An Admiralty for Asia: Isaac le Maire and conflicting conceptions about the corporate governance of the VOC

Oscar Gelderblom, Abe de Jong, and Joost Jonker

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An Admiralty for Asia

Isaac le Maire and conflicting conceptions about the corporate governance of the VOC [1]

Oscar Gelderblom (UU)

Abe de Jong (EUR)

Joost Jonker (UU)

Abstract

The Dutch East India Company or VOC in 1602 showed many characteristics of modern corporations, including limited liability, freely transferable shares, and well-defined managerial functions. However, we challenge the notion of the VOC as the precursor of modern corporations to argue that the company was a hybrid, combining elements from traditional partnerships with a governance structure modeled on existing public-private partnerships. The company's charter reflected this hybrid structure in the preeminent position given to the Estates General as the VOC's main principal, to the detriment of shareholders' interests. Protests by Isaac le Maire and Willem Usselinx about the board's disregard for shareholders rooted in a conviction that it ought to conform to traditional partnerships with their judicious balance between stakeholders' interests. However, the perceived public interest of a strong military presence in Asia prevented shareholders' protests from changing the corporate governance.

INTRODUCTION

The Dutch Republic's successful Asian trade during the 17th century is often considered a direct result of the creation, in 1602, of the Dutch East India Company (VOC) with a permanent capital, freely transferable shares, a separation of ownership and management, the shielding of corporate assets from creditors, and a limited liability for shareholders and directors (Van Brakel 1908, 1912; Van der Heijden 1908; Gaastra 2009; Den Heijer 2005). These features enabled the company to set up permanent trading posts for administration, storage, and ships' maintenance; to coordinate the activities of employees working in a variety of locations; and to mobilize the resources for establishing a strong military presence in Asia. The long-lasting, capital intensive commercial enterprise thus created, and the huge profits it generated for most of its existence, have led economic and legal historians to consider the governance structure of this company a necessary precondition for its economic success, and an important step in the evolution of the modern corporation.

During the early years, however, the company's policy and corporate governance attracted sharp criticism from shareholders. Within a few years a number of leading shareholders left the board because of disagreements over the direction of operations. In 1609 Isaac le Maire sent a long memo to the Republic's highest civil servant, Grand Pensionary Johan van Oldenbarnevelt, complaining about the board's highhanded and misguided policy.[2] Subsequently Le Maire attempted to force the board to change tack by launching his famous bear raid on VOC shares (Van Dillen 1930). The debate on the formation of an Atlantic trade company, the West-Indische Compagnie or WIC, also

shows a keen awareness that its corporate governance structure should be fundamentally different from that of the VOC. Indeed, the main advocate for a WIC, Willem Usselinx, hammered time and again on the need to give shareholders power over the companies they owned (Van Rees 1868). Finally, during the 1620s disgruntled shareholders fought hard to get more power over policy, ultimately in vain (Van Rees 1868, 144-172).

In this paper, we want to take a fresh look at the supposed character of the VOC as a pioneering joint-stock limited liability company (*naamloze vennootschap* or NV in Dutch). Paul Frentrop's book already did important groundwork for this, but he took the foundation of the VOC in 1602 as his point of departure, whereas, to gain perspective, we would want to know what went on before and connect this with what came later (Frentrop 2003). Traditionally, the historiography of Dutch corporate development regards the VOC as the first example of an NV and sees this form of organization as crucial to its economic success. Scholars broadly agree about the legal pedigree of the VOC. The company was essentially a private partnership with additional features, such as the limited liability for directors and for shareholders derived from various older forms of business organization (Den Heijer 2005, 35-36, Steensgaard 1982, De Vries and Van der Woude 1997, Van Brakel 1908, 1912, 1914, 1917, Van der Heijden 1908, 1917, Asser 1983; see however Lehmann 1895 and Mansvelt 1922). However, opinions differ as to the precise evolutionary path, i.e. which feature emerged why, when, and whence; and about origins, motivations and evolutions of particular features, such as limited liability.[3]

Moreover, we think that by looking at the relationship between agents and various principals within the company we can clear up the reigning confusion as to the provenance of these governance features, i.e. where exactly the VOC fits in the

evolutionary path of Dutch corporate law. The notion of agency dates at least back to Jensen and Mecking (1976), in which firms are described as 'nexus of contracts'. The agency literature models contracting and agency costs under assumptions of asymmetric information and divergent interests (an overview in Becht, Bolton and Röell 2003). Analyzing the VOC from this perspective gives us a better understanding of where exactly the VOC fits in the evolutionary path of Dutch corporate law.

Our analysis shows that the corporate governance norms which Le Maire and Usselinx wanted applied were common in other business organizations, such as the partnerships with additional features. The VOC deviated from these norms because of its essentially hybrid character as a private corporation entrusted with a public task, i.e. taking the war against Spain overseas by establishing a colonial empire in Asia (Van Rees 1868, 20-29, Van Brakel 1908, 20-22, Steensgaard 1982, 244-247, De Vries and Van der Woude 1997, 384-386, Israel 1989, 70-72, Van Goor 2002, Den Heijer 2005, 67-68). This aim inspired a governance structure modeled on semi-public institutions such as the local admiralty boards which coordinated the activities of the Dutch navy from the late 16th century onwards, the water boards which managed dikes and drainage, and on the polder boards which ran land reclamation projects (Fockeman Andreae 1975, 26-30, 49-50, 114-116, 125, 139-140, 142, Van Zwet 2009, 55-58, 76-84). Company directors therefore really faced two principals: the shareholders and the Estates General, the highest political institution in the Dutch Republic. With the investors' capital tied up for ten years and local elites dominating the general board of directors, the Estates General quickly emerged as the main principal. As a result corporate governance features common at the time and common in modern corporations were sacrificed for political

aims. Commercially-oriented shareholders vilified the company's policy but they were no match for the war-party with its control of the general board and direct access to the Estates General.

THE STRETCH OF TRADITIONAL PARTNERSHIPS

During the second half of the 16th century merchants in Britain and the Habsburg Netherlands began to explore new markets in Russia, the Eastern Mediterranean, and the coast of West Africa. These ventures carried considerable risk because of violence at sea, stark fluctuations in supply and demand, and the difficult monitoring of partners and employees trading in the distant markets. To manage these risks, British and Dutch merchants amended existing partnership contracts with additional clauses about the purpose and duration of the venture, the capital invested by the partners, the division of work between them and, for those who contributed labor rather than capital, their share in profits and losses. The earliest British trade with Guinea, for instance, was organized as temporary partnerships, which arranged a number of voyages counting two to five ships between 1553 and 1567. Upon their return accounts were drawn up and any profits split as agreed in the contract (Scott 1968, 3-9). The Flemish merchants pioneering Antwerp's trade with Narva during the 1560s also set up temporary partnerships with a small number of participants. The duration of and the capital invested in these companies increased with the familiarity between the partners, but even close relatives apparently preferred contracts for a limited time period with a clearly defined purpose (Wijnroks 2005, 65-105, Brulez 1959, 363-365, 557-558, Denucé 1938, xxii-xxvii).

Specific-purpose partnerships, *compagnia* in Italian parlance, were ideally suited to fund commercial expeditions to poorly known destinations (Lopez 1971, 74, Lopez and Raymond 1955, 175, 291, De Roover 1963, 139-140, 260-261, Hunt 1994, Lazzareschi 1947, 11-13).[4] They could be established by private contract and, in its most restrictive form, comprised a single voyage only. Just like general partnerships defined in Roman law, the partners in a *compagnia* remained severally and jointly liable for each others' actions as long as these actions were in accordance with the purpose and duration of the company contract (De Roover 1963, 142, 145). This emendation of the general partnership's rules had become accepted practice in Antwerp as early as 1537, for an accounting manual published in that year stated that 'There is no difference between the rule of a partnership with specified duration (*metter tyt*) and without specified duration (*sonder tyt*), except that shares are taken for a certain period, and the revenue is calculated according to this share' (Vanden Hoecke 1537, quoted in Goris 1925, 105n).

Partnerships also split tasks, for instance when the partners were separated by distance, when they employed an agent elsewhere, or when the collaboration was just a sideline for one or more partners (Nanninga Uitterdijk 1904, 529, Van Brakel 1912, 1914, 1917, Brulez 1959, 366-368). Merchants commonly had constantly shifting partnerships, some short-term and for particular purposes, such as a single voyage or the joint handling of a cargo load, others for longer terms and broader purposes, say the trade in one commodity with a particular country. To minimize internal control problems arising from the division of labour, merchants used a range of solutions drawn from experience. Remuneration schemes were jigged to provide incentives, while partnership contracts stipulated the obligations of partners-managers towards the joint enterprise in broad terms,

referring to a general obligation to manage a business and its administration in good faith, with due diligence, and in conformity with the style or custom of merchants. During the second half of the 16th century a very important form of limited liability developed for partnerships, in that principals could claim not to be liable for obligations which agents had incurred outside the partnership's purpose (Van Brakel 1908, 161-170, Van Brakel 1914, 168-169, Van der Heijden 1908, 50-56, Asser 1983, 88-89, 95-103, 115-119, Riemersma 1952, 335-337).

Partnership contracts were enforced by customary law and mercantile usage. One key custom was the requirement for proper account keeping coupled to the acceptance of ledgers, account books, and supporting documentation such as bills, account extracts, and correspondence as legal proof in litigation (Gelderblom fortcoming). The status of legal proof made archives valuable, so contemporary depictions of merchant offices always show voluminous archives. The gradual adoption of double-entry bookkeeping, facilitated by the publishing of practical handbooks such as the manuals of Jan Ympyn (Antwerp 1543) and Claes Pietersz (Amsterdam 1576), made business accounts far more transparent and thus easier to check (Jonker and Sluyterman 2000, 18, Gelderblom forthcoming). Proper account keeping provided the basis for other self-evident norms. Business partners had full access to all documents at all times plus a mutual obligation to draw up comprehensive annual accounts. Such annual reckoning was so normal that contracts only mentioned exceptions, for instance the settling of accounts after the liquidation of a shipping expedition of uncertain length, or after the number of years a particular venture would run (Van Brakel 1914, 165, 179, 182-183, 184-185, De Jonge

1862, 97 article 24). Similarly, merchants keeping current accounts with each other customarily exchanged account extracts for approval.

At this stage rulers in Britain and the Netherlands maintained some distance to new commercial ventures. Philip II left the Antwerp companies to their own devices as long as they did not harm the Spanish monopoly in the Americas. Nothing changed in 1577 when Calvinists took control of Antwerp's magistrate. In Britain Queen Elizabeth did contribute ships to the first African voyages but her participation was considered no different from that of other investors. She also granted a corporate charter to the Muscovy Company in 1555 so its members could negotiate privileges in Russia. This did not alter the company's financial organization. The merchants continued to organize separate voyages liquidated on return. In 1581 this model was transplanted to the Mediterranean trade with the merger of the Levant Company and the Venice Company. Despite earning fees from incorporation the Crown did not renew the Levant Company's charter. By 1592 the company functioned as a licensing agency which merely coordinated the protection of private trade (Scott 1968 II, 88).

Until the 1580s merchants in Holland had largely concentrated on trade between the Baltic and France, Spain, and Portugal. This trade was organized by individual merchants, small family partnerships, and shipping companies or *partenrederijen*. It is tempting to view these shipping companies as a distinct legal entity, but the term *partenrederij* is a 19th century invention. The underlying contract was a partnership with a specific purpose, in this case the exploitation of a ship, and particular only in the arithmetical division of shares (1/2, 1/4, 1/8th, etc.). The accounts of shipping companies were settled after a specific trip or after a trading season, following which participants

were free to reinvest or not. As with all specific-purpose partnerships the partners were jointly and severally liable for debts related to the purpose of the company, with one key exception. Any loss of cargo would be spread over all freight owners, while a total loss of the ship would free all shipping partners from any remaining claims on the company.[5] These two features of shipping companies appear to have been quite general in European maritime law, but in addition Dutch shipping partners enjoyed a particular form of limited liability. If the company faced claims exceeding the value of their investment, the partners could free themselves from having to pay the excess amount by abandoning their share. Participants in land reclamation ventures had the same right (Dekker and Baetens 2009, 65).

Following the fall of Antwerp in 1585 Amsterdam emerged as the new long-distance trade centre in the Low Countries. Antwerp merchants migrated north and continued their trade with Russia, the Levant, and Africa from the Dutch port. The Russia trade continued to be dominated by Antwerp firms, and the earliest voyages to Genoa and Venice in the 1590s were also organized by Flemish companies. Merchants in the long-distance trade were mostly left to their own devices, but to support the Levant trade the government sometimes supplied arms to individual ships, and it negotiated commercial privileges with the Ottoman sultan. The same was true for the Atlantic world. The early sugar expeditions to the Canaries, Madeira, and Brazil, and the first voyages to West-Africa were run by special purpose partnerships, and the salt trade to the coast of Venezuela was done by shipping companies (Van Goor 1997, 18-23, Gelderblom 2000, 179-181). Between 1593 and 1598 at least thirty ships sailed to West Africa from

Amsterdam, Enkhuizen, Hoorn, Rotterdam, Middelburg, and Delft (Den Heijer 2005, 31, Van Goor 1997, 22).

Surviving accounts reveal that investments in the African trade were typically made for one voyage, with the capital raised in advance and spent on the ship, its equipment, crew, armament, and merchandise (Unger 1940, Van Gelder 1916, 208). A small number of partners coordinated the expedition, for which they received a small fee. Upon the return of the ship the same men notified the other participants, sold the cargo and sometimes also the ship, and distributed the proceeds among their fellow investors.[6] The early success of these early African companies quickly raised concerns about increasing competition. In 1598 the eight companies then trading between Amsterdam and Africa decided to merge into a General Guinea Company so as to avoid competition, as director Jacques de Velaer explained to shareholder Daniël van der Meulen (Unger 1940, 208-209). The new company maintained the governance structure of the previous companies and organized single voyages only.

These ventures were all private enterprises, with little or no government involvement. The various companies sailing to Africa armed their own ships and sailed in convoy whenever possible; government support was initially limited to naval escorts in European waters for incoming and outgoing ships (Van Gelder 1916, 241).[7] Until 1598 the companies were exempt from the customs duties levied by the admiralty boards which ran the navy, but once a regular trade had been established they had to contribute. In addition to this Prince Maurice in 1596 and 1598 secretly supported two expeditions by the Antwerp merchant Balthasar de Moucheron to establish fortified trading posts on

the Principe and São Tomé off the coast of Guinea. Both attempts failed, as did an expedition equipped by the Estates General in 1599.

THE EARLY VOYAGES TO ASIA

The government played a more active role in the trade with Asia (Den Heijer 2005, 21). Three successive attempts to find a northernwestern passage to Asia were backed with public money supplementing private investment (*RSG* 1593-1595, 337, 16 May 1594). Officials also supported companies exploring the ordinary route to Asia via the Cape of Good Hope. The admiralties gave ordnance on loan, sold one or two ships on favorable terms, and granted exemption from customs duties (Den Heijer 2005, 29). In addition the admiralties provided regulations for coordinating the fleet and for securing discipline on board.[8] The early companies also borrowed ordnance from various cities, with the Estates General sometimes providing guarantees.[9] The funding of the early voyages to Asia was entirely a private matter, however, and organized as special purpose partnerships. Between 1595 and 1601 a total of 66 ships sailed from Amsterdam, Middelburg, and Rotterdam to Asia.

Small groups of merchants formed these partnerships by drawing in relatives, business associates and, for the first expedition, the entire crew of the four ships involved, since the company withheld two months' wages as venture capital (De Jonge 1862, 97, article 24). Though canvassed by directors and presumably attracted by their business standing, subscribers were not beholden to the directors but to the partnership.[10] The success of most early companies made them attractive propositions. The Amsterdam

ventures did not lose a single ship and merchants who invested in all expeditions earned an average annual return of 27 per cent, stimulating shareholders to roll their profits from one voyage into the next. As with the other long-distance ventures, the directors rendered accounts and paid out the profits after each trip, before asking investors whether they wanted to take part in a new venture.[11]

The lead merchants each had a specific task in the company, for which they were remunerated with a percentage of the value of the money and goods handled.[12] The Amsterdam *Oude Compagnie* had four committees of managers or *bewindhebbers* respectively for equipping the ships, for hiring crew members, for purchasing supplies, and for the outgoing cargo. The tasks were assigned to directors on the basis of their knowledge and skills: local merchants took care of shipping matters, two Antwerp traders were in charge of the ships' cargo. All directors were expected to help unloading the spices on the ships' return, and some of them were charged with storing the leftover provisions and victuals.[13]

The directors' personal credit provided a vital ingredient to the early expeditions. They paid for supplies from their own purse and charged interest on these advances, or else obtained them with suppliers' credit.[14] Once shipments had returned from Asia rebates on cash payments for spices bought provided additional liquidity.[15] Shareholders also advanced money to their company. In November 1601 the directors of the *Verenigde Amsterdamse Compagnie* paid interest to participants who paid their instalments early.[16] They also borrowed to purchase specie for sending to Asia.[17] Such credit transactions reveal the limits of the partnerships that organized the early voyages. Because the

participants were jointly and severally liable for company debts, the directors preferred to use their personal credit, which curtailed the total.[18]

Only a few shareholders managed the early companies, as the directors' resolutions for the Amsterdam *Oude Compagnie* show. The book does mention a general assembly on December 7, 1598, but since the remainder of the text concerns directors' decisions this term probably did not mean a meeting of all shareholders.[19] However, some directors appear to have been more powerful than others. The *collegie*, a committee formed by the four directors responsible for recruitment, appears to have evolved into an executive committee.[20] The other three committees each ran their own business, but could turn to the *collegie* for solving difficulties.[21] This evolution seems to have caused disagreement. Several resolutions were needed to ensure that the appointment of the expedition's commanding officer, the shipmasters, and the principal merchants would be made by jointly by all directors.[22] From at least 1599 an Amsterdam magistrate, Reynier Pauw, acted as president of the *collegie*, in which position he could convene the board of directors and probably also act in public on the company's behalf.[23]

The gradual articulation of governing large partnerships was taken a step further by the First United East India Company (*Eerste Verenigde Compagnie op Oost-Indië*), formed by a merger between Amsterdam's *Oude Compagnie* and a venture run by Flemish immigrants, the *Nieuwe Compagnie*, in 1601.[24] With no fewer than 23 directors, the new company needed stronger coordination. Pauw again acted as president of the *collegie*, which now had the authority to give instructions about interest payments on shareholders' installments, and about the accounts to be rendered by the subcommittees.[25]

CONSOLIDATION: THE VOC

In the long-distance trade merchants could not concentrate on business alone, they had to organize armed protection as well and thus break the state monopoly on violence. Amsterdam enabled companies to do this by keeping a rein on them through the magistrates on their boards, very much in the style of the admiralties. With the growing military and economic importance of the Asian trade this arm's length governing no longer sufficed. In 1597 Van Oldenbarnevelt started pushing for a consolidation because the continuing competition threatened to compromise the Dutch fight against Spain and Portugal in Asia (Den Heijer 2005, 41). The companies of Middelburg and Veere followed the Amsterdam example and merged into one *Verenigde Zeeuwse Compagnie* in 1600. The idea for a merger between the all companies, first considered in 1599, then reappeared, given new momentum by the emergence of the East India Company in Britain. Like the early Dutch companies, the British company organized single voyages, or series of two or three voyages, but always with full accounts presented upon completion. A permanent joint stock concern was only created in 1657, tied to clear rules about the accountability of its directors (Scott 1968 II, 128-132).

Negotiations between the Dutch companies took a long time because of conflicting demands. Firstly, the Estates General wanted the merger to secure a strong Dutch presence in Asia. The hot rivalry between the *voorcompagnieën* undermined the country's fragile political unity and economic prosperity, and seriously limited the prospects of competing successfully against other Asian traders from Europe. By attacking the Luso-Hispanic overseas empire, a large, united company would also help in

the ongoing war against the Spanish Habsburgs. Initially Van Oldenbarnevelt thought of no more than two or three manned strongholds (Van Deventer 1862, 301), but the Estates General wanted an offensive (Van Brakel 1908, 20-21). Secondly, the Republic's political fragmentation meant that the merger terms needed careful tailoring to vested financial and commercial interests in the various towns and provinces concerned. The solution adopted mirrored the organization of the admiralties. The company was made up of six local chambers running operations and delegating directors to a central board. Thirdly, all merchant active in the Asian trade needed to join if the new concern's monopoly was to work, and some were loath to give up their lucrative business. Balthasar de Moucheron, for instance, even set his own terms for joining and got them, only to walk out within a year over a policy disagreement (De Jonge 1862, 267, 282-283). Fourthly, the directors of existing companies sought to protect their own positions as managers of a lucrative commercial enterprise. According to Willem Usselinx, a large merchant well versed in the intercontinental trade, the VOC charter was drafted by *bewindhebbers* bent on defending their own interests and the Estate s General had allowed that to pass so as to achieve the desired merger (Van Rees 1868, 410). An agreement was finally reached on March 20th, 1602, after which the Estates General issued a charter granting a monopoly on the Asian trade for 21 years (Gaastra 2009, 21-23).

The VOC charter is often considered a blueprint for the governance structure of the company, perhaps even the founding act of the world's first corporation with modern features such as a permanent capital, entity shielding, separation of ownership and management, freely transferable shares, and limited liability. We will discuss these

features in more detail below, but want to emphasize two points here. First, the VOC's corporate governance must be understood by reading the charter in tandem with the preamble to the share subscription ledgers of the company's six local chambers. The merger negotiators clearly drafted this text during the negotiations, for the two surviving copies are identical Van Dillen 1958, 205-206, Unger 1946-1948, 13-14).

The charter and the preamble served very different purposes and highlight the VOC's character as a hybrid, a private commercial company with superimposed public responsibilities. Shareholders were no party to the charter; this was a contract between the directors and the Estates General. Indeed, during the 1620s conflict with shareholders the *bewindhebbers* even claimed that they, and not shareholders or the company, owned the charter.[26] The shareholders put their name under the preamble, thereby agreeing to put their money in the company for a period of ten years and to submit to its subscription conditions, which included a detailed procedure for transferring shares. Though investors will have known the terms of the charter, from the preamble the company looked like any other special-purpose partnership, a *compagnia* established with a specific purpose for a set number of years.

Second, the financial structure as laid down by the charter did not really differ from preceding long-distance trading partnerships. The VOC's capital was not intended to be permanent, but revolving in three consecutive and separate accounts: one for the fourteen ships which sailed in 1602; one for the decade starting in April 1602; and one for the period 1612-1622. Shareholders in the 1602 expedition had the right to take their money back on its return (charter article 9).[27] Shareholders in the VOC received the right to have their money back on the presentation of full accounts for the first 10-year period

in 1612 (article 7). These terms were not fundamentally different from the four year turn-over time of earlier expeditions to Asia, only longer. The longer timespan was probably the reason for defining a share transfer procedure, though the speed with which share trading developed after the VOC's launch suggests that a demand for easy transferability of shares had already manifested itself before (Gelderblom and Jonker 2004).

AGENCY PROBLEMS IN THE VOC CHARTER

If the preamble made the VOC look like a customary partnership, the company's charter laid down an entirely different form, a judicious compromise between, on the one hand, a partnership, and existing public bodies on the other. Given the importance of the VOC's political and military aims, and its monopoly, the company had to have some form of public status. The concept of a government department for the Asian trade similar to the Spanish Casa de India, i.e. an agency licensing private expeditions and financing warfare with the licence revenues, was dropped during the merger talks for reasons unknown (De Jonge 1862, 257-261).[28] Amending the customary partnership to secure official influence on private business must have appeared the logical and obvious solution. This was exactly what the admiralties, water boards, and polder boards did: providing public goods by levying duties for their use. Those boards were administered jointly by representatives from the parties concerned and officials appointed by local authorities. Similar organizations were later set up for the Baltic and Levant trades (Van Tielhof 2002, 232-248; Veluwenkamp 2000, 183).

With the VOC, however, the Estates General did not put representatives on the board of directors, but chose to anchor public control in the charter (Den Heijer 2005, 50). As a result the charter showed a heavy imbalance between the three main stakeholders: the *bewindhebbers* or shareholder-directors; the investors, i.e. the shareholders and bondholders; and the state in the form of the Estates General.

Out of the 46 charter articles, 29 dealt with various aspects of corporate governance and the stakeholders' positions.[29] It stands out that the Estates General meant to keep a close rein; after all, the VOC received suzerain rights overseas, the right to wage war and make treaties.[30] Four corporate governance clauses tied the VOC closely to the authorities at various levels. Article 6 gave the Estates General powers to overrule the *bewindhebbers* or managing directors. Under articles 15 and 16 the company had to supply data about incoming goods and about sales revenues to the provincial and city authorities if their inhabitants had supplied 50,000 guilders capital or more. If those authorities chose to appoint someone to organize share subscriptions for the company, that agent had a right to full financial information so as to keep the authorities, but not the shareholders, informed. In the end these two clauses remained dead letters. Finally, article 26 gave the right to appoint directors to the provincial estates.

A second feature which stands out is that the charter devoted attention to the VOC shareholders in only six of the 46 articles.[31] No. 10 laid down the subscription procedure. The charter said nothing about the shareholders' right to information or a right of representation on the board, presumably because the public interest of limiting the spread of sensitive information about war and other policy considerations weighed heavier than the private interests of shareholders. As for financial information, Van Oldenbarnevelt

had wanted annual statements of equipment costs and product sales followed by full accounts after ten years (Van Deventer 1862, 303), but the charter only gave shareholders a right to full accounts in 1612. Two articles defined exit rights. In addition to the right to sell shares stipulated in the preamble to the subscription register, shareholders were given a general exit right after the 1612 accounts (No. 7), while as we have seen the shareholders in the 1602 expedition could opt out (No. 9). Article 14 detailed some conditions for the intracompany accounts and for the statutory accounts to be presented to shareholders in 1612, and No. 17 gave shareholders a right to a dividend once the available cash reached five per cent of capital.[32] One curious article (No. 27) stipulated that small shareholders had the same rights as big ones when it came to sharing in the company's expected benefits. This was no doubt inserted to counter the existing practice, widely decried in the late 1590s, to carve up the sale of spices between the directors (Van Dillen 1930, 358-359). The charter clearly envisaged the VOC raising debt, as other private-public partnerships did, and denied the directors commission on such transactions (No. 30), but said nothing about bondholders or the priority of their claims over those of shareholders in case of bankruptcy.

Thus there existed a quite wide discrepancy between the intentions of the subscription ledger preamble and the charter, the former reflecting the customary partnership of equals, the latter creating an entirely different structure in which the heavy hand of the state left shareholders with no influence at all. The shareholders must have known both texts, but we have no indications that they saw the potential problems which this discrepancy might raise. If anything they presumably considered the involvement of the Estates General as a boost to the new company's chances of success in enforcing its

lucrative monopoly. In addition the prevailing informal nature of relations between managers and shareholders must have allayed any fears that they would be sidelined. The business communities of Dutch towns were close-knit. A 1616 play by the popular playwright Brederode portrayed a busy Amsterdam merchant running about town talking to his shareholders between closing deals (Jonker and Sluyterman 2000, 68). Backed up by the limited duration of enterprises such informal control mechanisms had worked well enough until then, and shareholders will have thought they would continue to do so.

THE PROMINENT POSITION OF THE DIRECTORS

As we have seen the directors' function was a fairly recent corporate innovation in need of definition. The evolution from the first expedition to Asia in 1595, organized by nine Amsterdam merchants who had styled themselves as *bewindhebbers* different from the general body of shareholders, to the emergence of the executive committees chaired by Pauw had taken only six years. The emerging differentiation do not appear to have affected contemporary conceptions about the character of the association. Though separately remunerated for their managing tasks, the *bewindhebbers* continued to act as first among equals. One document refers to them as the agents of the participants, a point repeatedly emphasized by Usselinx as well (Van Dillen 1930, 354, Van Rees 1868, 416, 446, 448, 451). In 1620 Usselinx described the WIC, then still in the project stage, as a *gemeene rederije*, perhaps best translated as a joint enterprise, in which all shareholders enjoyed equal rights of election and appointment. Consequently the directors ought to be

chosen by and from the shareholders; letting city councils appoint them violated that principle (Van Rees 1868, 416).

One clear sign of a divide between directors and the other shareholders appeared in the articles of association of the first expedition in 1595. The text itself has not survived, but we know from a related set of regulations that the contract denied participants the right to demand full accounts from the directors until all goods had been sold, during which time the participants would also have to content themselves with such information as the board of directors was prepared to divulge.[33] These clauses about accounting and about information sharing clearly served to highlight the fact that the company, by force of circumstance, deviated from the customary norms of full disclosure and annual accounts to partners. Everyone had to wait for up to two years until the ships had returned to European waters and sent fast-sailing yachts ahead with news and data. Once that had happened directors presumably gave participants a rough idea of the results, if only so as to secure their support for another venture.[34]

However, the regulations also show a subtle change in the status of the company's shareholders. The ban on the crew selling their shares before the return to port suggests that the exclusion of shareholders from the day-to-day running of the business was matched by an exit option in the form of freely transferable shares, possibly tied to an obligation to give the company an offer of first refusal (De Jonge 1862, 97, article 24). The exit option does not appear to have been exercised very often in the case of the *voorcompagnieën*, but at the launch of the VOC the trading option was considered so normal that, as we have seen, the charter did not even mention it (Gelderblom and Jonker 2004, Van Dillen 1930, 355-356).

Exit options were a normal feature in shipping companies, as often as not tied to a right of first refusal for the other shareholders, but they made sense for partnerships only if these had made a clear distinction between partner-managers who could sign for the company, and sleeping partners who could not. This type of company became quite common; in 1610 Le Maire managed a whaling company with seven shareholders who traded their shares (Hart 1976, 211-212). The separation of functions probably led to a wider application of the limited liability principle. Common shareholders could not only claim this if directors went beyond the purpose of the partnership, but also because they were no longer in direct managerial control. The shareholder-managers must also have enjoyed internal limited liability, i.e. they could not be called on to pay more than their share, but they do not appear to have acquired limited external liability, that is they remained personally liable for a company's obligations. In 1597 the prominent Rotterdam businessman Johan van der Veken petitioned the Estates General to release him from litigation over company debts since he ought not to be held personally liable for them, but we do not know whether his claim succeeded (De Jonge 1862, 239-240). The fact that article 42 the VOC charter expressly exempted the directors from personal liability suggests that the point needed articulation and did not follow automatically. Not everyone picked this up immediately. The Delft chamber of the Noordsche Compagnie, a whaling company set up in 1614, had apparently not exempted their directors from personal liability, so it became embroiled in a court case about the payment of beer ordered for the company's ships during 1616 and 1617. The directors settled in 1625 by sharing the bill (Van Brakel 1909, 305-306, 339-348).

By contrast, the VOC charter gave very extensive and detailed attention to the company's directors. No fewer than 22 of the 29 corporate governance clauses concern the *bewindhebbers* in one way or another.[35] Seven laid down the responsibilities of the board, the tasks and responsibilities of the individual directors, their oath of office, and their position as officials in having no personal liability for the company's debts (No.'s 2, 3, 6, 12, 27, 32, 33, 42). A further five detailed the directors' remuneration and reimbursement arrangements (No.'s 5, 28, 29, 30, 31). Finally, several articles reflected the difficult merger negotiations leading to the complicated structure of six chambers, one for each city or region which brought its *voorcompagnie* into the merger (No.'s 1, 2). The *bewindhebbers* of those companies became the directors of the VOC, and the charter named all 76 of them (No.'s 18-26). Once natural attrition had whittled this number down to 60 provincial estates and city councils were to fill vacancies from a list of candidates proposed by the company. In an important deviation from normal practice in the Republic, directors sat for life, surprisingly so given the rotation schemes and limited appointment terms common to similar appointments.[36] Each chamber delegated a set number of its directors to the regular meetings of the 17-strong executive committee.

The attention devoted to the directors was the outcome of several factors. First, the charter was drafted by a committee of directors from the *voorcompagnieën* keen to keep their hold on a lucrative enterprise and at the same time concerned with the risk of incurring unknown liabilities arising out of a company with an unusually long lifespan (De Jonge 1868, 262-281, *RSH* 1602-1603, 295-297). Second, as officers in a state-sponsored enterprise the directors would occupy newly created, semi-public functions of major importance, if only because their position was unique in spanning the whole

Republic, not just one of its constituent provinces. No other business enjoyed excise privileges for the whole of the country (No. 41), or possessed the right to apprehend sailors on the run wherever it found them (No. 43).

Third, reasons of state appear to have weighed very heavily indeed. With 12 articles detailing the relations between the company and the Estates General or other authorities, the state really acted as the second principal for the directors as their agents and determined the balance of power within the company.[37]

AN ADMIRALTY FOR ASIA

Though the importance of the VOC as a semi-public enterprise has been emphasized before in the literature, the agency theory framework highlights the extent to which this biased the company's corporate governance. Together with delegates from the various *voorcompagnieën*, representatives from the Estates General formed part of the committee which drafted the charter and which gave progress reports to the Estates; Van Oldenbarnevelt himself addressed the first meeting and chaired the last one (Van Deventer 1862, 303, De Jonge 1862, 262-281, Israel 1989, 70). Reasons of state, the desire to take the war to the Luso-Hispanic overseas empire and grab a Dutch empire there, brought the company into being and determined the way in which it was run in two ways, direct and indirect. First, in return for the monopoly plus other privileges and concessions such as the suzerain rights and tax breaks, the state received direct benefits: a small lump sum plus a range of instruments to guide policy.[38] The provincial Estates appointed new *bewindhebbers* (No. 26), a right which Holland transferred to the

magistrates of cities with a VOC chamber (Gaastra 2009, 21). The Estates General could override board decisions (No. 6). Regional and local authorities could appoint agents to monitor the company (No. 15-16). As we have seen this failed to happen initially, though some provinces later succeeded in obtaining board representation (Gaastra 2009, 32). In addition the company had to submit reports about returning fleets to the Republic's Admiralties and the commanding officer had to report in person to the Estates General (No.'s 36, 45).

These articles amounted to a strong injunction forcing *bewindhebbers* to give priority to the Estates General's wishes to the detriment of shareholders' interests, both via monitoring and bonding. Though the *bewindhebbers* possessed an obvious information advantage over any other stakeholder in the VOC, they had a clear incentive to share this with the state, but not with the shareholders. The state could, and did, help them in numerous ways, large and small: providing ships and ordnance, promulgating sanctions to speed up tardy share subscriptions, financial assistance, tax benefits, and issuing regulations for trading the company's shares, which included a ban on short selling after Le Maire's raid.[39] From 1609 the company received an annual subsidy of 20,000 guilders, rising to 300,000 guilders by 1615 (De Jong 2005, 82, Table 3.5). Delegates from the *bewindhebbers* frequently attended the Estates General's meetings: to supply information, give expert advice on a range of issues, or to get something done.[40]

As for the indirect ways, the system for filling vacancies provided the authorities with strong leverage over the board. Giving the power to appoint directors to local authorities meant ensuring that board members would be 'one of them', recruited from candidates suitable for public office, i.e. men adhering to Calvinism, the dominant

religion, and fully aware that their career and the social position of their family depended on their success in maintaining the status quo. Rather than economic appointments, the directors' positions became social and political assets, part of the glue binding the elite. As a result ties between magistrates and the VOC board were close indeed; as a rule two or even three of Amsterdam's four mayors doubled as VOC directors (Gaastra 2009, 32, Gelderblom 1999, 246-247). It seems reasonable to assume that the directors' interests included personal wealth maximization via transactions with the VOC (tunneling) and via direct expropriation. Examples of both surfaced over time, one of them in Le Maire's petition. However, the patronage opportunities offered by their access to board seats were probably as important in guiding the behaviour of directors.

Compared to that the shareholders' position was very weak. The charter handed most governing rights to the Estates General, created a fundamental misalignment of directors' and shareholders' interests, and provided only the barest minimum of checks on managerial behaviour. Directors were required to keep a minimum shareholding as a guarantee for their oath of office and by extension for the proper conduct of their staff (No.'s 28, 33). As investors, bondholders and shareholders were jointly entitled to the financial surplus of the VOC's operations. The charter gave no provisions at all to solve the potential conflict between competing claims of shareholders and bondholders. We know no more than that the *bewindhebbers* appear to have used bonds to favour preferred investors, who were keen on them because of the regular interest payments and good rates. Consequently we do not know either to what extent the VOC shareholders were residual claimants with respect to the bondholders. As we have noted, the shareholders' statutory right to dividends if revenues amounted to five per cent of capital was ignored,

and they had very limited information and no voting rights. However, share trading gave investors a very convenient exit option.

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

CONFLICTING CONCEPTIONS

Firmly in control of the company, the Estates General steered operations towards mounting war in Asia. During 1601-1602 successive expeditions had already engaged in skirmishes with Spanish and Portuguese ships; now the ongoing fight in Europe would be taken overseas with the express intention of, as Van Oldenbarnevelt put it, bleeding the Spanish resources (Van Deventer 1862, 311-313, Van Brakel 1908, 20-21). Accordingly

the admiral on the first expedition sent out received secret instructions, to be opened only after passing the Cape of Good Hope, for aggressive action going way beyond Van Oldenbarnevelt's original couple of fortresses.[41] It had been clear all along that the VOC would engage in war overseas; that was precisely the reason why three directors of the Amsterdam company declined to join its board (Gaastra 2009, 30). But the scale of the operations which the Estates General demanded went much further than anticipated.

Consequently these demands soon created serious friction. The Estates General had to warn the company repeatedly to heed its instructions about a vigorous pursuit of the war (*RSG* 1604-1606, 224-225 (1604), 501-502 (1605). The VOC retaliated by presenting a bill for fortresses, soldiers, and armament maintained at the behest of the state, which resulted in a regular subsidy (*RSG* 1607-1609, 696, 896 (1609), De Jong 2005, 82, Table 3.5). Two prominent directors and large shareholders resigned from the board shortly after each other: De Moucheron in 1603 and Le Maire in 1605, probably driven by despair over the company's commercial prospects as a result of its military operations. Both attempted to move back into the Asian trade one way or the other, by sponsoring the launch of trade companies abroad, or by organizing naval expeditions to explore routes not covered in the VOC charter. These resignations prompted the VOC board in 1606 to ask the Estates General for an injunction against directors giving up their seats.[42] Another prominent shareholder, Pieter Lintgens, sold out because, as a Baptist, he had conscientious objections to the VOC's warfare; he also attempted to found a company abroad.[43] By 1608 a disappointed VOC admiral strongly advised his successor not to try and combine business with war, since this was impossible. Realizing

this, the VOC board changed priorities and put war before trade (Van Brakel 1908, 21-22, De Jonge 1865, 233-240).

As a result the VOC's commercial operations made little headway and no dividends were being paid, all the more galling since the 1602 expedition started showering dividends three years later on the shareholders who had wisely opted not to let their share be subsumed into the VOC.[44] This must have caused uproar among the rest, who now knew that large amounts of money were coming in without being paid out. Combined with continuing bad news from Asia, the discontent over dividends appears to have pushed the company's share price from 140 per cent in 1605 down to 80 in 1606 (De Jonge 1865, 69). By 1610 and possibly a little earlier the board considered the VOC's prospects to be so poor that it petitioned the Estates General to waive the accounts due in April 1612, fearing that disclosure would lead to a precipitous withdrawal of capital.[45] The Estates initially resisted, demanding full accounts over the first ten-year period, annual accounts for the second ten-year period, the public advertising of sales, plus access to board meetings for selected members to represent shareholders' interests (*RSG* 1610-1612, 604, 703). A decision was only taken in November 1613, when the Estates General, not wanting to weaken the VOC any further, authorized the company to continue without presenting accounts (*RSG* 1613-1616. 153, 154-155, 156, Van Rees 1868, 47). It was only with this decision, taken in flagrant contravention of the charter, that the company's capital became permanent, a momentous corporate innovation effected by state intervention. A subtle shift in terminology suggests that, at more or less the same time, the board also sought to redefine the position of the shareholders towards the company. Initially shares were known as *partijen*, i.e. literally parts in the company

similar to the parts shipowners held in a ship, and together the holders of parts or *participanten* formed the company. From 1606, however, the VOC started substituting the term *actie* or action-in-law for *partijen*, signifying that the holders were no longer considered a part of the company, but outside owners of a right to dividends (Colenbrander 1901, 386-387). Moreover, it looks as if directors tailored the amount of the company's first dividend payments during 1610-1612 to acquit themselves of all claims from shareholders to be part of the company. Totalling 162.5 per cent by 1612, this amount neatly represented the paid-up capital plus the going rate of 6.25 per cent interest a year during ten years, so directors could argue they no longer owed shareholders anything.

The experiences with the VOC were so disappointing overall that the initial plans to set up a similar company for the Atlantic trade envisaged a radically different corporate governance structure. In 1606 the Estates of Holland circulated a draft charter for a West India Company (WIC) (for the text see Meijer 1986, 50-59). The overall structure of the proposed company was to resemble that of the VOC. A single-tier board of *bewindhebbers* headed the company, with day-to-day decisions delegated to a committee of seventeen. In the VOC this board operated more or less independently, but the draft charter envisaged giving the WIC shareholders power over it in two ways. First, the *bewindhebbers* would no longer be appointed by city councils or provincial estates, but elected by and from shareholders with a minimum holding of two to four thousand guilders, depending on the chamber in which they had invested. A third of the *bewindhebbers* would seek re-election every two years (Meijer 1986, 55, articles 17-19). Usselinx, as keen an advocate of shareholders' rights as Le Maire but more articulate and

persistent, saw regular board elections by shareholders as a guarantee that directors would not act as masters of other people's money, like they did in the VOC, but as agents, as they should (Van Rees 1868, 448, 451, Ligtenberg 1914, Jameson 1887). Second, the large shareholders would elect a supervisory board of *hoofdparticipanten* or leading shareholders to audit the accounts and discuss policy with the *bewindhebbers*, the first manifestation of the two-tier board so characteristic of Dutch corporate governance today (Meijer 1986, 55-56, articles 21, 23-26).[46] The draft also proposed keeping separate accounts for the commercial activities and for warfare, and presenting full accounts every six years. Finally shareholders would get a dividend if profits reached ten per cent of capital, as originally proposed for the VOC but lowered to five per cent in the charter, which latter threshold had clearly proved too low (Meijer 1986, 56, article 22, De Jonge 1862, 266, 273).[47] Even Le Maire's scathing profit estimate of no more than 2.3 million guilders over seven years meant that the company ought to have paid the statutory dividend in most years and thus had formally transgressed its charter, giving shareholders another legitimate cause for complaint (*Shareholder* Rights 2009, 45). The figure was therefore doubled so the WIC could conserve cash.

The company sketched in the 1606 blueprint was intended to function in tandem with a public body governing trade and warfare, the link between the two being provided by a board member appointed by the Estates General.[48] Clearly official thinking now accepted the undesirability of combining politics with business and consequently split the two tasks over separate bodies. This new insight and the consequent greater weight given to shareholders' interests can only be understood as an attempt to remedy perceived shortcomings in the VOC charter of four years before. It shows that a more balanced

model of corporate governance giving more power to the shareholders was not only conceivable, but in fact conceived. The fact that the Estates of Holland issued the draft also shows that these shortcomings were sufficiently serious to warrant official attention.[49]

Le Maire's 1609 diatribe and innovative bear raid on the VOC shares of the same year thus formed part of a groundswell of discontent. Indeed, Le Maire's criticism about corporate governance appears quite muted, all the more remarkable for the fact that he continued to hold 85,000 guilders worth of shares, which he sold only during 1610, presumably to fulfill obligations arising from his bear raid.[50] He subordinated his corporate governance criticism to his main concern, that the VOC's monopoly should be restricted and not, as the board wanted, extended. Big merchants such as he and De Moucheron were keen to get the scope of the intercontinental trade widened and chafed at the unremunerative VOC monopoly. But perhaps Le Maire also decided to focus the main thrust of his arguments on what he wanted to achieve most, because he realized that demands for corporate governance changes stood little chance since the Estates General would unlikely alter a structure designed in its favour. Moreover, at a time when immigrants from the Southern Netherlands like De Moucheron, Lintgens, and Le Maire were slowly but surely sidelined by the Hollands majority, calls for more power coming from that corner were unlikely to be popular, whereas claims for free and fair trade opportunities would attract a wide audience (Gelderblom 1999).

Whatever his motives, Le Maire concentrated on his objections to the VOC board's business policy and discussed only three main corporate governance complaints (*Shareholder Rights* 2009). First, the company's rising debt burden cut into the

shareholders' profits, so that no dividends had yet been paid and were unlikely to be paid before the 1612 accounts (*Shareholder Rights* 2009, 39, 40, 42, 45). Second, the dictatorial board refused to take advice or hear arguments. Third, the directors enriched themselves to the detriment of shareholders while trying to get the obligation to publish accounts waived (*Shareholder Rights* 2009, 39, 400-41, 45). The complaints amounted to a bill for the woeful impotence of shareholders: this had brought the latent conflict of interest between bondholders and shareholders to the fore and allowed the directors to get away with milking the company, which without public scrutiny of the accounts would continue indefinitely.

In combination with the sweeping proposals of the 1606 WIC draft statutes, Le Maire's complaints show that contemporaries were acutely aware of the VOC charter's failings. Yet nothing was done. The Estates General duly lifted the company's obligation to publish accounts and subsequent drafts for a WIC charter reverted to the VOC model, omitting the clauses on shareholder representation. Clearly the main principal wanted to keep a tight hold over its companies and ignored other interests.

CONCLUSIONS

During the 16th century traditional partnerships evolved to meet new commercial demands in the scale and scope of business in the Low Countries. The flexible legal system enabled existing forms such as the shipping company and the partnership to adapt by developing arrangements to safeguard the interests of stakeholders and third parties, redefining liabilities and solving emerging agency issues. Tried and tested in the

developing long-distance trade of Antwerp and subsequently Amsterdam, this framework proved sufficiently flexible to accommodate the biggest challenge, the overseas trade with Asia.

At first sight the VOC was a natural shoot off these old roots, and not a revolutionary innovation. Other companies had pioneered the joint-stock principle, the separation of ownership and management, limited liability, tradeable shares, and capital pledged for long periods of time. Yet the VOC differed materially from its predecessors: by its size, scope of operations, purpose, its durability, and by the creation of a lively securities trade. The company's corporate governance structure also differed materially as a result of its need to combine colonial warfare with trade. As a compromise between existing commercial interests, reasons of state, and the business models available at the time, its governance model in fact came closest to other private-public partnerships in the Republic such as the admiralty boards. The deficiencies of this construction were quickly recognized, but never remedied. With the war against Spain and colonial conquest in full swing, reasons of state would not allow that, and turning the *bewindhebbers* positions into a key instrument for social and political advancement created a powerful lobby group firmly defending the status quo.

The very modern character of the equity market which emerged with the establishment of the VOC in 1602 has led legal and economic historians to overlook the deviant nature of the company's governance structure. The VOC represented the culmination of a long evolution of corporate organization in several key respects: limited liability, freely transferable shares and securities trading, and a better definition of management functions and responsibilities. In those respects the company is a worthy

precursor of modern corporations and Dutch limited liability companies. However, the VOC's corporate governance was a clear step backwards, a deviation both from the preceding evolution and from contemporary conceptions of business organization and accountability. Directors appointed by outsiders and sitting for life were an anomaly, as was the disregard for shareholders' rights to information. It became the norm in the VOC, over vociferous protests from shareholders and prominent business men such as Le Maire and Usselinx, because reasons of state overrode the interests of private investors. Like the company's permanent capital, its corporate governance model was the consequence of state intervention, not of a quest for greater economic efficiency.

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Notes

[1] We are indebted to Matthijs de Jongh and Judith Pollman for pointing us to sources which helped to shape the argument of this paper, and to the participants of conferences and seminars at Yale, Antwerp University, the University of Amsterdam, Utrecht University, and CalTech for their constructive comments. Rienk Wegener Sleeswijk made us understand the precise legal character of early shipping companies; Ailsa Röell gave very useful detailed comments.

[2] The original documents lie in the Dutch National Archives, the Hague (henceforth NA) 3.01.14 Van Oldenbarnevelt no. 3123. Cf. De Jonge 1865, 364-378, and Haak and Veenendaal 1962, 293-294 for transcriptions. An English translation in *Shareholder Rights* 2009.

[3] According to De Vries and Van der Woude 1997, 385 the directors of the predecessors did not enjoy third-party limited liability, whereas Den Heijer 2005, 35-36, thinks they did.

[4] To be sure, this kind of adaptation of the general partnership can be traced back to the Justinian code: Zimmerman 1990, 457-459.

[5] Maritime law also provided for an equal distribution of damages among all freighters in case the cargo of only some of them was damaged or lost (thrown overboard) in order to safe the ship: Schöffer 1956.

[6] For most participants it would have been easy to establish with their own eyes when and in what condition ships returned, but managers usually informed those living elsewhere by letter: Van Gelder 1916, Unger 1940.

[7] Ships from different companies coordinated their operations so as to maximize mutual security. In 1601 two captains, one from Rotterdam and one from Amsterdam, signed a

contract of agreeing on a joint return voyage with mutual assistance and defence, secured on their ships and with penalties for non-compliance of up to 1,000 guilders: Unger 1940, 214-217.

[8] NA 1.04.01 Inv. Nrs. 3 and 4, printed in De Jonge 1862, 204-212, 249-253.

[9] NA 1.04.01, Inv. Nr. 27, fol. 4v (30 November 1598), fol. 12v (2 September 1599); fol. 30 (3 September 1600); NA 1.04.01 Inv. Nr 29, fol. 2 (13 October 1601).

[10] NA 1.04.01 Inv. Nr. 27, fol. 45v (30 December 1600). See for a discussion about the relationship between shareholders, directors, and the company Van Dillen 1930, 353-354. That they did have a direct relation with the company is clear from De Jonge 1862, 97, article 24.

[11] See, for instance, for the fifth voyage: NA 1.04.01, Inv. Nr. 27, Fol 34 (12 August 1600).

[12] NA 1.04.01, Inv. Nr. 27, fol. 2 (16 November 1598); compare a resolution on the submission of accounts by individual directors in NA 1.04.01 Inv. Nr .28, fol. 7 (4 October 1600).

[13] On storage: NA 1.04.01. Inv. Nr. 28, Fol. 1 (19 July 1599): on Texel: NA 1.04.01, Inv. Nr. 27, fol. 29 (12 June 1600). See also: NA 1.04.01 Inv. Nr .29, fol. 2 (13 October 1601), fol. 3 (29 October 1601).

[14] NA 1.04.01, Inv. Nr. 89. See also Inv. Nr. 27, Fol 5 (4 January 1599). At times the directors also personally took financial risks for the company. In July 1600 for instance six directors together insured, until its moment of sailing, a newly bought ship for 10,000 guilders. In the end the policy ran until July 1601: NA 1.04. 01 Inv. Nr. 27, Fol 29v (7 July 1600); Fol 30v-31, 16 April 1601.

[15] Amsterdam's Oude Compagnie set the rate for these rebates at 8-9 per cent in 1599 (NA. 1.04.01, Inv. Nr 27, fol. 16v (7 October 1599); Inv. Nr. 28, fol. 7 (7 October 1599) and 8 per cent in 1600 and 1601 (NA 1.04.01, Inv. Nr. 27, Fol 34 (12 August 1600); NA 1.04.01 Inv. Nr. 29, fol. 10 (2 October 1601).

[16] NA 1.04.01, Inv. Nr 29, fol. 4 (26 November 1601).

[17] NA 1.04.01, Inv. Nr 29, fol. 4 (15 November 1601).

[18] See, for instance, NA 1.04.01 Inv. Nr. 1 (3 December 1594) for the directors of Amsterdam's Oude Compagnie assuming joint and several liability for cannon borrowed on the company's behalf, printed in De Jonge 1862, 239-242.

[19] 'Adi 7 december ao 98 is bovengemelde […?] geschut in die generale vergaederynghe en spetialijcken die bewynthebberen daer op geroepen, gheproponeert, en oock by alle geaccepteert en geapprobeert', NA. 1.04.01 Inv. Nr. 27, fol 4v (7 December 1598). Other general meetings are noted on 14 December and 25 February, but the addition of 'ter presentie van alle die bewynthebberen, alleenlyck absent synde [namen]' (with all directors present, only [named individuals] being absent) appears to suggest that the meeting was for directors only. (NA. 1.04.01 Inv. Nr. 27, fols. 5 and 6). By August 1599 the term general meeting stands for a meeting of the directors: 'vergaderinge vande generale bewinthebbers' (NA 1.04.01, Inv. Nr. 27, fol. 12v). The power shift from the shareholders to the directors is exquisitely illustrated by a subtle mistake in the draft minutes about directors each paying part of a bill for cannon. Having started the word participant, the writer crossed this beginning out and replaced it with 'bewynthebber' or director: 'Aen 7 december ao 98 is gearresteert dat yder ~~particip~~ bewynthebber zal tot

zynen laste neemen voor reeckenynghe van tgeresikeerde gheschut die somme van seshondertenvyfftyck gl corent', NA. 1.04.01 Inv. Nr. 27, fol 4v (7 December 1598).

[20] NA 1.04.01, Inv. Nr. 28, fol. 5 (23 August 1599). On March 1, 1599, 'vergaderingynge van die colleganten en diverse der bewynthebberen' (NA 1.04.01, Inv. Nr. 27, fol. 6). See also: NA 1.04.01, Inv. Nr 28, fol. 6 (30 August 1599).

[21] NA 1.04.01 Inv. Nr. 28, fol. 5: 'Dat ijegelick particulier Collegie volcomen macht heeft om aff te doen t'geene aen haer werck dependeert ende swaricheyt maeckende, ofte onder haer discorderrende, vermogen den Raedt vant Collegie te hulpe te nemen'. This clause is added to the resolution of 23 August 1599 in a different handwriting, so the exact date remains uncertain.

[22] NA 1.04.01, Inv. Nr. 27 Fol. 22v (11 January 1600) Fol. 33 (25 July 1600); See also: NA 1.04.01 Inv. Nr. 28, fol. 19 (11 January 1600). See also the resolution, struck out in the draft index, stating that all directors regardless of their specific tasks had equal voting power (NA 1.04.01, Inv. Nr. 27, fol. 2 (16 November 1598).

[23] NA 1.04.01, Inv. Nr. 27, fol. 6 (25 February 1599), fol. 17 (9 October 1599); NA 1.04.01 Inv. Nr. 28, fol. 5 (23 August 1599), fol. 8 (9 October 2009). See also Witteveen 2002, 40.

[24] NA. 1.04.01 Inv. Nr. 27, fol. 20v (15 November 1599).

[25] NA 1.04.01, Inv. Nr. 29, fol. 4 (15 November 1601, 2 April 1602).

[26] Pamphlet Knuttel No. 3347, *Tegen-vertooch bij eenighe lief-hebbers vande waarheyt ende haer Vaderlandt ende mede participanten vande Oost-Indische Compagnie aen de Ed. Hoog. Moog. heeren Staten Generael*, 1622.

[27] We follow the text of the 1602 charter as printed in Van der Chys 1857, 118-135. An English translation may be found in Gepken-Jager, Van Solingen and Timmerman 2005, and on http://www.australiaonthemap.org.au/content/view/50/59.

[28] The proposal for a Casa de India structure probably dated from 1600 or 1601. The 1602 merger talks initially appear to have envisaged the executive committee of XVII *bewindhebbers* as a semi-public board for the Asian trade, though without shareholder representation, but this idea no longer appeared in the second draft: De Jonge 1862, 262, 272. However, the final document summarizing the outcome of the talks still referred to the company's board as a 'gemeene collegie van den Oost-Indischen handel', i.e. a general board for the trade with East India, De Jonge 1862, 278, Van Deventer 1862, 301. As late as 1622 Usselinx still pleaded for a public board charged with running the Asian trade and headed by the stadholder: Van Rees 1868, 424-427, 455. Alexander Bick is preparing a PhD thesis at Princeton on the WIC's governance.

[29] We counted charter articles 2, 3, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42 as dealing with aspects of corporate governance.

[30] Van der Chys 1857, 130, article 35. Senior VOC officers therefore had to swear an oath of allegiance to both the company and to the Estates General.

[31] Van der Chys 1857, 118-135, counting articles 7, 9, 10, 14, and 17.

[32] The initial document and the second draft drawn up by the merger committee had specified a threshold of ten per cent: De Jonge 1862, 266, 273.

[33] De Jonge 1862, 97, article 24 of the regulations concerning the expedition crew, referring to the contract between the participants.

[34] This was already the case with the first expedition: Van Dillen 1930, 355-356.

[35] Van der Chys 1857, 118-135, counting articles 2, 3, 5, 6, 12, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42.

[36] Cf. Usselinx' comments comparing the *bewindhebbers* to the boards of orphanages, church wards, and hospitals in Van Rees 1868, 417.

[37] Van der Chys 1857, 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.

[38] Van der Chys 1857, 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.

[39] For examples from the company's early years, see *RSG* 1604-1606, 501 (borrowing warships and ordnance), p. 501-502 (sanctions for late paying shareholders), 805 (new admonition to tardy shareholders), 808 (renewed publication of the monopoly and the penalties for disobeying it), 809 (ban on VOC crew to enlist in foreign service); *RSG* 1607-1609, 306 (official share transfer procedure and renewed sanctions for late paying shareholders), 307 (loans of cannon and ammunition), 729 (instructions to the ambassador in Paris to do everything in his power to frustrate the French plans for an Asian trading company), 896 (supply of ammunition and guns worth 25,000 guilders for the defense of forts). From 1609 the Estates General gave the company a regular annual assistance of 100,000 guilders in cash, on military costs which the company claimed in 1610 to amount to 420,000 guilders: *RSG* 1610-1612, 254; cf. 507 for the tax benefit granted in return for a loan of 250,000 guilders which the company had given to the state during 1605-1606, and 511 for a gift of spices from the directors to the members of the Estates General. Cf. Den Heijer 2005, 55, putting the first subsidy only in 1611, whereas it is clear from the resolutions that this was two years before. For the ban on naked shorting *RSG* 1610-1612, 16-17 and 44; this was promulgated on 27 February, cf. Van Dillen 1930, 68-69.

[40] For instance *RSG* 1602-1603, 88, 299 (consulting the Estates General on a successor to De Moucheron as director), 297-298 (various administrative issues on getting the company started up); *RSG* 1604-1606, 223-224 (forming a committee of directors to advise the Estates General on Spains position in Asia), 506 (discussing the equipment of new warships); *RSG* 1607-1609, 11 (coordinating naval matters between the admiralties and the company), 12-13 (discussing the commander of a next expedition), 893-895 (discussions whether or not to include Asia in the truce with Spain); *RSG* 1610-1612, 694 (latest news from Asia).

[41] "Secrete Instructie den Admiral Van der Hagen gegeven", NA 1.11.01.01 Inv. Nr 255, fol. 71-74; printed in De Jonge 1865, 163. Cf. Van Brakel 1908, 21.

[42] *RSG* 1604-1606, 806; the request was refused, the Estates General instructing the board to fill any vacancies as laid down in the charter.

[43] Van Rees 1868, 29, 31, 33-34. The efforts by De Moucheron and Lintgens to set up trading companies abroad inspired the VOC board to have Le Maire swear an oath that he would not compete with the company; this did not, however, deter him.

[44] Van Rees 1868, 27: from 1605 to 1610 respectively 15, 75, 40, 20, 25, 50 per cent for a total of 225. Van Rees erroneously attributes these dividends to the VOC, which paid its first dividend only in 1610. Article 9 gave shareholders in the last expedition of the *voorcompagnieën* the right to opt out. The Delft shareholder W.J. Dedel had clearly done this and, having received 130 per cent by 1607, he sold his share: Colenbrander 1901, 386-387.

[45] The published resolutions of the Estates General do not show when the board first requested the lifting of this obligation, but the Frisian Estates considered it during 1610 and asked the Estates General in April 1611 to turn it down: *RSG* 1610-1612, 359.

[46] According to Usselinx, the *hoofdparticipanten* were later dropped at the instigation of representatives from the country's main ports, i.e. *bewindhebbers* from the VOC who feared that they would have to introduce a similar structure: Van Rees 1868, 411, 423.

[47] Usselinx considered ten per cent inadvisable and thought apparently that no figure should be mentioned: Van Rees 1868, 452.

[48] Information kindly provided by Alexander Bick from his ongoing research.

[49] For subsequent convoluted developments surrounding the WIC see Den Heijer 2005, 45-50. Usselinx' complaint about WIC draft reflecting the repression of shareholders as practised by the VOC quoted in Van Rees 1868, 409.

[50] NA 1.04.02 Inv. Nr. 7060, ledger of shareholders fols. 90, 102, 114, 121, 182-191, 193-194, 196, 198, 201.