Indische Compagnie in 1602*. Amsterdam: Amsterdam University Press, 2002, 40.

<sup>52</sup> (NA. 1.04.01 Inv. Nr. 27, fol. 20v (15 November 1599)

<sup>53</sup> (NA 1.04.01, Inv. Nr 29, fol. 4 (15 november 1601; 2 april 1602).

earnings to the new venture.<sup>54</sup> Since participants did not always pay in time, the directors were forced to explicitly define their relationship to the investors. On December 30th, 1600, the directors of the *Oude Compagnie* stipulated that in case some of their participants failed to pay up their promised share, the directors would not be held liable, under the express condition that they would name the person and the amount of his or her investment, in order to allow the company to take legal action.<sup>55</sup> In other words, just like in any other special-purpose partnership, investors subscribed their capital to the company, not to the directors.

#### THE VOC CHARTER (1602)

Amsterdam was not the only place where companies trading with Asia were consolidated into one local enterprise. In 1600 the companies of Middelburg and Veere also merged into one *Verenigde Zeeuwse Compagnie* and this, in turn, led the Estates of Holland to push for further cooperation, not only between the Asian initiatives in various towns in Holland, but also between the companies in Holland and Zeeland. The consolidation of the sector was first considered in 1599, but it gained momentum in 1600 when the two Amsterdam companies merged and the English crown chartered the East India Company to curb competition between London merchants. The English company organized single voyages like the early Dutch companies, or short series of two or three voyages, but always with full accounts presented upon completion. A permanent joint-stock was only

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<sup>54</sup> See, for instance, for the fifth voyage: NA 1.04.01, Inv. Nr. 27, Fol 34 (12 August 1600).

<sup>55</sup> NA 1.04.01 Inv. Nr. 27, fol. 45v (30 December 1600).

created in 1657 but not without setting clear rules regarding the accountability of its directors.

In the Republic negotiations plodded along heavily. On the one hand government representatives and directors of the various companies had to strike a balance between the financial demands of investors interested in regular dividend payments, and the military and political demands of the Estates General who wanted to secure a strong Dutch presence in Asia. On the other hand, the Estates of Zeeland feared the interests of their province would become subordinated to those of the Amsterdam traders. After months of talking an agreement was finally reached on March 20th, 1602, after which the Estates General issued a charter granting a monopoly on the Asian trade for 21 years.<sup>56</sup>

The VOC charter is often considered a blueprint for the governance structure of the company, perhaps even the founding act of the world's first corporation. The company did indeed display a number of key features of present-day corporations: permanent capital, entity shielding, separation of ownership and management, tradable shares, and limited liability for shareholders. However, the financial structure laid down in the charter was not very different from the earlier Asian companies or other long-distance trading partnerships. During the 21 years for which the monopoly was granted the company would work with three consecutive accounts: one for the fourteen ships that sailed in 1602 under the command of Wijbrant van Warwijck; one for a decade starting in April 1602; and one for the period from 1612 to 1622. Shareholders would be allowed to ask their money back upon the completion of the first ten year period. These were acceptable terms for investors who had become used to a turn-over time of at least four years in the earlier voyages, the more so as the preamble of the capital ledgers of the six

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<sup>56</sup> Gaastra, *Geschiedenis VOC*, 21-23.

company chambers determined that shareholders had the right to transfer their shares at any point in time.<sup>57</sup>

This preamble to the capital ledgers of the six chambers of the company was a crucial addition to the terms of the VOC charter, really a second part of the company's constitution, for two reasons. First, any concerns the shareholders may have had about the liquidity of their investment were removed by the easy transferability of shares – so much so that soon after the company's creation in 1602 an active stock market sprang to life, spawning a wide variety of allied financial techniques. Second, the signatories agreed to the terms of the preamble, not those of the charter. The investors, and perhaps even some of the directors, considered the company just another special-purpose partnership, a *compagnia* established with a specific purpose for a set number of years. Ten years might seem excessive, but investors had become accustomed to longer terms in the Asian trade, and many of them had already developed the habit of transferring funds from one voyage to the next. Moreover, the installment scheme for paying up shares between 1603 and 1606 mimicked the investment pattern of the habitual single voyages.<sup>58</sup>

But even if traditional governance structures were incorporated in the VOC's founding documents, the charter itself displayed a heavy imbalance between the three main stakeholders: first, the *bewindhebbers* or shareholder-directors; second, the financiers, i.e. the shareholders and bondholders; third, the state in the form of the Estates-General, the highest political institution in the Dutch Republic. Out of the 46 articles, 29 dealt with various aspects of corporate governance and defined the positions

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<sup>57</sup> J.G. van Dillen, *Het oudste aandeelhoudersregister van de Kamer Amsterdam der Oost-Indische Compagnie* (Nijhoff: The Hague 1958) 105-106; W.S. Unger, 'Het inschrijvingsregister van de Kamer Zeeland der Verenigde Oost-Indische Compagnie', in: *Economisch Historisch Jaarboek* 24 (1946-1948) 1-33, *ibidem* 13-14.

<sup>58</sup> Gelderblom en Jonker, *Completing*

of the stakeholders.<sup>59</sup> Three features stand out. First, the impact which the character of the VOC as a semi-public enterprise entrusted with overseas trade and warfare had on the structure of the company's governance. The Estates-General and notably Johan van Oldenbarnevelt pressured the *voorcompagnieën* to merge for reasons of state and consequently kept a close rein on the VOC as well. The hot rivalry between the *voorcompagnieën* undermined the country's fragile political unity and economic prosperity, and seriously limited the prospects of competing successfully against the well-entrenched Spanish, Portuguese, and English Asian traders. By attacking the Luso-Hispanic overseas empire, a large, united company would also help to win the ongoing war against the Spanish Habsburgs. Doing this required establishing and maintaining a forceful presence in Asia under the flag of the Republic. For those reasons the VOC received suzerain rights, the right to wage war and make treaties in the name of the Estates-General.<sup>60</sup>

Four corporate governance clauses tied the VOC closely to the authorities at various levels. Article 6 gave the Estates-General discretionary powers to overrule the *bewindhebbers* or managing directors. Under articles 15 and 16 the company had to supply data about incoming goods and about sales revenues to the provincial and city authorities if their inhabitants had supplied 50,000 guilders capital or more. If those authorities chose to appoint someone to organize share subscriptions for the company, that agent had a right to full financial information so as to keep the authorities, but not the

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<sup>59</sup> We follow the text of the 1602 charter as printed in J.A. van der Chys, *Geschiedenis der stichting van de Vereenigde O.I. Compagnie en der maatregelen van de Nederlandsche regering betreffende de vaart op Oost-Indië, welke aan deze stichting voorafgingen* (Engels: Leiden 1857) 118-135. We counted articles 2, 3, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42 as dealing with aspects of corporate governance.

<sup>60</sup> Van der Chys, *Geschiedenis* 130, article 35. Senior VOC officers had therefore to swear an oath of allegiance to both the company and to the Estates-General.

shareholders, informed. In the end these clauses remained dead letters. Finally, article 26 put the right to appoint managing directors in the hands of the provincial estates.

The second feature which stands out is that the charter devoted attention to the VOC shareholders in only six of the 46 articles.<sup>61</sup> No. 10 gave administrative details about the subscription procedure. The charter said nothing about the shareholders' right to information. Nor did the shareholders have any right of representation with the board. An early proposal to organize the Asian trade in a chamber such as the Portuguese Casa de India had envisaged such a representation, as the WIC charter did later, but the VOC charter did not.<sup>62</sup> We may detect the hand of the state here; presumably the public interest of limiting the spread of sensitive information about war and other policy considerations weighed heavier than the private interests of shareholders. As for financial information, shareholders only obtained a promise of full accounts after ten years, in 1612. Two articles defined exit rights: a general one for all shareholders after the 1612 accounts (No. 7), and a special right for the shareholders in a going concern which was being merged into the VOC, if they objected to the terms of the merger (No. 9). Article 14 detailed some conditions for the intra-company accounts and for the statutory accounts to be presented to shareholders in 1612, and No. 17 gave shareholders a right to a dividend once the available cash reached five per cent of capital.<sup>63</sup> One curious article (No. 27) stipulated that small shareholders had the same rights as big ones when it came to sharing

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<sup>61</sup> Van der Chys, *Geschiedenis* 118-135, counting articles 7, 9, 10, 14, and 17.

<sup>62</sup> De Jonge, *Opkomst* I 257-261. The proposal probably dated from 1600 or 1601. Interestingly, the 1602 merger talks initially appear to have envisaged the executive committee of XVII *bewindhebbers* as a semi-public board for the Asian trade, though without shareholder representation, but this idea no longer appeared in the second draft: *ibidem* 262, 272. As late as 1622 Usselinx still pleaded for a public board charged with running the Asian trade and headed by the stadholder: O. van Rees, *Geschiedenis der koloniale politiek van de Republiek der Vereenigde Nederlanden* (Kemink: Utrecht 1868) 424-427, 455.

<sup>63</sup> The initial document and the second draft drawn up by the merger committee had specified a threshold of ten per cent: De Jonge, *Opkomst* 266, 273.

in the company's expected benefits. This was no doubt inserted to counter the existing practice, widely decried in the late 1590s, to carve up the sale of spices between the directors.<sup>64</sup> The charter clearly envisaged the VOC contracting debts, denying the directors commission on the issuing of bonds (No. 30), but said nothing about bondholders or the priority of their claims over those of shareholders in case of bankruptcy.

### THE PROMINENT POSITION OF THE DIRECTORS

By contrast, the charter gave very extensive and detailed attention to the directors. No fewer than 22 of the 29 corporate governance clauses concern the *bewindhebbers* in one way or another.<sup>65</sup> Seven laid down the responsibilities of the board, the tasks and responsibilities of the individual directors, their oath of office, and their position as officials in having no personal liability for the company's debts (No.'s 2, 3, 6, 12, 27, 32, 33, 42). A further five detailed the directors' remuneration and reimbursement arrangements (No.'s 5, 28, 29, 30, 31). Finally, various articles reflected the difficult merger negotiations between the various *voorcompagnieën*, fuelled by the keen economic and political rivalry between the Dutch Republic's fiercely autonomous cities. The company would be composed of four departments named *kamers* or chambers, one for each city or region which brought its *voorcompagnie* into the merger (No.'s 1, 2). The *bewindhebbers* of those companies became the directors of the VOC, so no fewer than 76

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<sup>64</sup> J.G. van Dillen, 'Nieuwe gegevens omtrent de Amsterdamsche compagnieën van verre', in: *Tijdschrift voor Geschiedenis* 45 (1930) 350-359.

<sup>65</sup> Van der Chys, *Geschiedenis* 118-135, counting articles 2, 3, 5, 6, 12, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42.

*bewindhebbers* were appointed and the charter named them all individually (No.'s 18-26). Once natural wastage had whittled this number down to 60 it would fall to provincial estates and city councils to fill vacancies from a list of candidates proposed by the company.<sup>66</sup> Directors sat for life, surprisingly so given the rotation schemes and limited appointment terms common to similar appointments in the Republic.<sup>67</sup> Each chamber delegated a set number of its directors to the regular meetings of the 17-strong executive committee.

The attention devoted to the directors was the outcome of several factors. First, reasons of state appear to have weighed very heavily indeed. With 12 articles detailing the relations between the company and the Estates-General or other authorities, the state really acted as the second principal for the directors as their agents and determined the balance of power within the company, as we will argue more fully below.<sup>68</sup> Second, the charter was drafted by a committee of directors from the *voorcompagnieën* keen to keep their hold on a lucrative enterprise and at the same time concerned with the risk of incurring unknown liabilities arising out of a company with an unusually long lifespan.<sup>69</sup> The powerful merchant Balthasar de Moucheron for instance, who had taken the lead in more than one expedition, only wanted to join on his own terms, and to placate him he got them, only to walk away within a year because of a policy disagreement.<sup>70</sup> According to Willem Usselinx, a large merchant well versed in the intercontinental trade, the VOC charter was drafted by *bewindhebbers* bent on defending their own interests and the

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<sup>66</sup> \*\*\*Ratio *bewindhebbers* to shareholders, 1602-1620.

<sup>67</sup> Cf. Usselinx' comments comparing the *bewindhebbers* to the boards of orphanages, church wards, and hospitals in Van Rees, *Koloniale politiek* 417

<sup>68</sup> Van der Chys, *Geschiedenis* 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.

<sup>69</sup> A report on the negotiations in De Jonge, *Opkomst* I 262-281.

<sup>70</sup> De Jonge, *Opkomst* I \*\*\* (conditions De Moucheron).



Estates-General had allowed that to pass so as to achieve the desired merger.<sup>71</sup> Third, as officers in a state-sponsored enterprise for warfare, trade, and colonial expansion the directors would occupy newly created, semi-public functions of major importance, if only because their position was unique in spanning the whole Republic, not just one of its constituent provinces. No other business enjoyed excise privileges for the whole of the country (No. 41) or had rights to apprehend fugitive sailors wherever it found them (No. 43).

Fourth, as we have seen the directors' function was also a fairly recent corporate innovation in need of definition. The company of nine Amsterdam merchants which sent out the first expedition in 1595 already styled themselves as *bewindhebbers* different from the general body of shareholders, which included the entire crew of the four ships involved, since the company took two months' wages as a share in the venture for each member.<sup>72</sup> The corporate governance of subsequent ventures mirrored the system for recruiting the shareholders. The companies were formed by a fairly small number of initiators, who drafted shareholders through family and business relations.<sup>73</sup> Once set up, the company was run by its initiators, now known as *bewindhebbers* and acting as first among equals. One document refers to them as the agents of the participants, a point repeatedly emphasized by Usselinx as well.<sup>74</sup> These directors probably received a remuneration for their efforts, but we do not know how much, or in which form, i.e. a fixed salary or a percentage of revenues. The emerging differentiation in tasks and pay do not appear to have affected contemporary conceptions about the character of the

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<sup>71</sup> Usselinx' remarks in Van Rees, *Koloniale politiek* 410.

<sup>72</sup> De Jonge *Opkomst* I, 97, art. 24.

<sup>73</sup> \*\*\*Discussion about question whether shareholders in direct relation with company Van Brakel, Van de Heijden, Den Heijer; clearly the case with first expedition from De Jonge *Opkomst* I, 97, art. 24.

<sup>74</sup> Van Dillen, 'Nieuwe gegevens' 354 (1597); Van Rees, *Koloniale politiek* 448, 416, 446, 448, 451.

association. In 1620 Usselinx described the WIC, then still in the project stage, as a *gemeene rederije*, perhaps best translated as a joint enterprise, in which all shareholders enjoyed equal rights of election and appointment. Consequently the directors ought to be chosen by and from the shareholders; letting city councils appoint them violated that principle.<sup>75</sup>

One clear sign of a divide between them and the other shareholders appeared in the articles of association of the initial expedition. The text itself has not survived, but we know from a related set of regulations that the contract denied participants the right to demand full accounts from the directors until all goods had been sold, during which time the participants would also have to contend themselves with such information as the board of directors was prepared to divulge.<sup>76</sup> These clauses about accounting and about information sharing clearly served to highlight the fact that the company, by force of circumstance, deviated from the customary norms of full disclosure and annual accounts to partners. Everyone had to bide their patience for up to two years until the ships had returned to European waters and sent their fast-sailing yachts ahead with news and data. Once that had happened directors presumably gave participants a rough idea of the results, if only so as to secure their support for another venture.<sup>77</sup> However, the regulations also show a subtle change in the status of the company's shareholders. The ban on the crew selling their shares before the return to port suggests that the exclusion of shareholders from the day-to-day running of the business was matched by an exit option in the form of transferable shares, possibly tied to an obligation to give the company an offer of first

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<sup>75</sup> Van Rees, *Koloniale politiek* 416.

<sup>76</sup> De Jonge, *Opkomst I*, 97, article 24 of the regulations concerning the expedition crew, referring to the contract between the participants.

<sup>77</sup> This was already the case with the first expedition: Van Dillen, 'Nieuwe gegevens' 355-356.

refusal.<sup>78</sup> The exit option does not appear to have been exercised very often in the case of the *voorcompagnieën*; a keen market for company shares sprang up only with the launch of the VOC.<sup>79</sup> By then the trading option was considered so normal that the charter did not even mention it. But the *bewindhebbers* who drafted the document clearly had agreed on a rough transfer procedure; the preamble to the ledger with share subscriptions of the Amsterdam and Zeeland chambers mention it in identical words.<sup>80</sup>

Exit options were a normal feature in shipping companies, as often as not tied to a right of first refusal for the other shareholders, but they made sense for partnerships only if these had performed a clear separation between partner-managers who could sign for the company, and simple partners who could not. This type of company became quite common; in 1610 Le Maire managed a whaling company with seven shareholders who traded their shares.<sup>81</sup> The separation of functions probably led to a wider application of the limited liability principle. Common shareholders could not only claim this if directors went beyond the purpose of the partnership, but also because they were no longer in direct managerial control. The shareholder-managers must also have enjoyed internal limited liability, i.e. they could not be called on to pay more than their share, but they do not appear to have acquired external liability, that is they remained personally liable for a company's obligations. In 1597 the prominent Rotterdam businessman Johan van der Veken petitioned the Estates General to release him from litigation over company debts

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<sup>78</sup> De Jonge *Opkomst* I, 97, art. 24.

<sup>79</sup> O. Gelderblom and J.P.B. Jonker, 'Completing a financial revolution: the finance of the Dutch East India trade and the rise of the Amsterdam capital market, 1595-1612', in: *Journal of Economic History* 64 (2004) 641-672; cf. Van Dillen, 'Nieuwe gegevens' 355-356, for examples of early transfers.

<sup>80</sup> J.G. van Dillen, *Het oudste aandeelhoudersregister van de Kamer Amsterdam der Oost-Indische Compagnie* (Nijhoff: The Hague 1958) 105-106; W.S. Unger, 'Het inschrijvingsregister van de Kamer Zeeland der Verenigde Oost-Indische Compagnie', in: *Economisch Historisch Jaarboek* 24 (1946-1948) 1-33, *ibidem* 13-14.

<sup>81</sup> 't Hart 'Walvisvaart' 211-212.

since he ought not to be held personally liable for them, but we do not know whether his claim succeeded.<sup>82</sup> The fact that article 42 the VOC charter expressly excluded the directors' personal liability suggests that the point needed articulation and did not follow automatically from a company's constitution. Even in the 1620s not everyone had picked this up. The Delft chamber of the Noordsche Compagnie had apparently not excluded their directors' personal liability, so it became embroiled in a lengthy court case about the payment of beer ordered for the company's ships. The directors finally settled in \*1647 by sharing the bill.<sup>83</sup>

#### THE MAIN PRINCIPAL

Though the importance of the VOC as a semi-public enterprise has been emphasized before in the literature, the agency theory framework helps us understand the full extent to which this aspect shaped the company's biased corporate governance structure. Together with delegates from the various *voorcompagnieën*, representatives from the Estates-General formed part of the committee which drafted the charter and the committee gave progress reports to the Estates.<sup>84</sup> Reasons of state, the desire to take the war to the Luso-Hispanic overseas empire and conquer a Dutch empire there, brought the company into being and determined the way in which it was run in two ways, direct and indirect. First, in return for granting a 21 year monopoly on trade with Asia plus other privileges and concessions such as the suzerain rights and tax breaks, the state received

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<sup>82</sup> De Jonge, *Opkomst I*, 239-240; \*\*\*chk petitions SG.

<sup>83</sup> Van Brakel, 'Noordsche Compagnie' \*\*\*; chk exact details case.

<sup>84</sup> De Jonge, *Opkomst I*, 262-281 for a report of the proceedings.

direct benefits: a small lump sum plus a range of instruments to guide policy.<sup>85</sup> The provincial Estates appointed new *bewindhebbers* (No. 26) and the Estates-General could override them (No. 6). Regional and local authorities could appoint agents to monitor the company (No. 15-16), but as we have seen this failed to happen. In addition the company had to submit reports about returning fleets to the Republic's Admiralties and the commanding officer had to report in person to the Estates-General (No.'s 36, 45).

These articles amounted to a strong injunction forcing *bewindhebbers* to minimize agency behavior towards the Estates-General, both via monitoring (board composition) and bonding (reporting, appointments). Though the *bewindhebbers* possessed an obvious information advantage over any other stakeholder in the VOC, they had a clear incentive to share this with the state and not with the shareholders. The state could, and did, help them in numerous ways, big and small: providing ships and ordnance, promulgating sanctions to speed up tardy share subscriptions, or issuing regulations for trading the company's shares, which included a ban on naked short selling after Le Maire's raid.<sup>86</sup> Delegates from the *bewindhebbers* frequently attended the Estates' meetings: to supply information, give expert advice on a range of issues, or to get something done.<sup>87</sup> As for the indirect ways, the system for filling vacancies provided the authorities with strong leverage over the board. Giving the appointment of directors to the provincial authorities meant ensuring that board members would be 'one of them', recruited from candidates suitable for public office, i.e. men adhering to Calvinism, the dominant religion, and fully aware that their career and the social position of their family depended on their success in maintaining the stability of the status quo. Rather than economic appointments, the

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<sup>85</sup> Van der Chys, *Geschiedenis* 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.

<sup>86</sup> \*\*\*Examples from Resolutions Estates-General.

<sup>87</sup> \*\*\* Examples from Resolutions Estates-General.

directors' positions soon became social and political assets, part of the cement mix which bound the elite together. The Amsterdam city council underlined this when, in 1610, they appropriated the right to appoint directors in the most powerful chamber from the Estates of Holland.<sup>88</sup> It seems reasonable to assume that the directors' interests included personal wealth maximization via transactions with the VOC (tunneling) and via direct expropriation. Examples of both surfaced over time, one of them in Le Maire's petition. However, the additional dimension of board appointments was probably as important in guiding the behavior of directors.

Set against that the incentives to have the *bewindhebbers* minimize agency behavior towards the other principals, bondholders and shareholders, were fairly weak. Directors were required to keep a minimum holding as a guarantee for their oath of office and by extension for the proper conduct of the staff hired and paid by them (No.'s 28, 33). As financiers, bondholders and shareholders were jointly entitled to the financial surplus of the VOC's operations. The charter gave no provisions at all to solve the potential conflict between competing claims of shareholders and bondholders. We know no more than that the *bewindhebbers* appear to have used bonds to favor preferred investors, who were keen on them because of the regular interest payments and good rates. Consequently we do not know either to what extent the VOC shareholders were residual claimants with respect to the bondholders. As we have noted above, the shareholders' statutory right to dividends if revenues amounted to five per cent of capital was ignored, and they had very limited information and no voting rights. In addition the rapid rise of share trading gave investors a very convenient exit option.

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<sup>88</sup> Gaastra, *Geschiedenis VOC* [\*32].

From a pure agency perspective, the weak position of shareholders vis-à-vis the directors opened an enormous potential for agency costs. Some of those have already been noted; others follow below, and still more surfaced during the 1620s struggle with discontented shareholders. One would expect investors to price protect against these agency costs, but poor data means that we cannot really see whether they did. The VOC's shares were fairly rapidly subscribed and are reported to have traded substantially above par for some time after. The fact that the board asked the Estates-General for special measures to prod tardy subscription payers suggests that some investors may have had second thoughts, but there simply is insufficient evidence one way or another.<sup>89</sup> Share prices seem to have fluctuated with the general outlook of the company, i.e. the arrival of news from Asia and rumors about dividend payments; to what extent agency issues had an impact we simply cannot say.

### LE MAIRE'S GRIPES

There is ample evidence that within a few years after its inception the VOC's charter and policy created serious friction within the board and between the board and the shareholders. We do not know the full extent of what happened, nor the nature of the arguments, but the signs are unmistakable. Three prominent directors and large shareholders resigned from the board in successive years: De Moucheron (1603), Pieter Lintgens (1604) and Le Maire (1605). They were driven mainly by frustration over the company's general business policy, since all three attempted to move back into the Asian

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<sup>89</sup> \*\*\*RSH [1605] resolution prod subscribers.

trade one way or the other, by sponsoring the launch of trade companies under the auspices of the French King Henri IV or by organizing naval expeditions to try alternative routes not covered in the VOC charter.<sup>90</sup>

The complaints are not difficult to understand because right from the start the VOC waged war against the Spanish and Portuguese in Asia. Steven van der Haghen, commander of the fleet which sailed to the east in December 1603, received secret and explicit instructions to that effect.<sup>91</sup> This new and radical policy manifested itself to best effect in the changed ratio of merchandise and money against ships and soldiers sent out. Compared to the early voyages the annual number of ships and their tonnage dropped. From 1595 to 1601 the early companies commissioned 66 ships with a total tonnage of 23,600 tons. Van Warwijck's 1602 fleet of 14 ships totalled 6,300 tons, and the 49 VOC ships sent to Asia between 1603 and 1607 amounted to another 23,500 tons. The years 1608 and 1609 were particularly lean for the VOC, only four ships or 1,600 tons leaving the Republic. The individual ships of the VOC were bigger, however, and they cost considerably more to equip due to heavier armament and the large number of soldiers taken on board. Between 1595 and 1601 the average equipment cost per ship of Amsterdam's early companies had been 40,000-75,000 guilders. The ships in four fleets which the VOC sent out between 1603 and 1607 averaged 80,000-150,000 to equip, and these costs formed two-thirds of total investment leaving one third for money and merchandise, which had been exactly the other way around in the early companies.<sup>92</sup>

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<sup>90</sup> Van Rees, *Koloniale politiek* 29, 31, 33-34. The efforts by De Moucheron and Lintgens to set up trading companies abroad inspired the VOC board to have Le Maire swear an oath that he would not compete with the company; this did not, however, deter him. Ref. bio Le Maire; \*\*\*Chk his share position in NA, also for what follows.

<sup>91</sup> "Secrete Instructie den Admiral Van der Hagen gegeven", NA 1.11.01.01 Inv. Nr 255, fol. 71-74; Compare De Jonge, III, 146ff\*\*\*

<sup>92</sup> Calculated on the basis of Gaastra, *Geschiedenis*, 25, 27; NA 1.11.01.01 nr 255, fol. 81v.



Wanting to establish a firm presence in Asia, the company invested heavily during its first years and even so made little headway. The military operations stretched the company's available means to the limit and harmed its commercial purpose.<sup>93</sup> This was one of Isaac Le Maire's key complaints in 1609, the company's obvious inability to properly cover the vast area of its monopoly, which left immense business opportunities unused, notably on the east coast of Africa, along the Arabian peninsula, and on the west coast of South America. Therefore, he argued, the VOC charter ought not to be extended, as the board wanted, but rather to be limited to the Indonesian archipelago.<sup>94</sup>

The result of the company's investments in violence was that no dividends were being paid, all the more galling since the last expedition sent out by *voorcompagnieën* in 1602 started showering dividends three years later to the shareholders who had wisely opted not to turn let their share be subsumed into the VOC.<sup>95</sup> This must have caused uproar from the rest, who now knew that a large amount of money had come in without being paid out. Combined with continuing bad news from Asia, the discontent over dividends appears to have pushed the company's share price from 140 per cent in 1605 down to 80 in 1606.<sup>96</sup> Two years later the board considered the VOC's prospects to be so poor that it petitioned the Estates-General to lift the statutory accounts due in 1612, fearing that disclosure would lead to a precipitous withdrawal of capital. The request was

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<sup>93</sup> Dutch-Asiatic Shipping\*\*\*

<sup>94</sup> "...de impotentie van de Compagnie ende dat hun middelen geensints en strecken om volgende het octroij door de Strate van Magellanes te navigueren, de vastelanden van Peru ende Eijlanden te beseijllen ende negotie aldaer te fonderen ende voorts te ontdekken alle de nieuwe landen soo int suiijden als int noorden gelegen, mede alle de vastelanden ende eijlanden van Africa, als hiervoren verhaelt." (Memo Isaac Le Maire, 24 January 1609)

<sup>95</sup> Van Rees, *Koloniale politiek* 27: from 1605 to 1610 respectively 15, 75, 40, 20, 25, 50 per cent for a total of 225. Van Rees erroneously attributes these dividends to the VOC, which paid its first dividend only in 1610. Article 9 gave shareholders in the last expedition of the *voorcompagnieën* the right to opt out. The Delft shareholder W.J. Dedel had clearly done this and, having received 130 per cent by 1607, he sold his share: H.T. Colenbrander, 'Ueber das erste Auftreten des Wortes "Aktie" in den Niederlanden', in: *Zeitschrift für das gesamte Handelsrecht* 50 (1901) 383-387, ibidem 386-387.

<sup>96</sup> De Jonge, *Opkomst* III 69.

granted; in agency terms, two stakeholders conniving to sideline the third one.<sup>97</sup> A subtle shift in terminology suggests that, at more or less the same time, the board also sought to redefine the position of the shareholders towards the company. Initially shares were known as *partijen*, i.e. literally parts in the company similar to the parts shipowners held in a ship, and together the holders of parts or *participanten* formed the company. From 1606, however, the VOC started substituting the term *actie* or action-in-law for *partijen*, signifying that the holders were no longer considered a part of the company, but outside owners of a right to dividends.<sup>98</sup>

The experiences with the VOC were so disappointing overall that the initial plans to set up a similar company for the Atlantic trade envisaged a radically different corporate governance structure. In 1606 the Estates of Holland circulated a draft charter for a West India Company (WIC).<sup>99</sup> The overall structure of the proposed company was to resemble that of the VOC. A single-tier board of *bewindhebbers* headed the company, with day-to-day decisions delegated to a committee of seventeen. In the VOC this board operated more or less independently, but the draft charter envisaged giving the WIC shareholders power over it in two ways. First, the *bewindhebbers* would no longer be appointed by city councils or provincial estates, but elected by and from shareholders with a minimum holding of two to four thousand guilders, depending on the chamber in which they had invested. A third of the *bewindhebbers* would have to seek re-election

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<sup>97</sup> Van Rees, *Koloniale politiek* 47. \*\*\*Chk date request; precise arguments used. In a 1620s memo about the WIC, Usselinx ascribed the poor results of the VOC to the fact that the charter had turned *bewindhebbers* from agents into principals: *ibidem* 446.

<sup>98</sup> Colenbrander, 'Aftreten des Wortes "Aktie"' 386-387. \*\*\*NB claim directors to own charter in 1621 pamphlets.

<sup>99</sup> The text in A.C. Meijer, "'Liefhebbers des Vaderlands ende beminders van de commercie", de plannen tot oprichting van een Generale Westindische Compagnie gedurende de jaren 1606-1609', in: *Archief, mededelingen van het Koninklijk Zeeuwsch Genootschap der Wetenschappen* (1986) 21-72, *ibidem* 50-59.

every two years.<sup>100</sup> Usselinx, as keen an advocate of shareholders' rights as Le Maire but more articulate and persistent, saw regular board elections by shareholders as a guarantee that directors would not act as masters of other people's money, like they did in the VOC, but as agents, as they should.<sup>101</sup> Second, the large shareholders would elect a supervisory board of *hoofdparticipanten* or leading shareholders to audit the accounts and discuss policy with the *bewindhebbers*, the first manifestation of the two-tier board later to become characteristic of Dutch corporate governance.<sup>102</sup> The draft charter also proposed keeping separate accounts for the commercial activities and for warfare, and drawing up full accounts every six years rather than every ten. Finally shareholders would get a dividend if profits reached ten per cent of capital, as originally proposed for the VOC but lowered to five per cent in the charter, which latter threshold had clearly proved too low.<sup>103</sup> Even Le Maire's scathing profit estimate of no more than 2.3 million guilders over seven years meant that the company ought to have paid the statutory dividend in most years and thus had formally transgressed its charter, giving shareholders another legitimate cause for complaint.<sup>104</sup> The figure was therefore doubled so the WIC could conserve cash.

The 1606 blueprint can only be understood as an attempt to remedy perceived shortcomings in the VOC charter of four years before and shows that a more balanced model of corporate governance for long-distance trading companies, eliminating some

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<sup>100</sup> Articles 17, 18, 19, Meijer, 'Liefhebbers' 55.

<sup>101</sup> Van Rees, *Koloniale politiek* 448, 451.

<sup>102</sup> Article 21, 23-26, Meijer, 'Liefhebbers' 55-56. According to Usselinx, the *hoofdparticipanten* were later dropped at the instigation of representatives from the country's main ports, i.e. *bewindhebbers* from the VOC who feared that they would have to introduce a similar structure: Van Rees, *Koloniale politiek* 411, 423.

<sup>103</sup> Article 22, Meijer, 'Liefhebbers' 56; De Jonge, *Opkomst* 266, 273 for the original VOC proposals. Usselinx considered ten per cent inadvisable and thought apparently that no figure should be mentioned: Van Rees, *Koloniale politiek* 452.

<sup>104</sup> *Shareholder Rights at 400* 45.

key agency issues by giving more power to the shareholders, was not only conceivable, but in fact conceived. The fact that the Estates of Holland issued the draft also shows that these shortcomings were sufficiently serious to warrant official attention.<sup>105</sup>

Le Maire's 1609 diatribe and innovative bear raid on the VOC shares of the same year thus formed part of a groundswell of discontent which had already been running for some time. Indeed, given the signs of discontent about the company's corporate governance, Le Maire's criticism on that subject appears quite muted, all the more remarkable for the fact that he continued to hold a large number of shares, which he only sold the following year.<sup>106</sup> He subordinated his criticism on the point to his main concern, that the VOC's monopoly should be restricted and not, as the board wanted, extended. Big merchants such as he and De Moucheron were keen to get the scope of the intercontinental trade widened and chafed at the unproductive VOC monopoly. But perhaps Le Maire also decided to focus the main thrust of his arguments on what he wanted to achieve most because he realized that demands for corporate governance changes stood little chance since the Estates-General would unlikely alter a structure designed in its favour. Moreover, at a time when immigrants from the Southern Netherlands like De Moucheron, Lintgens, and Le Maire were slowly but surely sidelined by the Hollands majority for reasons already mentioned, calls for more power coming from that corner were unlikely to be popular, whereas claims for free and fair trade opportunities would attract a wide audience.<sup>107</sup>

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<sup>105</sup> \*\*\*subsequent developments; Usselinx' complaint about WIC draft reflecting the repression of shareholders as practised by the VOC: Van Rees, *Koloniale politiek* 409.

<sup>106</sup> NA 1.04.02 VOC No. 7060, ledger of shareholders \*\*\*fol no's.

<sup>107</sup> O. Gelderblom, 'De deelname van Zuid-Nederlandse kooplieden aan het openbare leven van Amsterdam (1578-1650), in: C. Lesger, L. Noordegraaf, *Ondernemers en bestuurders, economie en politiek in de Noordelijke Nederlanden in de late Middeleeuwen en de Vroegmoderne Tijd* (NEHA: Amsterdam 1999) 237-258.

Whatever his motives, Le Maire concentrated on his objections to the VOC board's business policy and discussed only three main corporate governance complaints.<sup>108</sup> First, the company's rising debt burden cut into the shareholders' profits, so that no dividends had yet been paid and were unlikely to be paid before the statutory 1612 accounts.<sup>109</sup> Second, the dictatorial board refused to take advice or hear arguments. Third, the directors enriched themselves to the detriment of shareholders while trying to get the obligation to publish accounts lifted.<sup>110</sup> The complaints amounted to a bill for the woeful agency costs arising from the impotence of shareholders: this had brought the latent conflict of interest between bondholders and shareholders to the fore and allowed the directors to get away with milking the company, which without public scrutiny of the accounts would continue indefinitely. In combination with the sweeping proposals of the 1606 WIC draft statutes, Le Maire's complaints show that contemporaries were acutely aware of the VOC charter's failings. Yet nothing was done. The Estates-General duly lifted the company's obligation to publish accounts and subsequent drafts for a WIC charter reverted to the VOC model, omitting the clauses on shareholder representation. Clearly the main principal wanted to keep a tight hold over its companies and ignored other interests.

## CONCLUSION

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<sup>108</sup> We follow the English text as published in *Shareholder Rights at 400, Commemorating Isaac Le Maire and the First Recorded Expression of Investor Advocacy* (APG: s.l. 2009).

<sup>109</sup> *Shareholder Rights at 400* 39, 40, 42, 45.

<sup>110</sup> *Shareholder Rights at 400* 39, 40-41, 45.

During the last decade or so of the 16th century, the rapidly growing scale of the Dutch long-distance trade posed new challenges to corporate law. The flexible legal system enabled existing forms such as the shipping company and the partnership to adapt by developing arrangements to safeguard the evolving interests of stakeholders and third parties, redefining liabilities and solving emerging agency issues. This framework proved sufficiently flexible to accommodate the biggest challenge, the overseas trade with Asia; the joint-stock company with tradeable shares fitted naturally on the foundations of what had gone before. Yet the VOC differed materially from its predecessors: by its size, scope of operations, purpose, and its durability. And by the relationships between its principals. The importance of war and colonial conquest under its purposes determined the company's heavily biased corporate structure, in favour of the authorities and to the detriment of shareholders, who were treated as outsiders. The deficiencies of this construction were quickly recognized, but never remedied. With the war against Spain and colonial conquest in full swing, reasons of state would not allow that, and turning the *bewindhebbers* positions into a key instrument for social and political advancement created a powerful lobbygroup firmly defending the status quo, against which protests from outsiders like Le Maire and Usselinx stood no chance. Put in perspective, Le Maire's protests thus definitely reflected the corporate governance norms of his time.

The very modern character of the equity market which emerged with the establishment of the VOC in 1602 has blinded legal and economic historians for the much more archaic nature of the company's governance structure. In a radical departure from the organization of traditional partnerships, the incorporation of the VOC implied a remodeling of the company direction after the so-called *colleges*, the public bodies which

managed the Dutch admiralty- and water boards. The creation of six local chambers whose directors were delegated to a general board allowed the company managers to align their policy to the interests of the state, and to produce one very specific public good: the establishment of a strong military and political presence outside Europe. Hence the VOC was not a fundamental or evolutionary step towards the creation of the modern corporation. It was a compromise, an organization created for reasons of state, and as such a deviation from the norm.

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