

## **Shareholder Activism at the Dutch East India Company 1622 – 1625**

*Redde Rationem Villicationis Tuae! Give an Account of Your Stewardship!*

Paper presented at the Conference on the Origins & History of Shareholder Advocacy, Yale School of Management, Millstein Center for Corporate Governance and Performance November 6 and 7, 2009.

**Preliminary draft. Please do not cite or quote without permission of the author.**

This version: 10 January, 2010.

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Keywords: Shareholder activism, legal history, VOC, East India Company, agency theory, *societas, universitas, corporation*

JEL Classifications: B15, D23, K22, O10, O52

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## Abstract

This paper explores the reason for the absence of control rights of shareholders in the Dutch East India Company (VOC) and the background of the conflict between shareholders and directors that arose in 1622/1623 when the VOC Charter of 1602 was extended.

The VOC was the result of a merger between several companies that had been trading in the East Indies between 1594 and 1602. The legal structure of most of these “pre-companies” which were incorporated for a single voyage to the East Indies, prevented shareholders from having actual influence. In most of these companies, the shareholders invested their money, not in the company itself, but via one of the individual directors. The relationship between a shareholder and most of the precompanies was therefore indirect, which impeded the exercise of control rights. Furthermore, shareholders may not really have been interested in their control rights given the high returns and the expectations of the newly opened trade route.

When these pre-companies were merged into the VOC in 1602, nothing changed with respect to the absence of shareholder control rights. The VOC, however, was established for a longer period and had to meet other more long-term challenges than those faced by the pre-companies. The failure to adapt the control structure to suit the different circumstances may have been a source of the conflicts that arose between the directors and shareholders between 1602 and 1623.

In 1622, upon extension of the 1602 Charter, a significant conflict erupted between the shareholders and directors. The so called dissenting participants complained about the numerous conflicts of interests that had been arising between the various directors and the VOC. They accused the directors of abuse of power, short-selling and self-enrichment. They argued that shareholder approval was required for the VOC to turn to the capital market to borrow funds. They also demanded that large investors be entitled to vote on the appointment of new directors. As the dissenting participants supported their arguments by referring to the English East India Company, the corporate governance of the EIC is briefly described.

Publishing their complaints in pamphlets, the shareholders mobilized public opinion and attempted to convince merchants not to invest in the Dutch West India Company, which was being incorporated at the same time. They exerted pressure on the government to ensure that more rights were granted to the shareholders when the VOC Charter was extended.

Theoretically, the activism of the “dissenting participants” was successful. The 1623 Charter granted certain rights to large investors, including the right to nominate new candidates for appointment as director. The 1623 Charter further regulated insider trading by the directors and encouraged the directors to pay a yearly dividend to the shareholders. In addition, a committee of nine shareholders was entrusted with the supervision of the VOC directors. This corporate body was known as the “Lords IX” (*Heren IX*). In practice, however, the directors were able to frustrate many of the corporate governance improvements.

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## Shareholder Activism at the Dutch East India Company 1622 – 1625

*Redde Rationem Villicationis Tuae! Give an Account of Your Stewardship!*<sup>2</sup>

There was a rich man whose steward was accused of wasting his possessions. So he called him in and asked him, “What is this that I hear about you? Give an account of your stewardship, because you cannot be manager any longer.”<sup>3</sup>

Anyone entrusted with a property to use who uses it for a purpose other than that for which it was given is guilty of theft.<sup>4</sup>

### 1. Introduction

Agency problems that can arise between an agent and his principal as a result of separation from ownership and control are considerably older than their analyses in Berle and Means' *Modern Corporation & Private Property* (1932), Von Jhering's *Zweck im Recht* (1877)<sup>5</sup> or Adam Smith's *Wealth of Nations* (1776).<sup>6</sup> This is evident, for example from the quotes above, both of which were cited in 1622, by dissenting shareholders of the Dutch East India

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<sup>2</sup> Luke 16:2, quoted in *Tweede Nootwendiger Discours*, 13.

<sup>3</sup> Luke 16:1-2.

<sup>4</sup> Inst. 4,1,6 (*Sive is qui rem utendam accepit in alium usum eam transferat, quam cuius gratia ei data est, furtum committit.*), quoted in *Nootwendich Discours*, 27.

<sup>5</sup> “In the corporation, the members resign from the management and leave it to persons, who can be, but who don't need to be shareholders. In the corporation, two elements are separated that, in the natural situation of the law, coincide in the person of the owner: ownership and control. These elements are separated in such a manner, that the shareholder is owner without exercising control, whereas the board has control without being owner. (...) The legal position [of the board] is characterized by two elements: the authority to exercise control over a property that does not belong to it, and the obligation to act solely in the interests of those on whose behalf the board is acting. The latter element is the most risky of the legal relationship.” (Von Jhering 1877 (1893), 219-220; translation JMdJ).

<sup>6</sup> “The directors of such [joint-stock] companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.” (Smith 1776).

Company (Verenigde Oost-Indische Compagnie, or VOC). The VOC, incorporated in 1602, dominated trade with the East Indies during the entire 17<sup>th</sup> century. In the course of the 18<sup>th</sup> century, it was gradually outstripped by the English East India Company (EIC), which had been incorporated in 1600. There were great differences in the internal organization of the two competitors. The VOC was primarily an association of *capital*. Unlike at the EIC, the share capital of the VOC was *de facto* permanent as from its incorporation and VOC shares were already traded on the stock exchange in the first decade of the 17<sup>th</sup> century.<sup>7</sup> Partly because it had a more solid financial basis, the VOC was initially more successful than the EIC. Although it was easy for the participants in the VOC (as shareholders were called at the time) to sell their shares, they had no control at all: the VOC never had a shareholders' meeting. The EIC, however, was primarily an association of *members*, who were able to exert considerable influence on the policy from the start. At fully-fledged shareholders' meetings, directors were appointed annually and they could be dismissed in the interim. Exit possibilities for shareholders of the EIC were initially very limited and arose mainly when temporary capital stock was liquidated. A liquid stock market arose in the last decades of the 17<sup>th</sup> century only after joint stock became permanent. In short, shareholders of the EIC had a strong voice, while their colleagues at the VOC enjoyed better exit possibilities.

The absence of a corporate body in which shareholders of the VOC had a voice did not impair their ability to actually express their opinions. In 1622 and 1623, critical VOC shareholders caused quite a stir when they protested against the self-enrichment and inefficient management by the directors. The so-called *dolerende participanten* or *doleanten* (dissenting<sup>8</sup> participants) accused the directors of using their powers primarily in their own interests. Partly to put an end to this, the dissenting participants, who jointly held almost 40%

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<sup>7</sup> See e.g. Gelderblom/Jonker 2004 and Smith 1919, with further references.

<sup>8</sup> *Dolerende participanten* can also be translated into *complaining* or *aggrieved* participants.

of the share capital,<sup>9</sup> demanded more influence in the VOC. The conflict between participants and directors was fought out in the public arena by way of a pamphlet battle.<sup>10</sup>

The shareholder activism of 1622 and 1623 is important for various reasons. First of all, it is an interesting example which illustrates what agency problems and conflicts can arise if shareholders in a publicly traded company remain deprived of information and have no control at all. Secondly, the conflict between shareholders and directors is significant from the viewpoint of legal history. The outcome of the conflict was an important moment in the history of Dutch corporate law: it was acknowledged for the first time, at any rate theoretically, that shareholders in a listed company are more than just financiers of an enterprise and that they are also entitled to a voice, for example in the appointment of directors.<sup>11</sup> Furthermore, the so-called two-tier board may well have its roots in this conflict. In companies with a two-tier board, not uncommon in, for example, Germany and the Netherlands, the supervisory board is charged with supervising and advising the board of directors, which is composed only of executive directors.<sup>12</sup>

This paper is structured as follows. Section 2 outlines the Charter (*Octrooi*) of the VOC and the position of the shareholders within the VOC. In this section, I also attempt to find an explanation for the participants' lack of control. Section 3 deals briefly with shareholder activism before 1622, after which section 4 more thoroughly discusses the participants' complaints about the course of affairs at the VOC on the basis of passages from various

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<sup>9</sup> Van Rees 1868, 148.

<sup>10</sup> Knuttel 1978, nos. 3345-3356 and 3585b.

<sup>11</sup> Partnership-like companies or companies that resembled private limited companies often did, of course, have meetings in which investors had a voice; these companies, however, were different due to their smaller scale and limited exit opportunities of the partners/investors.

<sup>12</sup> In the Netherlands, a *one-tier board*, with executive and non-executive directors, will soon be given a legal basis, so that companies will be able to choose between a one-tier and a two-tier board.

pamphlets.<sup>13</sup> The corporate organization of the EIC will also be dealt with briefly, because the participants presented it to the directors as an example. This section then gives an overview of the response by the directors and the outcome of the conflict, which resulted in an amendment to the Charter. Section 5 concludes.

## **2. The position of the participants under the 1602 Charter**

### **2.1. Internal organization of the VOC**

The VOC can be considered a type of merger of several shipping companies, the so-called precompanies, which traded with the East Indies between 1594 and 1602. The precompanies were incorporated for the duration of one voyage, after which they were liquidated and the proceeds divided among the participants. The first precompany, the Amsterdam based *Compagnie van Verre*, returned from the Indies in 1597. From a commercial perspective, the voyage of this company can hardly be considered a success: only 87 of the crew, originally consisting of 240 persons survived the journey, one ship was lost and the merchandise brought back could barely cover the costs. This company, however, had proved that sailing to Asia was possible and had opened a new trade route to the East Indies.<sup>14</sup>

This immediately resulted in the formation of various precompanies in different cities in Holland and Zeeland, the two western provinces of the Netherlands. Between 1595 and 1602, 65 ships set sail, 50 of which returned. The most successful expedition returned in 1599 and made a substantial profit of 399%. Within a few years, the Netherlands had acquired a leading position in the trade with the East Indies and forced the Portuguese into second place.<sup>15</sup>

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<sup>13</sup> See also Frentrop 2002, 88 *et seq.*, Van Rees 1868, 144 *et seq.*, Van der Heijden 1908, 61 *et seq.* and Van Brakel 1908, 129 *et seq.*

<sup>14</sup> Gaastra 2009, 15.

<sup>15</sup> Gaastra 2009, 17-18.

The incorporation of various precompanies led to sharp competition among the companies, which caused the purchase prices in the Indies to rise and the market prices in the Netherlands to fall. Moreover, skirmishes with the Spaniards and Portuguese could not be ruled out. Both the merchants of the various precompanies and the States General<sup>16</sup> therefore had an interest in having the different precompanies merge into the Dutch East India Company, which would be granted a monopoly on trade.

In the Charter of 1602,<sup>17</sup> the States General granted the VOC the sole right “to sail east of the Cape of Good Hope or beyond the Straits of Magellan for the next twenty-one years”.<sup>18</sup> The Charter conferred certain powers on the VOC under public law, for example to conclude treaties on behalf of the States General, to build forts, enforce public order and appoint judicial officers (*officiers van justitie*).<sup>19</sup> In the preamble to the Charter, it is explicitly mentioned that the States General have granted the Charter to the VOC in order to “promote the interests and the wellbeing of the United Netherlands as well as the interests of all the inhabitants of the countries involved.” The Charter also expressly dealt with possible warfare with the Spanish and Portuguese.<sup>20</sup> The numerous public duties and powers illustrate that the VOC must be considered a semi-public company, rather than a purely private enterprise that

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<sup>16</sup> At the time the Charter was granted, the Republic of the Seven United Provinces was involved in a battle for independence from Spanish rule, which resulted in international recognition of the Republic in 1648. This Republic can be considered a type of confederation of independent provinces that had delegated limited powers to a central body, the States General, for example in relation to foreign policy. All provinces had one vote in this body. The Southern Netherlands – now Belgium, Luxembourg and parts of Northern France – remained under Spanish rule (Israel 2008).

<sup>17</sup> *Groot Placaet-Boek I* (Great Placard Book I), column 530 *et seq.* A transcription of the text and its English translation have been published in Gepken-Jager *et al.* (eds.) 2005.

<sup>18</sup> Article 34 of the Charter.

<sup>19</sup> Article 35 of the Charter.

<sup>20</sup> Article 37 of the Charter.

simply sought profit maximization.<sup>21</sup> One of its principal objects was to weaken the position of the Spanish and Portuguese overseas.

The Charter further regulated the internal relationships of the VOC, as they are now set out in companies' articles of incorporation. Article 3 of the Charter, for instance, provided that policy outlines had to be determined by a board known as the *Heren XVII* (the Lords XVII):

“Whenever the aforementioned Board is called to meet, it will be concerned with decisions regarding when the equipping shall take place, the number of ships involved, the ship departure dates and other matters relating to trade.”

The close connections to the States General are well illustrated by the fact that the Lords XVII could turn over a specific matter to the States General for elucidation and decision if the Lords XVII were unable to reach agreement on matters of considerable importance.<sup>22</sup> Although major decisions were made by the Lords XVII, their implementation and the day-to-day management was carried out by the local directors. These directors were employed at one of the six separate branches, called chambers (*kamers*). The VOC had chambers in Amsterdam, Rotterdam, Delft, Hoorn and Enkhuizen, all trading cities in the powerful western province of Holland, as well as in the south-western province of Zeeland. All chambers were former headquarters of one of the precompanies. Power was thus largely decentralized in the VOC. The Board of the Lords XVII was composed of the directors of the different chambers. Only major shareholders were eligible for directorships. All 77 of the first

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<sup>21</sup> This issue is extensively dealt with by Gelderblom/De Jong/Jonker, @@@.

<sup>22</sup> Article 6 of the Charter.

directors of the VOC are mentioned by name in the Charter.<sup>23</sup> Their number was to be reduced to 60 by natural attrition: 20 in Amsterdam, 12 in Zeeland and 7 in each of the other chambers. In case of a vacancy, the directors of the chamber in question had a right to make a binding nomination of three candidates. Appointments were made by the States of the relevant province.<sup>24</sup> In 1602, however, the States of Holland delegated the right of appointment to the mayors of the five cities in question.<sup>25</sup> The Charter of 1602 did not contain a provision on the basis of which directors could be dismissed. They were appointed for life.

As from August 1602, interested parties could subscribe to the VOC. The subscription was a great success: in total, 6,424,588 guilders were raised in the six chambers of the VOC.<sup>26</sup> The number of subscribers in Amsterdam was 1,143 and in Zeeland 264.<sup>27</sup>

The position of participants was limited to that of providers of capital, without any control rights being attached to their “shareholdership”. The VOC did not have a body that showed any similarity to the modern day general meeting. For the rest, the rights participants enjoyed were more or less comparable to those of current shareholders. Although the Charter did not provide anything about this, it must be assumed that the internal liability of participants was limited to the level of the contribution promised by them. Participants were not liable to creditors of the VOC for debts of the VOC. The participants were also entitled to dividend distributions: Article 17 of the Charter provided that “there shall be a distribution of dividends as soon as 5% of the proceeds from the return cargo have been cashed”. Rather than dividend distributions in their present meaning, these distributions were initially considered advances on the intended liquidation of the VOC which, as was the intention when the

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<sup>23</sup> Article 18-23 of the Charter.

<sup>24</sup> Article 26 of the Charter.

<sup>25</sup> Den Heijer 2005, 111.

<sup>26</sup> 3,679,915 guilders were subscribed for in Amsterdam, 1,300,406 in Zeeland and 1,444,268 in the four other chambers (Den Heijer 2005, 61).

<sup>27</sup> Den Heijer 2005, 70-71; Harris 2009b; Gepken-Jager 2005, 58.

Charter was drafted, had been incorporated for 21 years. This provision, however, was never fully complied with because, among other things, it soon became evident that the VOC was not a temporary organization: in order to set up trade with the East Indies, it had to make expensive, lasting investments, while financial means were scarce. Furthermore, the participants had a restricted right to information: the prospect was held out to them of a general audit after ten and twenty years. Under Article 7 of the Charter, the participants could withdraw their money from the company after these ten and twenty years. In the meantime, they could freely transfer their shares. This enabled the emergence of a stock market trade in shares almost immediately after the incorporation.<sup>28</sup>

## 2.2. Explanation for the participants' lack of control

The participants' lack of control can be explained by the organization of the precompanies. The internal organization of most of the precompanies prevented the participants from having actual influence. Until 1600, at any rate, participants did not invest directly in the precompanies, but through the individual directors. In principle, the directors knew only the participants they had recruited themselves and not the participants who participated through their fellow directors.<sup>29</sup> This meant that the precompanies were characterized by a layered structure: the relationships among the directors somewhat resembled that of a general partnership. In addition, a partnership relationship existed between the individual directors and each of the participants recruited by them. The latter relationship is presumably rooted in the *commenda*, a form of partnership resembling a limited partnership.<sup>30</sup> It was characteristic of a *commenda* that a merchant (*tractator*) traded with capital, a ship and/or merchandise made available by an investor (*commendator*). The internal liability of *commendatores* was

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<sup>28</sup> Gelderblom/Jonker 2004.

<sup>29</sup> Asser 1983, 90, with further references.

<sup>30</sup> Harris 2009a; Asser, 1983, 86 *et seq.* and Van der Heijden 1908, 74 *et seq.*

limited to what they had contributed; as a rule, *commendatores* were not externally liable.<sup>31</sup>

The relationship between a director (*tractator*) and the participants (*commendatores*) he recruited was presumably influenced by the *participatie-commenda*, a type of *commenda* in which the *tractator* has control.<sup>32</sup>

As result of the layered structure, the relationship between participants and the precompany, at any rate at the early precompanies, was very loose.<sup>33</sup> On the one hand, the indirect relationship between participants and the company and, on the other, the dominant

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<sup>31</sup> The *commenda* (Lat.: (ac)commendare: to entrust) presumably originated in Arabia and spread from Italy across Europe in the Middle Ages and was also known in the Netherlands. In cases in which both the *commendator* and *tractator* shared the profits, the *commenda* is often described on the basis of the conceptual framework taken from the *societas* (partnership) concept of Roman law. See also Harris 2009a and Duynstee 1940, 14 *et seq.*

<sup>32</sup> As investment vehicles, the precompanies also bore some relationship to the *partenrederij* (ship owning partnership or shipping partnership), a then common form of partnership that offered investors in ships the possibility to spread their risks (Gelderblom/Jonker 2004, 645, 649 and Gelderblom 2009, 231). *Partenrederijen* enabled shippers (investors) to become co-owners of fixed *scheepparten* (parts of ships) of 1/16, 1/32 or 1/64 shares of a ship. Although the precompanies and the *partenrederijen* have a lot of common and the precompanies may well have been influenced by the *partenrederij*, there are also some differences, for instance with respect to the external liability of investors. Their external liability was excluded in case of the precompanies, whereas investors in a *partenrederij* were externally liable, which liability, however could be limited in situations (Asser 1983, 84 *et seq.*). Furthermore, most *partenrederijen* were entered into in order to operate one or sometimes several *ships*; the precompanies to set up a *trading company*, for which purpose not only different ships, but first of all the merchandise belonged. Moreover, the precompanies were not subdivided into the usual parts. Nor were the voting rights of the directors of the precompanies, unlike at the ship owning partnerships, dependent on the sum contributed by each of them. Furthermore, unlike at the *partenrederij*, the shippers and bookkeepers at the precompanies took only a subordinate position (Van Brakel 1908, 110-112).

<sup>33</sup> Asser 1983, 91 *et seq.*, with further references. The participants in the *Compagnie van Verre* (1594) were bound by certain general conditions that may constitute a very loose direct bond between participants and the precompany. Although these general conditions have been lost, another document, which has been preserved, briefly describes the principal clause of these general conditions. According this principal clause, participants did not enjoy an individual right of information. Instead, they had to await the profits and the financial results as presented to them by the directors (De Jonge I, 97, 210).

position of the directors with respect to their participants, partly explains the fact that participants in the precompanies did not have any control.<sup>34</sup>

A further explanation for the lack of control by the participants of the precompanies may be found in the fact that they were formed for the duration of a single voyage. The ships were at sea for most of the existence of a precompany, and for this reason alone, control by participants was no simple matter. After the ships returned, the proceeds were divided and the company liquidated. A participant was subsequently able to decide whether or not to invest money again for a following company. Consequently, despite the lack of formal control, the directors could not simply ignore the participants' interests. Finally, the presumption is justified that most participants in the precompanies were not very interested in possible control rights, given the expected profits.

The incorporation of the VOC did not change anything regarding the (lack of) control by the participants. Participants were not involved in the negotiations on the Charter between the directors of the various precompanies, which were held under the direction of Van Oldenbarneveldt, one of the most influential Dutch politicians at the beginning of the 17<sup>th</sup> century. During these negotiations, the directors of the precompanies must not have felt the need to change anything about the control relationships and thus impair their own status.<sup>35</sup> Neither had the public authorities good reasons to grant control rights to the participants: the public interests of a company that would fight the Portuguese and Spanish and would establish colonies could well conflict with the interests of private investors who primarily sought profit maximization.

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<sup>34</sup> The bonds between participants and companies strengthened around 1600. For instance, participants of the Middelburg based precompany (1601) participated directly in the company. Nevertheless, this development had no consequences for the control relationships (Van der Heijden 1908, Appendix I and Asser 1983, 91 *et seq.*).

<sup>35</sup> Most directors at the various precompanies also became directors at the VOC.

There was no need to grant control rights to the participants either, given the abundance of capital at the beginning of the 17<sup>th</sup> century. The fact that the Netherlands had rebelled against Spanish rule<sup>36</sup> did not prevent the economy from undergoing strong growth in the last decade of the 16<sup>th</sup> century.<sup>37</sup> After the Spanish armies took Antwerp in 1585, a large flow of immigration started from the Southern Netherlands. The concomitant relocation of much of the trade from the Southern to the Northern Netherlands contributed to the tempestuous economic developments and large-scale investments in overseas trade.<sup>38</sup> The Insurrection did not prevent the Dutch to trade with Spain, as the Spanish were largely dependent on the supply and transit trade with the Netherlands for their overseas trade. The Spaniards paid for the goods delivered by Dutch merchants with gold and silver from the West Indies. This enabled Holland to accumulate large stocks of silver in the 1590s.<sup>39</sup> After the Spanish trade embargo imposed by Philip II in 1598, this capital was invested mainly in the rapidly increasing trade with the East and West Indies.<sup>40</sup> The abundance of capital would not have compelled the directors or the public authorities to give the participants control. Failure to realize that the VOC meant the creation of a new kind of company may finally have contributed to the fact that the participants remained devoid of control.

### **3. Activism during the first Charter: Isaäc Le Maire**

The drafters of the Charter presumably did not fully realize that the VOC, which had been incorporated for at least 21 years, was faced with challenges that the precompanies did not have. The longer horizon required long-term investments and the development of a long-term strategy. Nor did the drafters of the Charter seem to have realized that the strong position of

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<sup>36</sup> See note 16.

<sup>37</sup> Israel 2008, 337 *et seq.*

<sup>38</sup> Den Heijer 2005, 16 *et seq.*

<sup>39</sup> Van Brakel 1908, XIV; Israel 2008, 341.

<sup>40</sup> Israel 2008, 342; Den Heijer 2005 24.

the directors, the indefinite time for which they were appointed and the fact that the Charter obliged them to conduct a financial audit only after 10 and 21 years would expose them to temptations that did not yet exist before.

What's more, the VOC may well have been funded mainly by private money, but it was not exclusively a private trading company: it particularly served the foreign policy of the Netherlands in addition. For instance, the VOC was often used to weaken the position of the Portuguese and Spaniards, with whom the Netherlands was involved in a war of independence, in Asia.<sup>41</sup> Consequently, a lot of funds were not used for commerce, but in the battle against the Portuguese in Mozambique, Goa, the Moluccas and Amboen.<sup>42</sup> The powers and obligations under public law involved costs that did not necessarily serve the interests of participants. In addition, much money was spent on setting up a network of trading posts throughout Asia for intra-Asiatic trade. This was necessary, because there were not enough markets in Asia for European goods.<sup>43</sup> Because of this, the high expectations aroused by the profits of some of the precompanies were not met in the first twenty years of the VOC's existence.

The disappointing profits and absence of dividend distributions resulted in great dissatisfaction on the part of one of the major participants of the VOC, Isaäc Le Maire.<sup>44</sup> This former Amsterdam director was forced to resign in 1605, presumably because he was suspected of fraud.<sup>45</sup> The monopoly of the VOC, as well as a non-competition clause he had

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<sup>41</sup> Jonker/Sluyterman 2000, 46 *et seq.*

<sup>42</sup> Jonker/Sluyterman 2000, 46; Den Heijer 2005, 65

<sup>43</sup> Jonker/Sluyterman 2000, 47.

<sup>44</sup> For extensive treatment of Le Maire's shareholder activism, including various primary sources, see Van Dillen 1930. See also Frentrop 2002, 76 *et seq.* and Frentrop 2009.

<sup>45</sup> The fraud supposedly concerned equipping a ship in 1602 that was not done under the flag of the VOC, but still by an Amsterdam based precompany that was in the process of being merged into the VOC (Van Dillen 1930, 3 *et seq.*)

signed, however, prevented him from setting up a competing company in the Netherlands.<sup>46</sup> For this reason, Le Maire held secret talks consecutively in Amsterdam with Hudson and in Paris with King Henri IV about the formation of a competing company.<sup>47</sup> Given that Le Maire had competing plans, he had every interest in the investors withdrawing their money from the VOC after ten years as provided by the Charter of 1602. On January 24, 1609, in a remonstrance, addressed to Van Oldenbarnevelt, he denounced the “impotence” of the Company:<sup>48</sup> Le Maire argued that the VOC sent out too few ships, had to borrow money due to severe losses, did not make any discoveries and, above all, did not make enough use of the Charter, as a result of which the “beneficial navigation lies down as if dead and buried”. Le Maire protested vehemently against the endeavor of the directors to have the first ten-year financial statements merge into the second ten-year financial statements and to deny the right of the investors to withdraw their money in 1612. He therefore requested that the VOC would act in accordance with the Charter and that the rights of investors under the Charter would not be infringed, so that they could withdraw their money if they wished so.

After Van Oldenbarnevelt rejected Le Maire’s request a month later, Le Maire, together with a few members, incorporated the *Groote Compagnie*, which engaged in short speculations on a large scale.<sup>49</sup> Le Maire hoped that, if the share prices would fall below par value, the investors would ask their money back in 1612. This would require the VOC to be liquidated and would give Le Maire himself the opportunity to set up new trading companies. The partners of this *Groote Compagnie* supposedly spread false rumors and committed fraud

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<sup>46</sup> Van Dillen 1930, 4.

<sup>47</sup> Van Dillen 1930, 5 *et seq.* and Frentrop 2002, 78 *et seq.* The discussions were discovered in Paris by the Dutch diplomat Van Aerssen. The plans for a French company also failed owing to the murder of Henri IV in 1610.

<sup>48</sup> Printed in De Jonge III, 364 – 378. For an English translation, see: Frentrop/Jonker/Davis 2009.

<sup>49</sup> Frentrop 2002, 79; Den Heijer 2005, 99.

with the aid of Barent Lampe, bookkeeper of the Amsterdam Chamber, who allegedly included fake transactions in the shareholders' register.<sup>50</sup>

The Groote Compagnie's short speculations were initially successful: the price fell from 212% in 1607 to 126% in 1609.<sup>51</sup> But they did not have the intended result. At the request of the Lords XVII, the States of Holland prohibited the trade in *blanco actiën* – shares one does not hold oneself.<sup>52</sup> A counter-petition by several anonymous merchants who asserted that the falls in prices were the result of poor management did not succeed. Nor was the primary aim achieved, namely that, in compliance with the Charter of 1602, an audit would follow and the participants would be able to withdraw their money. According to the directors, an audit would play into the hands of the Spanish and English competitors. Moreover, long-term investments would preclude (partial) liquidation, which would be the consequence if the participants reclaimed their money. The directors argued further that investors had sufficient exit-opportunities at the stock-exchange.

There is no doubt that the directors' course of action, which was backed by the public authorities, violated the Charter. It deprived the participants of two of the few disciplinary mechanisms granted to them under the Charter: a financial audit and the right of participants to withdraw their money. It is therefore well conceivable that the deprivation of this disciplinary mechanism made it more difficult for the directors to resist the temptation to enrich themselves in the following decade; the directors had now experienced the backing of the public authorities, even if they violated the Charter. On the other hand, it cannot be ruled out that not giving the participants the opportunity to withdraw their money enabled the directors to strengthen the position of the VOC with respect to the EIC. The EIC did not have

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<sup>50</sup> Van Dillen 1930, 23.

<sup>51</sup> Gaastra 2009, 27.

<sup>52</sup> *Groot Placaet-boek I (Great Placard Book 1)*, columns 553 *et seq.*; Van Dillen 1930, 15 *et seq.*; Frentrop 2002, 80 *et seq.*; Den Heijer 2005, 100; Gepken-Jager 2005, 70 *et seq.*

any permanent share capital at that time, which was one of the reasons it was considerably less financially strong than the VOC.<sup>53</sup>

Le Maire's short speculations nevertheless resulted in dividends being distributed for the first time in 1610. Given the lack of liquid assets, it was decided that dividends would be distributed in mace at a value of 75% of the nominal capital.<sup>54</sup> A second distribution followed soon afterwards, largely in kind and a small part in cash.<sup>55</sup> That distribution in cash was made only on condition that the payments in kind were accepted. Several participants objected to the distributions in kind as these led to falls in prices on the market.<sup>56</sup> Many of them did not object to the fact that it concerned a distribution *in kind*, but rather to the fact that distributions were calculated on the basis of too high a market price, owing to which they actually amounted to less than they seemed to. These participants later received a payment in cash at the same level in 1612, 1613 and 1618.<sup>57</sup> In 1620 another dividend distribution of 37.5% took place. In total, during the first Charter, 200% of the nominal capital was distributed, which, based on a correct valuation of goods distributed in kind, comes down to about 7.5% a year.<sup>58</sup>

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<sup>53</sup> Gaastra 2009, 24. Cf. also Gelderblom 2009, 232-240, who deals extensively with the funding of the VOC and EIC in this period and gives various other explanations of the fact that the VOC had fewer funding problems than the EIC.

<sup>54</sup> Van Dillen 1930, 22 *et seq.* The announced distribution caused the price to rise again, which caused serious financial problems for the short speculators, who had to fulfil their short selling obligations. Several of them went bankrupt because of this.

<sup>55</sup> Gaastra 2009, 23 and Den Heijer 2005, 87 – 88.

<sup>56</sup> The directors might have intended this, in order to force the English off the market; Frentrop 2002, 83.

<sup>57</sup> Den Heijer 2005, 88.

<sup>58</sup> Frentrop 2002, 83. In the same period, the short-term interest rate dropped from 8% on average to about 5.5% (Gelderblom/Jonker 2004, 663).

## **4. Activism on the part of dissenting participants**

### **4.1. Introduction**

Although most of the participants may well have accepted the fact that the directors did not conduct an audit in 1612, but when no audit was conducted once again ten years later, a heated conflict arose between directors and participants.

The VOC offered almost ideal circumstances for a maximization of agency costs and conflicts of interest. Compared with the precompanies, new sources of agency conflicts had appeared, whereas existing disciplinary mechanisms disappeared or proved to be ineffective. Firstly, the directors were not only obliged to maximize the profits of the VOC, but they also had to serve the public interests of the United Netherlands and had to strengthen the position of the Netherlands in the East Indies.<sup>59</sup> Gelderblom/De Jong/Jonker show that the public authorities disposed of sufficient disciplinary mechanisms in order to ensure that the public interest was taken into account by the directors. They also point out that there were numerous personal links between the directors and the local, provincial and governmental authorities. Secondly, as we will see below, the remuneration structure as provided in the 1602 Charter proved to be a source of new agency problems. Thirdly, under the 1602 Charter, no new disciplinary mechanisms were put in place in order to counterbalance the disappearance of the disciplinary mechanism of a liquidation of a precompany after every voyage. Fourthly, the few disciplinary mechanisms that were supposed to be in place – the rendering of a financial account and the opportunity to withdraw money after ten years – had proven ineffective due to the backing of the directors by the public authorities during Le Maire’s activism.

The result there were practically no disciplinary mechanisms in place which could serve the participants’ interests: they were not involved in the appointment of directors, who

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<sup>59</sup> Gelderblom/De Jong/Jonker @@@@

were appointed for life. Neither did the participants have any other control rights. The directors could not be held personally liable and had a monopoly on information. Although shareholders could sell their shares, there was no market for corporate control. Furthermore, the share market was essentially not regulated and self dealing was not explicitly prohibited. If one takes into account that no dividends had been declared after 1620 and the share price had gone down from 250% in 1620 to 165% in 1622,<sup>60</sup> one can easily conclude that the participants were locked in.

Although there are many similarities between the complaints of Le Maire in 1609 and the dissenting participants, there are also important differences between the two activism episodes. Unlike Le Maire, the dissenting participants were not aiming to put an end to the VOC. They explicitly did not propose their fellow-shareholders to withdraw their money in accordance with the Charter. Rather, their activism was aimed at ending abuses and changing the internal balance of power.

Unlike Le Maire, the public nature of the activism by the dissenting participants was an essential part of their strategy. As certain private requests to the directors did not have the intended results, the dissenting participants attempted to exert influence on the negotiations between directors and the States General on the extension of the Charter. By publishing various anonymous polemic pamphlets, they not only aimed at mobilizing the public opinion against the VOC, but also at preventing money from being invested in the Dutch West India Company (West-Indische Compagnie or WIC). In 1621, the WIC had been granted a Charter to trade with North and South America and was collecting funds from investors. The dissenting participants probably attempted to stop people from investing in order to make the States General more receptive to their objections.<sup>61</sup> This strategy proved effective, because

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<sup>60</sup> Van Rees 1868, 147.

<sup>61</sup> Frentrop 2002, 101.

subscription for shares of the WIC ran with much difficulty, even though the WIC Charter of June 1621 granted more control rights to participants than the VOC Charter of 1602. The limited interest of shareholders resulted in expansion of the WIC's trade monopoly in June 1622 and strengthening of the position of WIC participants on February 13 and June 21, 1623. These amendments of the WIC Charter coincided with the activism of the dissenting participants: on July 22, 1622, the States of Holland prohibited the *Nootwendich Discours* ("Necessary Discourse"), one of the principal pamphlets by the dissenting participants. On December 22, 1622, the States General decided to extend the VOC Charter, without the directors and dissenting participants having reached agreement. The VOC Charter was amended again on March 13, 1623. There is also a close connection between the incorporation of the WIC and the amendment of the VOC Charter with respect to content: the dissenting participants sometimes derived inspiration from the WIC Charter, while some demands by the participants were not met at the VOC, but were at the WIC.

The incorporation of the WIC also proved to be an independent source of conflicts between the directors and the dissenting participants. The reason for this was that the directors intended to participate in the WIC for one million guilders in order to obtain control in the WIC as well. The dissenting participants protested vehemently against this decision, as they would then indirectly participate in the WIC against their will.<sup>62</sup>

Below I will discuss the main separate matters brought up in the pamphlets. The complaints can be roughly divided into three categories: (i) failure to comply with the obligation under the Charter to render a financial account (Section 4.2), (ii) self-enrichment and conflicts of interest (Section 4.3), and (iii) complaints regarding the participants' lack of control rights (Section 4.4). Section 4.5 deals with the demands of the dissenting participants to amend the Charter, after which Section 4.6 focuses on the directors' response. Section 4.7

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<sup>62</sup> Van Rees 1868, 148; *Nootwendich Discours*, 27.

describes how the activism resulted in the amendment of the Charter of 1623. Section 4.8 deals with the activism after the amendment of the Charter.

#### 4.2. No rendering of financial account.

The immediate reason for the activism was the fact that the directors had refused for the second time to render account of their management and financial results:

“There has been no audit. Everything has remained obscure and they haven’t come up with anything but procrastination and excuses instead of the accounts book, which, as we suspect, they had smeared with bacon and which was eaten by the dogs. It is said that only someone who has something to conceal hides. But an honest rendering of account can, of course, bear the light of day. When our ancestors Adam and Eve hid and tried to conceal themselves behind fig leaves, they were unable to account to God for taking bites of the apple. Now the Dissenting Participants set everyone thinking whether all suspicion can be removed in this way from the hearts of pious people.”<sup>63</sup>

Anger was strengthened by the fact that not only the second financial statements and audit failed to materialize, but that directors had also requested the States General to extend the Charter by fifty years:

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<sup>63</sup> *Nootwendich Discours*, 6: “Tis niet geschiet. Al duysternis/ noyt iets voor den dach gekomen/ dan’t Futselboeck in plaats van’t Rekenboeck/ dat sy met Speck moeten besmeert hebben/ en van de Honden soo wy dencken gegeten is. Niemand schuylt seytmen of hy is vuyl/ een suyver Rekeninge kan wel Sonneschijn verdragen. Doen onse Voorouders Adam en Eva schuylden/ en haar selven achter de Vijgenbladeren sochten te verduysteren/ wisten sy Gode geen Rekenighe van den Appel-beet te doen. Nu geven de Doleanten yder een te bedencken/ of sulcken maniere van doen/ een middel is/ om alle quaat achterdacht/ uyt vrome luyden herten te nemen.”

“For instance, they did not allow the Participants to attend the annual audit, so they would not be able to solve the mystery how the directors had suddenly become so wealthy (...). They even requested to have the Charter extended by 50 years, so they could hold their well-paid jobs longer and only conduct a general audit for the participants’ grandchildren in the next world.”<sup>64</sup>

The dissenting participants were therefore of the opinion that a proper audit should be conducted before a decision could be made to extend the Charter:

“You Honorable Gentlemen can conclude from the above that the participants have good grounds to complain about the directors and demand a proper audit from them before their directorships can be continued. Because their good or bad administration will be evident from such an audit. It will then be evident as well how absurdly and shamelessly they have discharged their duties, which is the reason they first request extension of the Charter before they have proved that their administration is in order by conducting an audit. This shows, however, that they are trying to avoid a proper audit and are attempting to obtain an extension of the Charter by promising to conduct an audit afterwards. At that time, they will have enough possibilities to drag their feet, so no audit will ever follow again. This is in conflict with the custom of all right-minded agents or administrators who are charged with administering other people’s property (such as the directors) and who are prepared to render account at any time to the satisfaction of their principals as often as their principals ask them to do so, so as

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<sup>64</sup> *Vertooch*, 7-8: “[S]oo en hebbense de Participanten niet toegelaten, over de Jaerlickse Reeckeninghe te moeghen staen, op datse de Mysterien van haer subite Rijckdommen niet en souden komen te weten (...). Soo hebbense noch prolongatie van vijftich Jaren versocht/ om in die profijtelicke Officie gecontinueert te worden/ om als dan eerst aen de Participanten kindts kinderen in d’ander Werelt de generale Reeckeninge te doen.”

not to harbor any suspicions or mistrust. Because an honest person highly values his honor and good name and cannot bear the thought that people think ill of him. The directors apparently do not pay much attention to their good name, as long as they can simply continue to have other people's goods at their disposal, which Your Honorable Authority should not allow (...).”<sup>65</sup>

#### 4.3. Conflicts of interest

The dissenting participants extensively complained about the wealth of the directors, which contrasted with the low dividends that had been paid out to the participants. Their wealth had appeared so suddenly, that it looked ‘like mushrooms that have grown overnight.’<sup>66</sup> Amongst others, they accused the directors of self-dealing (Section 4.3.1), insider trading (Section 4.3.2), abuse of the remuneration rules (Section 4.3.3) and stealing from the company (Section 4.3.4).

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<sup>65</sup> *Vertooch*, 10: [U]yt dit voorverhaelde (...) kan U.Ed.Hog.Mog. oordeelen/ hoe rechtveerdige oorsaecken dat de *Participanten* hebben over de Bewinthebbers te *doleren*, ende van haerlieden te eyschen Reeckeninge *in debita forma*, al eer datmen van haer in’t Bewinthebberschap te *continueren*, behoort te spreecken/ want uyt de Reeckeninge sal haer goede oft quade *Administratie* blijcken/ ende hoe ongerijmt ende onbeschaemt dat het van haer gedaen is/ datse durven eerst *Continuatie* versoecken/ al eerse door het doen van deuchdelicke Reeckeninge hebben bewesen well *gadministreert* te hebben: het welck een teycken is/ datse het doen van behoorliche Reeckeninge soeken te ontgaen/ ende komende *continuatie* verkrijgen op belofte van daer nae Reeckeninge te doen/ datse als dan middel genoech sullen hebben/ om de selve soo te traineren/ datter nimmermeer wat van komen sal/ het welck strijdt tegen het doen van alle oprechte *Facteurs* oft *Administrateurs* over ander Lieden goederen/ ('twelck de Bewinthebbers zijn) de welcke tot allen uyren bereyten zijn/ hare principalen tot *Contentement*, Reeckeninge te doen/ so dickwils alsse ‘tselve van haer versoecken/ om buyten alle *suspicie* ende achterdocht te wesen/ want eerliche luyden zijn jalours van haere eere ende goede Naem ende Faem/ niet konnende verdraeghen/ dat men eenich quat bedencken van haer soude hebben/ daer (soo het schijnt) de Bewinthebbers niet veel op een passen/ alsoo maer in’t besit van ander Liede goeden mochten blijven/ het welck door U.Ed.Mog. autoriteyt kan ende behoort in dese vrije Landen niet gepleecht en mach worden (...).”

<sup>66</sup> *Nootwendich Discours*, 13: “(...) als Campernoellien/ [die] op eenen nacht gewassen [schijnen] te zijn.”

#### 4.3.1. Self-dealing

Many conflicts of interest occurred because directors purchased goods from the VOC at too low prices. I quote a passage from the *Vertooch* (“Remonstrance”) and the *Tweede Nootwendiger Discours* (“Second, More Necessary Discourse”):

“They have also permitted themselves to purchase the goods of the participants from each other, which is contrary to the custom of everyone who administers other people’s property. The fact that they provide one another with benefits can be concluded from the following. Sometimes, when they are going to sell a batch of silk goods and have earmarked these for merchants, they first sell these goods to one another without waiting for or listening to these merchants, at a price that is one third less than the price these merchants would be willing to pay for them. Subsequently, the director, who bought the goods from his partners resells the goods immediately to the same merchants at a price that is one third higher than what he had paid for them, which enables him to earn 33% on the goods without investing money or running a risk. In that way, without undertaking a long and dangerous voyage to the East Indies, directors can make a very profitable voyage to the East Indies in just a few hours.”<sup>67</sup>

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<sup>67</sup> *Vertooch*, 7: “Oock hebbense boven dien haer selven aenghenomen de vryheyt der goederen der *Participanten* van malkanderen te kopen/ mede teghens het ghebruyck van alle eerliche *Administrateurs* van ander Lieden goederen/ wat slage datse malkanderen *reciproquelick* hier in voeghen/ kanmen hier uyt besluyten/ dat altemet als sy partie Sijde waren sullen verkopen/ ende sy daer op Cooplieden hebben bescheiden/ datse sonder de selve Kooplieden te verwachten of te hooren spreecken/ de selve Sijde waeren een malkanderen verkopen/ omtrent een derdepart beter koop/ als de selve Kooplieden daer vor souden hebben willen gheven. Alsoo dat den Bewinthebber die de voorseyde waeren van sijn *Confratres* gekocht hadde/ datelick de selve een de voorseyde Kooplieden wederom verkocht/ een derdepart duerder als hy die gekocht hadde/ ende sonder eenich gelt te verschieten oft Risico te loopen omtrent drie-endertich ten hondert daer op verdiende. Alsoo dat se/ sonder nae Oost-Indien te varen/ daer toe dat een lange reyse ende groot perijckel vereyscht wordt/ sy in eenige uyren tijs eene seer profijtelicke Oost-Indische reyse (...) kunnen doen (...).”

“Another director purchased a batch of indigo privately for 29 *stuivers*, of which it is not only said that a more profitable purchase had never been made before, because it was under market value. But because the director who made the purchase was also angry with his fellow directors (the sellers), he received a few thousand pound discount outright. In that way, they were said to have enriched one another at other people’s expense.”<sup>68</sup>

In the *Tegen-vertooch* (“Counter Remonstrance”), the directors replied that the Charter does not expressly prohibit directors from trading with the Company and they denied abusing their position.<sup>69</sup> This did not convince the author of the *Nootwendich Discours*. To substantiate his assertion that directors may not trade with the Company, he first of all relies on general principles of reasonableness and fairness (*bona fides*). In addition, he looks for similar situations in which someone in his capacity as trustee manages property that does not belong to him personally. He argues that a trustee may not engage in self-dealing or may do so only under stringent conditions:

“It shall be enough that the directors are well paid and that they can imagine being gentlemen. Of course, they will argue that self-dealing is not expressly forbidden under the VOC Charter. However, I will then reply that the fact that something is not expressly forbidden, does not lead to the conclusion that it is allowed. One should take into account the fairness or unfairness of the specific case and then consider whether it

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<sup>68</sup> *Tweede Nootwendiger Discours*, 70: “Een ander heeft een Partij Indigo tot 29. stuyvers Bewinthebber van Bewinthebbers gekocht/ daar van seer geroemt wort/ noyt profijtelijcker koop ghedaan te wesen/ om datse niet alleen onder de Mert/ ende Waardy was. Maar door dat hem den Coopenden Bewinthebber/ aan zijn Confraters de Verkoopers soo qualijck wist te houden/ heeft hy daar-en-boven noch veel duysent Ponden Refactie daar aan ghenoten. Soo soudemen malkanderen den Bal van ander-mans Dack toekaatsen.”

<sup>69</sup> *Tegen-vertooch*, 4-5.

is allowed or not. As the whole world considers self-dealing as unfair, it is expressly forbidden under the Charter of the Dutch West India Company.<sup>70</sup> Equally, the Lords of the Admiralty are not allowed to trade with the Navy. Guardians and “*curatores bonis*” may not purchase goods that have been given in custody, unless by public auction, which may also be allowed in the case of the VOC. One can see that it violates the spirit of the Charter. Unfortunately, the profits that the directors enjoy as a result of self-dealing have disabled their power of judgment, as a result of which, just because of their silliness, these pious persons did not understand the spirit of the Charter, and therefore simply sought their own profits and would like to continue to do so.”<sup>71</sup>

#### 4.3.2. Information asymmetries and insider trading

The directors’ monopoly on information gave them a special position on the stock market, which was not yet actually regulated.<sup>72</sup> According to the participants, the directors made devious use of their information advantage. As the VOC did not publish financial accounts, investors often bought or sold their shares on the basis of rumors on the market. According to

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<sup>70</sup> Art. 31 WIC Charter.

<sup>71</sup> *Nootwendich Discours*, 13: “Tis de Bewinthebbers ghenoech/ dat sy de groote Gagien strijcken/ en haar selven evenwel inbeelden kunnen Heeren te zijn. Dat sy nu hier op willen seggen/ ‘tis haar int Octroy niet verboden. Dient voort Antwoort. Datmen uyt sulx niet kan besluyten/ dat het daarom toegelaten is. Men moet in sulcken geval acht nemen op de Billijckheyt ofte Onbillijckheyt der saacken/ ende daar naar oordeelen oft gheoorloft is. Maar door dat het by al de Werelt voor onbillijck wort gehouden/ is het Expresselijck in ’t Octroy van de West-Indische Compagnie verboden. Gelyck oock de Heeren van de Admiraliteyt/ het kopen ende Verkopen van/ ende aan/ de Admiraliteit/ verboden is. De beschreven Rechten verbieden mede/ alle Voochden oft Curateurs/ de Kopinge der Goederen/ onder haar bewint en Curatele staande/ ten zy by openbaren opslach/ dat hier oock konde toeghestaan worden. Waar uyt men wel vermerckt/ dat het stil-swijgens tegens de meeninghe van’t Octroy is. Maar het profijt dat onse Bewinthebbers daar door genieten/ heeft haar oordeel soo verslecht/ dat sy Vromelieden uyt onnoselheyt den Sin van’t Octroy niet hadden gevat/ maar hebben simpelijck haar eyghen besten ghesocht/ ende souden soo noch wel willen voortvaren.”

<sup>72</sup> The prohibition of short selling in 1609 described in Section 3 had proven to be ineffective.

the participants, the directors spread false rumors among the unsuspecting public, depending on their long or short positions and their intentions to buy or sell:

“It is known that they can pull the wool over the participants’ eyes and tell them anything they want, by which they constantly deal them a blind card. Sometimes they present Company matters optimistically to induce the participants to purchase shares. Then they make it seem as if matters are going badly again to frighten the participants, so that they can buy shares at a cheap price in order to meet their short obligations at the expiration date. By doing so, they ruin the participants and ultimately draw everything to themselves as absolute rulers of the East Indies. Oh shameless servants. It is time for the Gentlemen of the States General to take the matter in hand (...)!”<sup>73</sup>

There seem to have been some grounds for the accusations, because in a reply, the directors did not deny that they traded in shares.<sup>74</sup> Without dealing with the accusation that they spread false rumors, the directors only asserted that it was evident from the pamphlets that the dissenting participants were just as greedy as they accused the directors of being. If the directors did indeed engage in short speculations, just like Le Maire in 1609, this means that the directors could have a personal interest in the share price going down for at least a certain

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<sup>73</sup> *Nootwendich Discours*, 17: “[B]ekent is datse de Participanten dies aangaande kunnen blint-hocken/ en wijs maken ‘tgeene sy willen/ latende haar gestadich de blinde kaart speelen. D’een tijt den Staat van de Compagnie groot makende/ om de Participanten tot dier inkopen te bewegen/ en d’ander tijt kleen/ om haar verveert te maken/ om alsoo de Partijen die de Bewinthebbers te vooren daar noyt in hielden/ maar nochtans op levering/ dieruyt verkocht hadden/ wederom goeden koop teghens het verschijnen van den Lever-dach in te kopen. Ruynerende alsoo de Participanten/ en alles eyndelijck aan haar/ als absolute Heeren van Oost-Indien treckende. O onbeschaamde Knechten! Tis tijt dat de Heeren Staten Generaal/ de sake by de handt nemen (...)!”

<sup>74</sup> *Tegen-vertooch*, 6-7.

period. It is hard to imagine a more serious agency problem! It is therefore not surprising that the participants protested against this special form of conflict of interest:

“One can also imagine how the directors attempt to make profits at the expense of the participants when they sell more shares in the Company than they own. In this way, they intensely long for the misfortune of the Company so they can repurchase the shares cheaply at the expiration date, in order to make profits on the Company’s losses. One can imagine how much such directors promote the prosperity of the Company (...).”<sup>75</sup>

#### 4.3.3. Directors’ remuneration as a source of agency conflicts

Conflicting interests between directors and the VOC were aggravated further by the way in which directors were remunerated. According to Article 29 of the Charter, the total salary of directors amounted to 1% of the equipping and 1% of the profits. This amount was subsequently divided among the directors of the various chambers:

“They shall furthermore receive 1% commission on the costs of the outward journey and the same percentage of the profits obtained from the return cargoes, which shall be divided up as follows: half to the Chamber of Amsterdam, a quarter to the Zeeland Chamber, and to the Chamber of the Maas and North Holland, each one eighth,

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<sup>75</sup> *Korte Aenwysinge*, 6: “Oock kanmen dencken hoe die Bewinthebbers der Participanten profijt soeken/ die haer werck maecken van actien op tijt te verkopen/ meer als sy inde Compagnie participeren/ ‘twelck haer doet haecken nae de qualick-vaert van de Compagnie/ om tegens den verval-dach de selve actien wederom goet koop te mogen inkopen/ ende alsoo uyt der Compagnie schade/ profijt te treckten/ hoe seer dat sulcke Bewinthebbers de welvaert van de Compagnie behertigen/ is wel te bedencken (...).”

regardless of whether one or the other has put in more or less moneys or has sold a greater or lesser quantity of spices than its share.”<sup>76</sup>

This provision not only aimed at profit-maximization, but also included an incentive to maximize the turnover. It created various possibilities for abuse. Firstly, the provision in the Charter that salaries were not determined per director but per chamber sometimes resulted in vacant director’s positions not being filled so that the earnings could be divided among fewer directors.<sup>77</sup> Secondly, the fact that the directors’ pay was higher the more the costs of equipping a ship rose, certainly did not contribute to an economical purchasing policy. Moreover, if a director sold equipment goods to the Company at too high a price, he could enjoy a double advantage.<sup>78</sup> This was done on a large scale, according to the *Nootwendich Discours*:

“We will now discuss the supply for shipping equipment. Here, our well paid directors are playing dirty tricks (...); they have found a secret route to the goldmines. That route, however, does not lead though the Strait of Magellan, where they wasted the capital of the company. Rather, they sell salt beef, cables, ropes, anchors, wine, bread, biscuit rusk (even if the rusk has already made a previous trip), beans, peas, groats, they are constructing ships, providing artillery, powder and shots, etc. Each of the directors sells something in order to maximize his profits (...). But why, my dearest

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<sup>76</sup> “Sullen voorts genieten voor provisie vande vuytreyse een ten hondert ende oock soo veel vande retouren, welcke provisie verdeylt wordden, die Camere van Alstelredam, de helff, de Camere van Zeelant een vierdepart, ende de Camerevande Maze, ende Noothollandt elck een achste part, zonder regardt te nemen off dèen ofte andere meer penningen Ofte men inbrengt ofte specerien, als syn Contingent vercoop.”

<sup>77</sup> Van Brakel 1908, 133.

<sup>78</sup> According to the *Eyndelijcke Iustificatie*, 7 (Final Justification), the goods that were sold by the directors to the VOC were sometimes even not measured, weighed or counted (see also Van Rees 1868, 150).

Gentlemen, doesn't the company organize a public auction, why doesn't it purchase the goods from anybody who is willing to accept the lowest price? This may save one third of the construction costs of the ships.”<sup>79</sup>

According to the author of the *Nootwendich Discours*, the provision on the directors' commissions also resulted in the VOC having much too big ships built:

“It is difficult to estimate how much loss the Company has suffered by building so many large and expensive ships: each chamber tries to build the largest ships in order to equip them with a lot of goods and make huge profits so that it can earn a large commission. This could have been done with cheaper ships and the money used in trade or to pay back loans. Those large, expensive ships were then used partially in the East Indies even to transport wood and stones for the construction of Fort Jacatra.<sup>80</sup> Some ships were lost in the process, which means that half of the large ships would have sufficed for the trade between the East Indies and here.<sup>81</sup>

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<sup>79</sup> *Nootwendich Discours*, 14-15: “Ten vierden/ het Punt van de Leveringe/ dienende tot uytrustinge der Schepen/ hier gaan onse Gegagieerde Heeren Bewinthebbers/ groote streecken en treeken/ (...) hier hebben sy gevonden eenen korten wech tot de Gout-mijnen/ niet deur de Straat van Magellanes, daar sy’t uytgesondene Capitaal t’soecken ghemaackt hebben. Maar alleenlijck aan Leverancien/ van Ossen en Sout/ (...) Cabels/ Touwen/ Seylen/ Anckers/ Wijnen/ Broot/ Beschuyt/ al heeft het te vooren op een Reys geweest/ Bonen/ Erten/ Grutten/ Bouwen/ van Schepen/ Geschut/ Kruyt/ Lonten/ Loot/ etc. Yder levert wat/ daar hy hem best op verstaat/ om profijt te doen (...). Maar waarom niet mijne Lieve Heeren Bewinthebbers/ dese Leverancien/ opentlijck aengehslagen voor alle Man diese best/ en besten koop leveren willen/ ‘twelck in’t bouwen van Schepen wel een derdendeel verschelen soude.”

<sup>80</sup> In 1618, Governor General J.P. Coen decided that the VOC had to build a fort in Jakatra – now Jakarta. After the resistance of the local Prince Sriwijaya was brutally broken, the city virtually burned down and the English chased out, in 1619 Coen decided to reconstruct Jakatra, meanwhile renamed Batavia, and build a much larger fort. The dissenting participants refer here to the expenses involved in this reconstruction.

<sup>81</sup> *Korte Aenwysinge*, 7: “Voorts wat schade de Compagnie gedaen is/ door het timmeren van soo veel groote kostelicke Schepen/ elcke kamer om grootste al om groote equippagien te doen/ ende groote Retoeren wederom elck in sijn kamer te bekommen/ om alsoo veel

#### 4.3.4. More self-enrichment

A certain director is portrayed in a sarcastic manner, for whom the regular fee was not enough and who was accused of literally putting items of the VOC into his own pocket. This concerned a gold crucifix that was part of the inventory of a *kraak*, a certain type of sailing ship that the VOC had captured. The pants pocket proved unable to withstand the weight of the crucifix, according to the *Tweede Nootwendiger Discours* that reported this “exhibitionistic self-enrichment”:

“During the inspection of the goods belonging to a ship that had been captured by the company, a certain Director put a gold chain with a heavy golden crucifix in his pocket. As one should always give one's neighbor the benefit of the doubt, I believe this director only thought he was putting his handkerchief in his pocket. Due to the heavy weight, however, his pocket tore open and the golden crucifix, including a part of the chain was hanging out of his trousers. His fellow director, feeling pity for him that he was not able to bear his own cross, realized that anybody could see his groin and told him that his shirt was hanging out of his trousers. The director blushed to the roots of his hair, but then simply took up his crucifix and walked away. You directors, you wipe your mouth while telling us that you didn't eat!”<sup>82</sup>

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provisien te genieten/ is qualick te estimeren/ want men hadde het met veel kleynder onkostelijcker schepen wel kunnen doen/ ende het gelt inde Negotie gebruycken/ oft de penningen die in deposito genomen zijn/ daer mede afleggen/ welcke groote kostelicke schepen ten deel in Oost-Indien gebruyckt werden/ om hout ende steen te halen/ tot het maecken vant Fort Jacatra/ ende eenige vergaen aldaer/ alsooo datment met de helft vande groote schepen om tusschen Oost-Indien ende hier te ghebruycken wel hadde kunnen doen.”

<sup>82</sup> *Tweede Nootwendiger Discours*, 74: “In’t over-sien van de goederen der ver-overde Kraack hadt seker Bewinthebber/ ick dencke onverhoets/ meenende/ sijn Neusdoeck/ (gelijckmen van sijn even-naasten altoos ’t beste hoopen moet) in de handt te hebben/ een Gouden Keeten/ daar een swaar Gouden Kruys onder aan hinck/ in sijn Sack onbedocht ghesteecken. Maar sijn Sack met sulcken onghewoonen last overladen zijnde/ brack/ en is het Gouden Kruys met een Stuck van de Keeten/ onder uyt sijn Broeck komen te hangen. Sijn Confrater medogent

#### 4.4. Control rights: the EIC as an example for the VOC

The violations of the Charter and the agency problems that arose may have been the immediate cause of the participants' activism but, from a corporate governance perspective, it is equally interesting that they also demanded major institutional changes. The dissenting participants actually wanted to inverse the balance of power within the VOC. They essentially proposed the VOC to change from a joint stock company of sovereign directors and silent financiers into a joint stock company of participants who exercised control over the directors they appointed.

In order to make their claim, the dissenting participants referred to several other trading companies in which the investors exercised control over their agents. Firstly, they repeatedly referred to the so called *factorijvennootschap*, a very common limited partnership-like company in which one or more silent partners had a dominant position. For instance, the silent partners of a *factorijvennootschap* usually appointed or dismissed their *facteurs* (agents) that were trading at the risk of the partnership, as well as the *administrateurs* (bookkeepers) that were in charge of the internal administration.<sup>83</sup> Secondly, they refer to the governance of the WIC, the large Spanish and Portuguese trading companies and notably to the EIC.

The reference to the EIC is remarkable, because the roots of the EIC radically differ from those of the VOC. As pointed out above, the VOC primarily evolved out of the general partnership and the *commenda*, both of which are often described on the basis of the conceptual framework taken from the Roman law *societas* (partnership). The EIC, however, is rooted in another legal form, the *corporation*. A corporation can be described briefly as an

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siende/ dat hy niet machtich was sijn Kruys te dragen/ is soetkens benefens hem ghetreden/ daar half in beschaaamt zijnde/ en heeft hem heuslijck/ na sijn eer kijckende/ een ander mocht nae sijn goet sien/ vermaant/ dat sijn Hembt onder uyt hinck. ‘tWelck hy oock over-zijdts siende met Rootheyt ghewaar wiert. Maar nam doen ghevoechgelyck sijn Kruys weder op/ en wandelde. Veecht op die manier maar u Mont/ en segt dat ghy niet gegeten en hebt.”

<sup>83</sup> See for instance *Vertooch*, 10, quoted above in Section 4.2.

association of persons that has legal personality and a hierarchical executive organization.<sup>84</sup> It has the capacity to own property separately from that of its individual members. It can contract with third parties in its corporate capacity. A corporation can regulate its internal affairs, discipline its members and resolve their disputes. It has a hierarchical and centralized governance structure, through which regulations and decisions are made and agents are empowered.

The corporation is considered the English form of the *universitas* that was already dealt with in the *Corpus Iuris Civilis*. The *universitas* and corporation, however, did not actually develop until the Middle Ages, within canonical and revived Roman law. The *universitas* constituted the basis throughout continental Europe of very diverse organizations, ranging from municipalities, monasteries and convents and guilds to universities and colleges. So did the corporation in England. An important difference between the corporation and the *universitas*, however, is that the corporation was frequently used in a commercial context, whereas the *universitas* was not.<sup>85</sup>

The VOC certainly showed some characteristics also inherent to the *universitas/corporation*: it was incorporated as a legal person pursuant to a charter that was granted by the States General and it had a board of directors that could act on behalf of the VOC. It is uncertain, however, whether these characteristics are the result of influence by the *universitas/corporation*.<sup>86</sup> They seem rather to be the result of a rapid and independent

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<sup>84</sup> Harris 2009a. See also Mehr 2008 and Avi-Yonah 2005.

<sup>85</sup> Blackstone 1827 (1765), Chapter 18, §469 admits the Roman origin of the corporation, but adds in that ‘our laws have considerably refined and improved upon the invention, *according to the usual genius of the English nation.*’ Mehr 2008, 216 *et seq.* deals with the differences between the *universitas* and corporation.

<sup>86</sup> Mehr 2008, 312 *et seq.* suggests that the VOC can be considered as a *universitas* of directors. He accepts the consequence that the participants should be considered creditors, rather than shareholders of the VOC. If this latter view is true, it would give an additional explanation why the participants did not enjoy any control rights: they were ‘only’ creditors of the VOC. Although I do not exclude that certain directors indeed considered the

evolution from the precompanies and of the desire of the States General to promote a merger of the precompanies and to weaken the Spaniards and Portuguese in the East Indies.<sup>87</sup> The VOC differs in this respect from the EIC, which did indeed originate from the corporation and is also characterized by a strong members' organization. It is therefore not surprising that the dissenting participants held up the internal organization of the EIC to the directors and States General as an example. This is the reason why a few words follow below about the origin and organization of the EIC.<sup>88</sup>

The EIC is rooted in the old English merchant guilds, which were traditionally organized as corporations.<sup>89</sup> Under the flag of a merchant guild, English merchants had already been conducting trade with Europe at their own risk since the Middle Ages. The guild members appointed and dismissed their own directors and were subject to the rules of the guild. Collaboration was strengthened because members who had bought goods at a certain price had to allow other members to participate in the transaction at the same price.

At the end of the Middle Ages, the *regulated company* arose from these merchant guilds. Regulated Companies were characterized by a Royal Charter pursuant to which a monopoly on trade in a certain region was granted. In the second half of the 16<sup>th</sup> century, some regulated companies started trading in joint stock at their common risk. This led to the creation of the *joint stock company*, of which the EIC, incorporated in 1600, was an early example. Although the membership of the EIC was permanent, the joint stock capital became permanent only as from the 1650s. Before, the financing of the EIC bore some similarities with the precompanies: every member could decide to subscribe for a joint stock, that was set

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participants as just creditors, it is not in accordance with the VOC Charter of 1623, nor with the WIC Charter of 1621. Furthermore, the Middelburg based precompany (1601) explicitly considered its participants *compaignons*, which indicates that they were more than just creditors (Van der Heijden 1908, 227). One year later, this precompany merged into the VOC.

<sup>87</sup> Harris 2009b.

<sup>88</sup> About the EIC: Harris 2009b; Harris 2005; Chaudhuri 1965; Scott II, 89 *et seq.*

<sup>89</sup> Scott I, 1-14.

up for one or more specific voyages or for a certain period. At the end of these voyages or this period, the joint stock was liquidated and the profits were shared, after which the members could decide whether or not to invest it again.<sup>90</sup>

From its very start, the EIC had a fully-fledged shareholders' meeting, which each year appointed a board of directors, composed of a governor, his deputy and a court of 24 committees, and determined their salaries. These officers could also be dismissed in the interim. During the shareholders' meetings, shareholders were thoroughly informed about the course of affairs at the EIC.<sup>91</sup> Decisions on important matters were presented to the shareholders' meeting for approval. In practice, the Board also had to follow instructions from the shareholders' meeting.<sup>92</sup> The nature of the EIC as a (joint stock) association of persons clearly emerges from the indication of shareholders as *members*<sup>93</sup> and from the fact that initially, all shareholders could cast one vote, regardless of their financial interest.<sup>94</sup> In short, the EIC constituted a real shareholder democracy (*one man, one vote*).<sup>95</sup>

Although the pamphlets do not explicitly refer to the corporation as such, it clearly appears that the dissenting participants advocated a more corporate organization in which the directors would be subordinate to the participants, instead of the reverse. As an illustration, a passage follows below from the *Nootwendich Discours* that not only refers to the EIC, but also to several other large trading companies. In addition, the *factorijvennootschap* is held up as an example to the directors of the VOC:

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<sup>90</sup> Occasionally, the shareholders meeting decided to carry capital from one joint stock to the next.

<sup>91</sup> Harris 2005, 230.

<sup>92</sup> Chaudhuri 1965, 32-33.

<sup>93</sup> These members had to take a loyalty oath when they acquired their shares and even had to pay a penalty if they failed to attend a shareholders' meeting without notice.

<sup>94</sup> In the course of the 17<sup>th</sup> century, the extent of voting rights underwent some changes that strengthened the position of the major shareholders (Harris 2005, 230).

<sup>95</sup> The current *plutocratic* principle of *one share, one vote* is often misleadingly described as a shareholder *democracy*.

“The dissenting participants are not slaves, but free people in free countries. They only ask to be allowed to appoint administrators of their goods themselves, to whom they entrust such administration. That this request is not unfair is evident from the fact that even the King of Spain gives merchants who sail to the East Indies and Spanish merchants who trade with the West Indies the opportunity to appoint the agents or bookkeepers of their goods to whom they themselves entrust such management. In England as well, one sees that the participants in the EIC have the most to say: they remain masters of their own goods and each year appoint and dismiss from their midst as they see fit a Governor, his deputy and the Court of 24 Committees, as well as an auditor. And each shareholder is entitled to inspect the books and merchandise and see how the goods are converted to cash. This is evident from a certificate from the English East Indies Board, of which the dissenting participants have obtained an authentic copy. Does this not turn you pale, oh shameless directors! Or does no red blood flow through your veins? But neither law nor reason can make you change your minds. Other countries set the standard and you remain stuck in your old ways. You do not follow any good examples. It appears that although greed has not blinded you, it has indeed made you insensitive and leprous.”<sup>96</sup>

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<sup>96</sup> *Nootwendich Discours*, 29-30: “Maar dat de Doleanten als vrije Lieden/ in vrije Landen/ en geen Slaven/ niet meer en versoecken/ dan te mogen stellen/ over de Regieringhe haarder Goederen die gheene die sy’t toe vertrouwen. Dat dit versoeck niet onbillijck is/ blijckt daar by dat selfs den koninck van Spangien (...)de kooplieden van Oost-Indien in Portugaal/ en van West-Indien in Spagnien/ de vrije Dispositie [laat] / om over hare Goederen/ die Facteurs ofte Regierders te stellen/ die ’t haar gelieft/ en syt toe-vertrouwen. In Engelant mede sietmen dat de Participanten in de Oost-Indische Compagnie het meeste gesegh hebben/ over haar eygen Goederen Meesters blijvende/ kiesende ende afsettende uyt haar geheel Lichaam jaarlijcx sulcken Gouverneur/ sijnen Ghedeputeerden en 24. Ghecommitteerden/ daar by voegende sulcke Auditeurs van Rekeninge/ alst haar ghelieft. En yder Aventurier in’t particulier/ ist geoorloft/ na de Boecken en Waren te sien/ hoe sy ghebeneficieert worden. Als blijckt uyt de Attestationen/ van de Engelsche Oost-Indische Regieringe by de Doleanten uyt de

The participants' wish to be more involved in the internal affairs of the VOC is also clear from a passage from the *Tweede Nootwendiger Discours*, in which it was argued that the participants should be entitled to approve a resolution by the directors to take out loans. Various pamphlets show that taking out loans was frowned upon owing to the interest charges and increased risk of bankruptcy.<sup>97</sup> The author of the *Tweede Nootwendiger Discours* was of the opinion that only participants were authorized to invest money. Directors therefore should not be authorized to put more money at risk than the participants did themselves. In view of the risks involved in taking out loans, the participants should be involved in a decision to take out loans, as argued in the passage below:

“The directors should not needlessly have taken out an interest-bearing loan of 77 tons of gold, with as subsequent justification that the directors hoped that this would enable them to set up a profitable trade in silk. They should have been certain of this before assuming such a burden without the advice or knowledge of the participants. Furthermore, it is very doubtful that they were authorized and had good reasons to do so, because each participant has invested as much as he himself was willing to risk. Participants did not invest that which the directors borrowed over and above this as they saw fit, without an express mandate. In that way, they could indeed ruin all participants and the whole Company and allow them to go bankrupt. The participants therefore request that this unlimited power to burden the Company henceforth be

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Copijen Autentijck gelicht. Ontverft ghy hier niet van O onbeschaamde Bewinthebbers! Of hebt gylieden geen root bloet in't lijff. Maar geen recht noch reden kan u omsetten. Ander Landen doen/ en roert u niet. Geen goede Exempelen bewegen u. ‘tSchijnt dat u de Giericheyt niet blint/ (...) maar ongevoelich en Lazerich moet gemaackt hebben.” See also Frentrop 2002, 95

<sup>97</sup> Regarding the funding of the VOC by loan capital: Gaastra 2009, 24 *et seq.*

limited, unless the directors jointly and severally guarantee such loans. *Nam factum cuique suum, non adversario nocere debet ff. De Reg. Iur.*<sup>98</sup> The directors are not authorized to do so, except with the advice, in accordance with the will and with the prior knowledge of the participants, their principals. The participants are thus not satisfied with such frivolous excuses and stories that the loan was communicated to His Princely Excellency [Stadholder Prince Maurice of Orange] and the Honorable Gentlemen of the States General. Why don't you say that you have spoken to the participants who have a direct interest in this and did not approve it after you had brought it to their attention (or do you imagine that it is far beneath your station to consult with your lords and masters about your business)? Why do you, directors, put forth a fallacy? For the Prince and Honorable Gentlemen of the States General rely exclusively on the information you give them and, what's more, they understand nothing about commerce. They can therefore be easily misled when one presents matters to them otherwise than they are. In short, you obtained permission by devious means. So their permission cannot protect you, nor can it remove the power of the participants' arguments. Furthermore, the participants have never understood that, by contributing their own money to the Company, they turned themselves into children of the court and that henceforth, their own funds would be at the disposal of His Princely Excellency and the Honorable Gentlemen of the States General. (...) Isaiah speaks about this as follows in Chapter 5:<sup>99</sup> Shame on you who add house to house and join field to field, until not an acre remains, and you are left to dwell alone in the land."<sup>100</sup>

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<sup>98</sup> Because a person's own acts should harm the person acting himself, not his opposite party (Dig. 50,17,155).

<sup>99</sup> Isaiah 5:8 (New English Bible).

<sup>100</sup> *Tweede Nootwendiger Discours*, 34-45 (cf. also *Naerder Aenwysinghe*, 4): "Want 77. Tonnen Gouts Interest sonder noot op te nemen/ namaals te willen excuseren met de hoope die Bewinthebbers hadden/ van den Zijden-handel te verkrijghen/ daar behoorden sy eerst van

There was no response to the above-mentioned argument when the VOC Charter was amended, but one can indeed be found in the WIC Charter that was supplemented on June 22, 1623. It provides “the Company may not withdraw any interest-bearing funds or deposits except with the advice and consent of the majority of directors and principal participants.”<sup>101</sup>

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versekert gheweest te hebben/ eer sy sulcke groote lasten/ buyten der Participanten Raat/ of voorweten (...) op haar ghenomen hadden. Maar ‘tsal noch te Disputeren/ en te Bepleyten staan of sy de macht en Redenen met eenich Fondament ghehadt hebben/ om sulcx te doen. Want yder Participant in de Compagnie gheleyt heeft/ ‘tgheen hy avonturen<sup>100</sup> wilde/ en niet wat Bewinthebbers extraordinaarlijck naar haar eygen goetduncken/ sonder expresse last op namen/ sy souden soo doende alle de Participanten en de geheele Compagnie/ wel wy Noorder Son doen opstaan/ en insolvent maken. Welcke ongebreydelde Licentie/ en ongelimiteerde macht van belasten/ de Participanten ook versoecken/ voortaan de toekomende Bewinthebbers/ mach inghebonden/ besneden en besnoeyt worden/ of dat sy daar selver voor na rechten instaan. *Nam factum cuique suum, non adversario nocere debet ff. De Reg. Iur.* Bewinthebbers daar toe niet ghemachticht zijnde/ ten sy met advijs/ wil/ en voorweeten der Participanten hare Meesters. Welcke Participanten oock niet aannemen/ sulcke frivole/ en blauwe excusen. Wy hebbent met sijn Princelijcke Excellentie en de Ho.Mog.Heeren Staten Generaal ge communiceert. Maar waarom niet met de Participanten diet aangaat/ (ten waar ghy u lieden inbeeldet/ dat het verre beneden uwe Reputatie soude zijn/ met u Heeren en Meesters uwe saken t’overleggen) ende die hebbent op ons aangeven goet gevonden. Maar waarom Bewinthebbers seght gij daar niet by vals/ en onwaarachtig voorgeven. Want den goeden Prins/ en de H.M. Heeren Staten Generaal/ als geen Briefen noch Advissen krijgende anders dan die ghylieden haar vertoont/ en geen Negotie verstaande/ sijn licht te abuseren/ wanneermen haar de dinghen/ aangheeft/ anders dan sy inder daat zijn/ sulck toestaan en consent/ hebt ghylieden/ subreptijff en obreptijff verkregen/ en kan u lieden niet beschermen/ noch de Participanten prejudiceren. Welcke Participanten oock noyt verstanden/ dat sy met haar middelen in de Compagnie te leggen/ haar selven Hoofsche kinderen maackten/ en dat namaals sy en hare privee middelen souden staan/ tot dispositie van sijn Princelijcke Excellentie/ en de H.M. Heeren Staten Gheneraal. (...) Daar van de Propheet Esaias in’t vijfde Capittel alsooo spreeckt. Wee! den geenen/ die het eene huys aan het ander trecken/ en eenen acker tot den anderen brengen tot dat daar gheen Ruym meer en zy/ en sy alleen het Landt besitten.”

<sup>101</sup> “De Compagnie [sal] geene Penningen op interesse oft deposito (...) mogen lichten/ dan met advijs ende consent van ’t meerendeel der Bewint-hebberen ende Hooft-participanten.”

#### 4.5. Proposals to revise the Charter

In the short term, the participants wanted a dividend distribution in the form of cloves<sup>102</sup> and an audit in conformity with the provisions of the Charter. The dissenting participants also wanted to reduce the risk of conflicts of interests by changing the remuneration policy:

“[We request] that instead of a commission, the directors be paid a fair fee, for which they must fully and accurately perform the tasks with which they are charged, in order to prevent the unseemly greed on which the overabundant equipping of ships and sending of goods is based.”<sup>103</sup>

As pointed out above, they also demanded certain institutional changes that would give the VOC a stronger corporate character. Their initial proposals were nonetheless moderate by current standards, for example concerning the way in which they wanted to exert influence on the appointment of directors. They did not, for instance, propose that *all* shareholders must have influence on the appointments, but only the *principal* participants, i.e. participants who are eligible for a directorship on the basis of their interest. Moreover, the dissenting participants did not demand a direct right of appointment; they requested only a nomination for appointment, which would ultimately be made by the States of Holland or Zeeland. Nor did they request that the participants be given the right to dismiss directors in the interim. Their proposal essentially comes down to the introduction of a kind of staggered board, from which several directors would retire periodically:

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<sup>102</sup> Roelevink 1983, nos. 4655, 4690B, 4702, 4704, 4707, 4712 and 4765; *Nootwendich Discours*, 39.

<sup>103</sup> *Tweede Nootwendiger Discours*, 25: “Dat de Bewinthebbers in plaatse van Provisie/ een eerlijck Tractament soude toegeleyt worden/ daarvoor sy oock van haar opgheleyde charge<sup>103</sup> neerstelijck<sup>103</sup> en geheel mosten waar-nemen/ om te beletten den onordentelijcken treck-lust van overtollige uytrustingien/ en uytſendingen van goederen.”

“Regarding the amendment of the Charter, the participants request first of all that the directors will no longer remain for an indefinite time but that a fourth of them will retire and another fourth every two years. The participants also request that the principal participants be allowed to make a nomination for appointment, and that the appointment be made by the Gentlemen of the States of the province in question.”<sup>104</sup>

This proposal appeared in several altered forms in other pamphlets. For instance, the *Nootwendich Discours* demands that one third of the directors should retire every two years.<sup>105</sup> The *Kort Onderricht* and the *Tweede Nootwendiger Discours*, however, take a tougher position and argue that the participants should be able to elect the directors directly.<sup>106</sup>

Furthermore, the participants wanted more supervision to be exercised over the directors’ management. For this purpose, they requested that a delegation of principal participants be allowed to inspect the books and be assigned supervisory duties. Account

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<sup>104</sup> *Copye van eenen brieff* (Copy of a letter), 5: “Aengaende het redressement daer van is het principaelste dat de Participanten versoecken/ dat de Bewinthebbers voortaen veranderlick sullen zijn/ ende dat voor eerst een vierdepaert sal afgaan/ ende voorts alle twee jaren een gelijck vierdepaert/ ende dat de nominatie van de nieuwe aenkomende Bewinthebbers sal staen by de Hooft-Participanten/ ende d’electie by de Heeren Staten van den Lande.” This proposal also appeared in an altered form in the *Nootwendich Discours*. With reference to the charter just granted to the West India Company, a proposal was made that one third of the directors should retire every two years. The *Nootwendich Discours* also contains the proposal that participants who jointly represent 1/60 of the capital each be allowed to appoint a director. In the *Kort Onderricht*, 6 and *Tweede Nootwendiger Discours*, 25, the participants’ demands relating to the appointment of directors were toughened and it was argued that the participants should be able to elect the directors directly.

<sup>105</sup> The *Nootwendich Discours* also contains the proposal that participants who jointly represent 1/60 of the capital each be allowed to appoint a director.

<sup>106</sup> *Kort Onderricht*, 6 and *Tweede Nootwendiger Discours*, 25.

should be rendered annually to this Board. The *Kort Onderricht* (Short Instruction) desired, for instance:<sup>107</sup>

“that supervisory directors be appointed from the ranks of principal participants, who maintain day-to-day supervision of the accounts before grass grows over them. We request that a general audit report be made available to them annually, and that another general audit be prepared within six or more years, so that the directors can hold their offices with honor and without causing a scandal!”<sup>108</sup>

In the *Tweede Nootwendiger Discours*, the dissenting participants toughened their demands again and demanded:

“that it be stipulated that principal participants be allowed on a daily basis to inspect the accounts of all equipping of ships and all goods purchased and sold.”<sup>109</sup>

Lastly, the author of the *Tweede Nootwendiger Discours* desired that an end be put to the hybrid character of the VOC as a private trading company and an extension of the colonial

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<sup>107</sup> In the *Kort Onderricht*, the participants’ demands with respect to the appointment of directors were toughened once again. On p. 6, they demanded “that the participants should absolutely be allowed to choose their own directors and have free disposition over their goods as they see fit.” (“dat de participanten absolutelick sullen mogen hare Bewinthebbers kiesen/ ende de vryheyt hebben over hare goederen te stellen diet haer belieft.”) This is also stated in the *Tweede Nootwendiger Discours*.

<sup>108</sup> *Kort Onderricht*, 6-7. “dat daer sullen opsienders gestelt worden/ of gecommitteerde uyt de Hooft Participanten die de reeckeninghe daghelycx sullen oversien eert mosch daer over wast. Dat aen de selve oock een generale jaerlicxs ene rekeninge sal ghedaen worden/ ende binnen ses of meer jaren weder een ghenerael slot sal ghemaect worden/ soo sullen de Bewinthebbers haer Ampt met eeran ende sonder opspraecke kunnen ende moghen bedienen!”

<sup>109</sup> *Tweede Nootwendiger Discours*, 25: “Dat Hooft Participanten souden gheordonneert worden om van alle Wtredingen/ Gekochte/ ende Verkochte goederen/ de Rekeningen daghelycx te oversien.”

politics of the States General. Although this proposal was not worked out further, the idea is interesting because it could have reduced the incidence of internal conflicts of interest:<sup>110</sup>

“[We wish] a council to be formed, composed of lawyers, military officers and other qualified persons to determine the policy relating to the war, judiciary and police, because they would have a better understanding of these matters than merchants, who should be occupied only with commerce, the equipping of ships and the financial policy.

(...)

[Furthermore, we wish] that wars be waged only in the name of the States General, because commanders and statesmen do not like to enter the service of merchants. And that the forts be maintained by the States under certain conditions, such as the payment of convoys, licenses and tolls.”<sup>111</sup>

#### 4.6. The directors' response

##### 4.6.1. The directors' pamphlets

In the above, I hardly devoted any attention to the directors' response to the participants' complaints. The reason for this is not only that fewer pamphlets were published on behalf of the directors; the directors probably had no need to wash their dirty linen in public either.

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<sup>110</sup> See also Van Rees 1868, 161.

<sup>111</sup> *Tweede Nootwendiger Discours*, 24-25: “Datmen soude eenen Raat formeeren van Rechtsgeleerden/ Krijchlieden/ en andere gequalificeerde Persoonenen om’t beleyt van d’Oorloghe/ Justitie en Politie te hebben/ deur dat sy haar daar bere als kooplieden op verstaan. Die haar simplijck met den Koophandel/ uytrustinge van Schepen/ en de handelinge van Penninghen souden bemoeyen.

(...)

Dat d’Oorlooge gheheelijck soude ghevoert worden uyt den Naam van de Hog. Mog. Staten Gheneraal/ Bevelhebbers en lieden van Staat qualijck willende in dienst van kooplieden gaan. En dat de Forten by de Staten op sekere Conditiën en Voorwaarden/ als van Convoyen/ Licentien/ en Tollen te betalen/ onderhouden wierden.”

Moreover, the pamphlets representing the opinions of the directors are less interesting from a corporate governance perspective because the incumbent directors had an interest in maintaining the *status quo*. The directors extensively argued that the pamphlets damaged the directors' reputation.<sup>112</sup> Furthermore, arguments for a different corporate structure under a new Charter were simply set aside, with reliance on the old Charter:

“The assertion that the directors appropriated the right to make a nomination for the appointment of directors is clearly a lie and incorrect, as this is allowed in so many words according to the Charter. So the directors have not appropriated this right.”<sup>113</sup>

To the extent the directors dealt with the substance of the participants' pamphlets,<sup>114</sup> they mainly emphasized that they also had to take into account the public interest of the Netherlands: the VOC was not just a private initiative, but a semi-public enterprise. This inherently caused internal conflicts of interest, which the directors had to deal with. According to the Directors, the VOC had been very profitable for both the Netherlands and the participants.<sup>115</sup> They further argued that the VOC had meanwhile repaid part of its debts. They put forth various mitigating circumstances insofar as the earnings indeed remained lower than expected.<sup>116</sup> For instance, the war in Germany (now known as 30 Years War, 1618 – 1648) supposedly impeded the sale of spices, and the VOC alleged to have waged expensive sea battles with the English for the common good (*gemeinen best*), because they would

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<sup>112</sup> *Tegen-vertooch*, 4 *et seq.*

<sup>113</sup> *Tegen-vertooch*, 4: “Te seggen dat de Bewint-hebberen aen haer luyden hebben ghebracht/ de nominatie vande Bewint-hebberen is openbaer loghen ende onwaerheyt/ want by het Octroy het selvighe expresselijcke is vergunt ende toeghestaan/ ende hebbent over sulcks niet selver aen haer genomen.”

<sup>114</sup> *Tegen-vertooch; Derde Discours.*

<sup>115</sup> *Derde Discours*, 4-5, 9.

<sup>116</sup> *Tegen-vertooch*, 7-8.

otherwise have been driven out of the Indies. Although an audit was promised in the next year,<sup>117</sup> the directors stated that it was very complicated to prepare an annual audit, because ships were located in thirty different places in Asia, sometimes more than 300 miles apart. The continuous intra-Asiatic trade, the distances between locations and to the Netherlands made it difficult to prepare an audit report, according to the directors.<sup>118</sup> Finally, the directors do not fail to point out that the participants' pamphlet battle seriously harmed the WIC.<sup>119</sup> This shows that the participants' only real weapon – refusal to subscribe for shares of the WIC – was effective; the WIC had difficulty in gathering the necessary starting capital at the same time.

#### 4.6.2. Relations with the governmental authorities

As the pamphlets on behalf of the directors do not excel in their argumentative power, it seems that the directors primarily relied on their close links with the governmental authorities instead. As pointed out above, the directors of the Chamber of Middelburg were appointed by the States of Zeeland, whereas the directors of the Chambers established in Holland were appointed by the local authorities. It therefore comes as no surprise that many VOC-directors were also mayor, member of a town council, or were members of the patrician families which formed the local or provincial oligarchic governing class (*regentenklasse*).<sup>120</sup> Some directors were member of the States of Holland or Zeeland. Sometimes, directors were even a representative of their province in the States General.<sup>121</sup>

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<sup>117</sup> *Derde Discours*, 7.

<sup>118</sup> *Discours*, 7-8.

<sup>119</sup> *Derde Discours*, 2-3, 10 *et seq.* This investment stoppage might also have been based on investors' objections relating to the colonial and military role assigned in part to the WIC.

<sup>120</sup> Den Heijer 2005, 110 *et seq.*; Gaastra 2009, 28 *et seq.*

<sup>121</sup> In the States General, each of the seven provinces could cast one vote. In theory, decisions were taken unanimously; however, in practice, the States General were dominated by the powerful province of Holland.

The close relations between the VOC-directors and the local and the provincial government explain why the States of Holland were their closest ally. For instance, on 22 December 1622, when the States General resolved to prolong the Charter, the States of Holland prohibited the dissenting participants from going to court in order to claim their rights under the old Charter.<sup>122</sup> The States of Holland also issued a *Placcaet* (Placard), which stated that:

“the persons, shares and accounts of the directors and the policy of the whole Company are put in a bad light by many lies and much defamation, and that the Company is wrongfully being showered with enormous derision, without reason and contrary to the truth.”<sup>123</sup>

The *Placcaet* further shows that the directors succeeded in convincing the States of Holland to prohibit the *Nootwendich Discours*. According to the States of Holland, the *Nootwendich Discours* was a *fameus libel*, a notoriously libelous, sensational, defamatory pamphlet. A reward of 400 guilders was offered to the person who could identify the author or printer.

It seems as if the suppression of the *Nootwendich Discours* did not come as a surprise to its author, because this pamphlet calls at the end that “*in libera republica, liberas oportet esse lingua*s” (In a free republic, speech should also be free). The *Placcaet* did not make much of an impression. This is not only evidenced by the fact that the *Nootwendich Discours* was reprinted twice under a different title,<sup>124</sup> but also by the *Tweede Nootwendiger Discours*,

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<sup>122</sup> Van Rees 1868, 155; Frentrop 2002, 97-98.

<sup>123</sup> *Placcaet* 3: “de Persoenen/ Actien ende administratie vande Bewint-hebberen/ ende de Regieringhe ende beleydt vande gheheele voorsz Compagnie/ Calumnieuselijck worden ghetraduceert/ met veel leughenen ende smaat-redenen bekladdet/ ende met enorme injurien teghen recht/ reden/ ende bewaerheyt beswaert.”

<sup>124</sup> Van Rees 1868, 157.

published soon afterwards, that was scornfully dated in *In't Jaar Een-en-twintich, der Onghedane Rekeninge* (The 21<sup>st</sup> year for which no accounts were rendered). The cover pages of the *Tweede Nootwendiger Discours* also contains a quote of the Roman poet Terentianus Maurus (*Pro captu Lectoris, habent sua fata libelli*; Books have a destiny that depends on the capacity of the reader),<sup>125</sup> which shows a clear disdain to the States of Holland that had prohibited the *Nootwendich Discours*. The author of the *Tweede Nootwendiger Discours* presumes that the directors will indeed:

“rage like oil on a fire. A furious man trips over his own feet and would give four hundred guilders to find out the author’s name and take revenge on the one he despises. They should think twice before they decide to find the author, because, if he were found, he would prove and substantiate and maintain all this and even more.”<sup>126</sup>

The scornful polemic did not take away that the close relations and personal unions between the directors and the members of the States of Holland posed the participants for a serious dilemma: on the one hand, they complained about the misconduct by the directors, on the other hand, they respectfully requested the same persons to stop these bad practices.<sup>127</sup>

[Insert Picture 1 here]

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<sup>125</sup> Terentianus Maurus, *De litteris, de syllabis, de metris*, verse 1286.

<sup>126</sup> “Rasen als Olie in de Pan. De Toornige stompelt over hem selven/ en om Vier hondert guldens wel wensten den Autheur te weten/ om haar aan hem te vreecken/ dat hy weynich acht. Sy mosten al geestich raden/ eer sy hem uytvinden sullen/ en schoon bekent zijnde/ soude hy dit alles/ en meer bewijsen/ en staande houden.” (*Tweede Nootwendiger Discours*, 96).

<sup>127</sup> The *Tweede Nootwendiger Discours* repeatedly shows that the dissenting participants were well aware of this dilemma. See also Van Rees 1868, 159 *et seq.*

#### 4.7. The Charter of 1623

As the States General had granted the 1602 Charter, the States General were authorized to extend and amend it. The States General was composed of representatives of each of the seven provinces of the Netherlands. Each of these provinces could cast one vote. Although in theory, decisions were taken unanimously, in practice, the States General were often dominated by Holland, in which five of the six VOC Chambers were situated. As we have seen above, the VOC directors were strongly backed by the representatives of Holland. However, it seems that the representatives of the other provinces were more receptive to the participants' complaints, at least to some degree.<sup>128</sup> Even if the province of Holland was by far the most powerful province of the Netherlands, the States General could not completely ignore the complaints of the dissenting participants. This enabled the States General to fulfill an intermediary role in the negotiations which were held during the last months of 1622. The activism by the dissenting participants therefore appears to have been effective to the extent that, at any rate on paper, some demands were met in the decision of the States General on December 22, 1622 to extend the Charter by 21 years as of 1623.<sup>129</sup>

Article 1 of this Charter confirmed that an audit would still be conducted; it would be presented in a public meeting "with open doors and windows" to representatives of the States General. It provided as well that some of the directors in office would retire pursuant to a complicated rotation schedule. The newly appointed directors were to retire three years from the time all directors were replaced and would be eligible for reappointment only three years later (Article 2). Pursuant to the new Charter, the participants would be convened in the event

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<sup>128</sup> Van Rees 1868, 162. This appears for instance from the Annexes to the request to the mayors and city council of Amsterdam (Thyspf 3026). On the other hand, the States General were clearly irritated by the polemic tone of the (apparently just published) *Tweede Nootwendiger Discours*. For this reason, the representatives of the participants were requested on December 27, 1622 to confirm that they had no knowledge of this pamphlet (Roelevink 1983, 4737; Roelevink 1989, 95, 298).

<sup>129</sup> *Groot Placaet-Boek I*, column 537 *et seq.*; Roelevink 1983, no. 4712, 4714.

of a vacancy. This meeting would then designate a number<sup>130</sup> of principal participants who, together with the remaining directors of the chamber in question, would be allowed to make a nomination for appointment (Article 3). The nomination had to be made by a majority of votes and contain at least three candidates, all principal participants. The States of the province or the mayor of the city in question subsequently made the appointment.<sup>131</sup> To prevent nepotism, it was no longer allowed to nominate close relations of directors.

The Charter of 1623 was also intended to put an end to the self-enrichment of the directors, e.g. by regulating the transactions of directors with the VOC (Article 6). Directors were allowed to deliver goods only after approval from the States General, the States of the province in question or the city magistrates. Directors were allowed to purchase goods from the Company only if these goods had fixed prices or were purchased at a public auction. The granting of discounts or postponements of payment was prohibited by the Charter of 1623. The remuneration structure was adjusted in such a way that the directors would receive a joint remuneration of 1% of the profits.<sup>132</sup> In this way, the remuneration no longer depended partly on the value of the equipping of ships. As of 1647, the directors would receive only a fixed remuneration.<sup>133</sup>

Finally, the directors were placed under the supervision of a board of *Heren IX* (Lords IX), composed of sworn principal participants from the different Chambers. The Lords IX

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<sup>130</sup> The number matches the number of directors in the chamber in question, not counting the retiring director.

<sup>131</sup> On this point, there is a close connection with the WIC Charter. It initially provided that directors and principal participants would be allowed to make a joint nomination for appointment. The dissenting participants based their demands regarding the appointment of directors partly on this provision. The amendment of February 16, 1623 to the WIC Charter was subsequently influenced in turn by the activism of the dissenting participants, in view of the provision that the nomination would be made exclusively by the principal participants, the same as in the VOC Charter of December 1622. Lastly, the amendment of June 21, 1623 to the WIC Charter provides that the principal participants may also appoint some directors directly.

<sup>132</sup> Ships, artillery, inventory and borrowed money were not allowed to be counted.

<sup>133</sup> Gepken-Jager 2005, 67.

examined the annual balance sheet and were granted a right of advice in respect of important decisions by the directors or the Lords XVII (Article 5). The members of the Board of Lords IX were bound by strict secrecy.<sup>134</sup> This supervisory body was expected to promote the interests of the (principal) participants who, just as under the first Charter, remained at a distance from the Board of Directors.

The States General had announced these amendments to the Charter without agreement having been reached between the participants and directors. Both the activism and the negotiations were therefore continued following extension of the Charter. On the advice of Stadholder Prince Maurice, the States General resolved on March 13, 1623 to ultimately adjust the Charter in several places “to remove all further questions and disputes”.<sup>135</sup> According to these adjustments, the participants were allowed to appoint a certain number of auditors which would have the right to inspect the underlying documents so they could audit the settlement. They also provided that the Lords IX were allowed to attend all meetings of the Lords XVII. The Lords IX obtained a right to give advice at those meetings on decisions concerning the sending and equipping of ships, sale of goods and distribution of dividends. They were also entitled to inspect the correspondence with the East Indies and to inspect the warehouses. Last but not least, it was provided that, in principle, distributions would be made to participants each year.

#### 4.8. Activism after the prolongation of the Charter

The second amendment of the Charter, however, did not remove all further questions and disputes, as the States General had wished. On the same day the Charter was amended again,

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<sup>134</sup> Pursuant to Articles 4 and 5 of the amendment to the WIC Charter on June 21, 1623, a similar supervisory body was to be established at the WIC.

<sup>135</sup> *Groot Placaet-Boek I*, column 543 *et seq.*; Roelevink 1989, no. 490.

the dissenting participants expressly objected.<sup>136</sup> By the end of March 1623, the dissenting participants promised that their activism would come to an end, if two demands would be met. Firstly, they requested the further regulation of insider trading and short speculations. This issue was resolved within a few days: on April 1<sup>st</sup>, 1623, the States General resolved to confirm the existing ban on naked short selling.<sup>137</sup> The resolution also contained some regulation on future transactions, the registration of encumbered shares and the settlement of share transactions.<sup>138</sup>

Their second request was initially delayed and finally never met. The participants requested that the Lords IX would get a decisive vote, rather than an advisory vote in the meetings of the Lords XVII.<sup>139</sup> The supreme governing body of the VOC would then *de facto* become a one tier board, consisting of 17 executive directors, appointed by the local or provincial authorities upon a joint nomination by the principal participants and the directors, and of 9 non executive directors, directly appointed by the same principal participants. This proposal would not only dilute the voting rights of the incumbent 17 directors, it would also slightly weaken the position of the powerful Chamber of Amsterdam. More than half of the share capital had been subscribed for in the Amsterdam Chamber, but it had only 8 representatives in the Lords XVII, so that Amsterdam could not control this meeting. Four members of the Lords IX were appointed by the principal participants of Amsterdam. If the request of the dissenting participants had been met, ‘Amsterdam’ would have 12 votes in the combined body of 26 directors. Amsterdam would then always need two additional votes in

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<sup>136</sup> Thyspf 3023 and 3120.

<sup>137</sup> Thyspf 3026, 6.

<sup>138</sup> *Groot Placaet-Boek I*, column 555 *et seq.*

<sup>139</sup> Thyspf 3026, 5.

stead of one in order to impose its will on the VOC. It is also for this reason why the Amsterdam directors opposed against the second demand of the dissenting participants.<sup>140</sup>

The Amsterdam directors – many of whom were also engaged in local politics as a mayor or city representative – apparently exercised their influence in the States of Holland; the same may have been the case of the directors of the other Chambers that were situated in Holland. The province of Holland, on its turn, delayed and finally vetoed the second demand of the dissenting participants. It is remarkable, however, that each of the other six provinces that were represented in the States General supported the demand of the participants.<sup>141</sup> This shows that the dissenting participants enjoyed quite some support in the Netherlands, even on the highest political level.

In the mean time, the appointment of the Lords IX gave rise to further quarrels. The principal participants of Delft and Rotterdam had the right to jointly appoint a member of the Lords IX and one participant that would be charged with the financial audit. However, according to the participants of Delft, the Rotterdam participants had appointed these representatives themselves.<sup>142</sup> In Amsterdam, the directors refused to publish a list, containing the names of the Amsterdam based principal participants, so that a meeting could be called in order to appoint the Amsterdam the members of the Lords IX. In stead, the directors invited only a limited number of principal participants to which they were closely related, so that the Amsterdam directors could exert influence on the appointment of the four members of the Lords IX.<sup>143</sup>

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<sup>140</sup> Thyspf 3126, 9.

<sup>141</sup> Thyspf 3026,

<sup>142</sup> Theyspr 3031.

<sup>143</sup> One of these four representatives even resigned, after he became aware that the election process was not organized in a proper way. (Thyspf 3119; Thyspf 3118, 4-5. See also Van Rees 1868, 168.)

Furthermore, some provisions in the amended Charter were ineffective or not complied with. For instance, according to the amended Charter, the delivery of goods by the directors to the VOC required the prior approval by the public authorities like the city magistrates. As many of the directors were city magistrates themselves, the directors could continue insider trading as they did before, at least according to the dissenting participants.<sup>144</sup> Moreover, new directors would not by far be appointed always in accordance with the amended Charter.<sup>145</sup> In performing their supervisory duties, the Lords IX often took account of their own ambitions to become future directors.

A final important source of conflicts was the financial audit. The 1623 Charter provided that auditors, to be appointed by the principal participants, had the right to inspect all underlying documents in order to check the financial accounts. The settlement became a continuing story of refusal to grant access to the books, delay by the Amsterdam directors, apparently lost documents, admonitions by the States General and refusal by the Amsterdam directors to follow the instructions of the States General.<sup>146</sup> Finally, in 1624 the Amsterdam directors simply removed all books and stated that sufficient accounts had now been rendered and declared the matter closed.<sup>147</sup>

How did the activism by the dissenting participants come to an end? It actually fizzled out like a damp squib. As pointed out above, the States of Holland have delayed a decision on voting rights of the Lords IX and supported the Amsterdam directors to obstruct the settlement of accounts. In the course of 1625, the States General needed the support of the VOC in order to solve two issues with England and France.<sup>148</sup> National interest therefore

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<sup>144</sup> Thyspf 3027, 9.

<sup>145</sup> Gaastra 2009, 29 *et seq.*

<sup>146</sup> Thyspf 3121; Thyspf 3123.

<sup>147</sup> Thyspf 3122.

<sup>148</sup> The VOC had captured two French ships. The diplomatic relationship with France would be seriously damaged if the VOC refused to pay damages. In England, Dutch diplomats had

required the States General to support the VOC in its conflict with the dissenting participants. They therefore stopped exerting pressure on the directors to render the accounts. Finally, the participants must have acknowledged that any further protests would be useless.

## 5. Conclusion

All this does not alter the fact that the pamphlet battle was significant for the development of corporate law. The conflict between shareholders and directors forms an early well documented example of agency problems, which can arise due to the separation of ownership and control. In their pamphlets, the dissenting participants raised corporate governance issues that are still relevant today, like self-dealing, insider trading, board remuneration, self-enrichment and board independence. The activists stressed the importance of fiduciary duties of directors and of control and information rights for shareholders. Furthermore, the pamphlets illustrate the internal conflicts of interests that can arise if a semi-public enterprise both has to serve the public interest and the commercial interests of investors.

As a result of the pamphlet battle, at least theoretically, a limited degree of control by major shareholders in a listed company was recognized for the first time. Unlike at the EIC, such control would be exercised mainly indirectly by a body composed of representatives of the principal participants. As the corporate governance of the VOC would serve as an example for many publicly traded joint stock companies in the 17<sup>th</sup> century, both in the Netherlands and in continental Europe, the importance of the activism by the dissenting participants was certainly not limited to the Netherlands.<sup>149</sup>

According to current standards, the Charter of 1623 would be faced with many protests from shareholders and would create a breeding ground for a ‘new round’ of

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drawn a number of bills of exchange on the VOC. The States General urged the VOC to accept these bills (Van Rees 1868, 169).

<sup>149</sup> Gepken-Jager *et al.* (eds.) 2005.

shareholder activism. This, however, did not happen at the VOC: the internal organization was not significantly changed, which meant that an organization with an oligarchic attitude would remain until its bankruptcy in 1795. The silencing of the shareholder protest can be explained mainly by the fact that faulty corporate governance did not appear to prevent commercial success. Ironically, the beginning of the 1620s mark the beginning of an era of prosperity for the VOC.<sup>150</sup> Precisely in 1622, the Banda Islands were conquered and the VOC obtained a monopoly on the trade in nutmeg and mace, followed in the next decades by a monopoly on the trade in cloves and cinnamon. Furthermore, the VOC profited substantially from intra-Asian trade, for example through access to Japan as of 1639. In short, abundant dividends flowed in and share prices gradually rose. The participants were satisfied.

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<sup>150</sup> Den Heijer 2005, 88.

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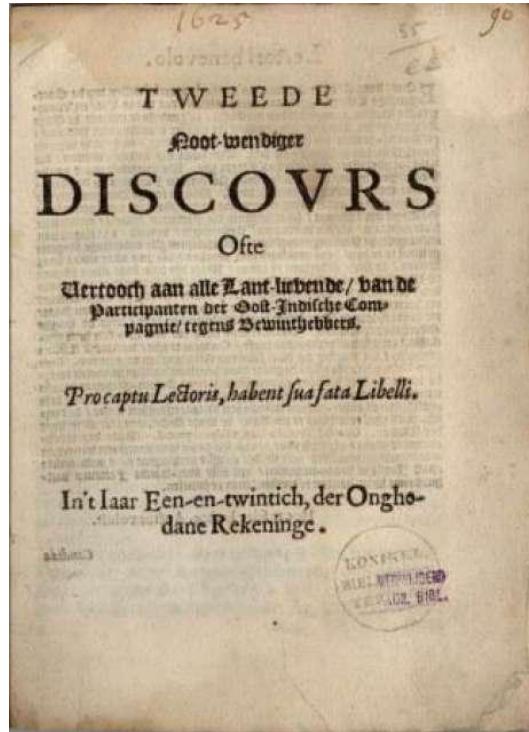
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Thyspf	Catalogue indication of a book or pamphlet that is included in the <i>Bibliotheca Tysiana</i> , a book collection founded by testament by Johannes Thysius (1622-1653), now part of the Leiden University Library ( <a href="http://www.library.leiden.edu">www.library.leiden.edu</a> )
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Picture 1



Title page of the *Tweede Nootwendiger Discours*.<sup>151</sup>

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<sup>151</sup> With thanks to Asher Rare Books, Amsterdam.