

## PROSPECTUS



### FUNCOM N.V.

(A Dutch public limited liability company incorporated and organized under the laws of the Netherlands, registered with the Commercial Register of the Chamber of Commerce (*Handelsregister van de Kamer van Koophandel*) under registration number 28073705)

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**Listing of 95,970,000 New VPS Shares and 42,777,778 Conversion VPS Shares, issued in a Private Placement and through a Debt Conversion**

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**Offering of up to 15,000,000 VPS Offer Shares in a Subsequent Offering to Eligible Shareholders**

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The Company is offering up to 15,000,000 VPS Offer Shares in the Company with a nominal value of EUR 0.04 each at a subscription price of NOK 0.55 per VPS Offer Share. Holders of the Company's Shares (save for the VPS Registrar in its capacity as VPS Registrar) as of 30 June 2016, as registered in the VPS and the Company's shareholders' register in the Netherlands as of 4 July 2016 who are not resident in a jurisdiction where such offering would be unlawful, or would (in jurisdictions other than Norway) require any prospectus filing, registration or similar action (the Eligible Shareholders) are being granted tradable Subscription Rights that, subject to applicable law, provide preferential rights to subscribe for and be allocated VPS Offer Shares in the Subsequent Offering. Eligible Shareholders will be granted 0.0649 Subscription Rights for each VPS Share held. Each Subscription Right will give the right to subscribe for one (1) VPS Offer Share. The Subscription Period commences on 5 July 2016 and expires on 8 August 2016 at 16.30 CET.

**Subscription Rights not sold prior to 16.30 CET on 4 August 2016 or used to subscribe for VPS Offer Shares prior to 16.30 CET on 8 August 2016 will lapse without compensation to the holder and consequently be of no value.**

The Company is not taking any action to permit a public offering of the Subscription Rights or the VPS Offer Shares in any jurisdiction outside of the Netherlands or Norway. The VPS Offer Shares are being offered only in those jurisdictions in which, and only to those persons whom, offers of the VPS Offer Shares (pursuant to the exercise of Subscription Rights or otherwise) may lawfully be made. For more information regarding restrictions in relation to the Subsequent Offering pursuant to this Prospectus, please refer to Section 14 "Selling and Transfer restrictions".

In order to facilitate registration of the Company Shares issued in connection with the Private Placement and the Debt Conversion with the VPS, and hence trading of the New VPS Shares and the Conversion VPS Shares on Oslo Børs, such Company Shares were registered in the name of the VPS Registrar in the Company's shareholders' register in the Netherlands. The same arrangement will be made in respect of the VPS Offer Shares. On this basis, the VPS Registrar registered in respect of the Company Shares issued in connection with the Private Placement and the Debt Conversion and will register in respect of the new Company Shares to be issued in connection with the Subsequent Offering, depositary interest, in book-entry form, in those Company Shares with the VPS. Therefore, it is not the underlying Company Shares as such, but depositary book-entry form interests in those shares, that were or will be registered with the VPS and which are or will be tradable on Oslo Børs. The majority of the Company's existing Company Shares have been registered in the VPS and are tradable on Oslo Børs under the same arrangement as described above. References in this Prospectus to "VPS Shares" in the Company being listed or traded on Oslo Børs shall, where the context so requires or permits, mean the depositary book-entry form interests in those shares and references in this Prospectus to "Company Shares" means the underlying shares registered in the Company's shareholders' register in the Netherlands.

Manager:



The date of this Prospectus is 10 June 2016

## IMPORTANT INFORMATION

For the definition of certain capitalized terms used throughout this Prospectus, please refer to Section 16 "Definitions and glossary of terms" which also applies to the front page.

This prospectus (the "**Prospectus**") has been prepared in order to provide information about Funcom N.V. ("**Funcom**", the "**Offeror**" or the "**Company**") and its business and consolidated subsidiaries (the "**Group**") in connection with the listing of 95,970,000 Depositary Receipts (the "**New VPS Shares**") over new underlying ordinary shares in the Company (the "**Company Shares**") issued in a private placement announced on 26 May 2016 (the "**Private Placement**"), the listing of 42,777,778 Depositary Receipts (the "**Conversion VPS Shares**") over new Company Shares issued pursuant to a conversion of USD 7.7 million of outstanding debt (the "**Debt Conversion**") (the listing of the New VPS Shares and the Conversion VPS Shares is hereinafter referred to as the "**Listing**") and the offering of 15,000,000 Depositary Receipts (the "**VPS Offer Shares**") over new Company Shares in a subsequent offering directed towards Eligible Shareholders (the "**Subsequent Offering**"). The Company reserves the right to issue less Company Shares and VPS Offer Shares than offered if the number of subscriptions in the Subsequent Offering is lower than the amount of VPS Offer Shares offered. This Prospectus has been prepared solely in the English language. The Prospectus has been reviewed and approved by and filed with the Netherlands Authority for the Financial Market (*Stichting Autoriteit Financiële Markten* ("**AFM**")) pursuant to 5.9 of the Dutch Act on financial supervision (*Wet op het financieel toezicht*) (the "**Dutch Financial Supervision Act**" or "**DFSA**"). The AFM has neither undertaken any form of control nor approval of matters pursuant to company law described in or otherwise covered by this Prospectus.

As the Company qualifies as a "Small or Medium Size Enterprise", or an SME, the level of disclosure in this Prospectus is proportionate to this type of issuer, cf. EC Commission Regulation EC/486/2012.

This Prospectus has been passported into Norway in accordance with section 5:10 DFSA and section 7-9 of the Norwegian Securities Trading Act in order to conduct the Subsequent Offering in Norway.

Any new material information and any material inaccuracy that might have an effect on the assessment of the VPS Shares arising after the date of publication of this Prospectus and prior to the completion of the Listing and the Subsequent Offering will be published and announced as a supplement to this Prospectus in accordance with section 5.23 DFSA. Without limiting the manner in which the Company may choose to make public announcements, and subject to the Company's obligations under applicable law, announcements in relation to the matters described in this Prospectus will be considered to have been made once they have been received by Oslo Børs and distributed through its information system, published on the Company's website and filed with the AFM.

All inquiries relating to this Prospectus must be directed to the Company. No other person is authorized to give information or to make any representation in connection with the Listing and the Subsequent Offering. If any such information is given or made, it must not be relied upon as having been authorized by the Company or by any of the employees, affiliates or advisers or any of the foregoing.

ABG Sundal Collier ASA (the "**Manager**") does not make any representation or warranty, express or implied, as to the accuracy or completeness of such information, and nothing contained in this Prospectus is, or shall be relied upon as, a promise or representation by the Manager. The Manager disclaims all and any liability, whether arising in tort or contract or otherwise, which it might otherwise have in respect of this Prospectus or any such statement.

The distribution of this Prospectus may be restricted by law in certain jurisdictions. The Company requires persons in possession of this Prospectus to inform themselves about and to observe any such restrictions. This Prospectus does not constitute an offer of, or a solicitation of an offer to purchase, any securities in any jurisdiction or in any circumstances in which such offer or solicitation would be unlawful.

Neither the New VPS Shares, the Conversion VPS Shares, the VPS Offer Shares nor the underlying Company Shares have been and will not be registered under the U.S. Securities Act of 1933 as amended (the "**US Securities Act**"), or with any securities authority of any state of the United States. The New VPS Shares, the Conversion VPS Shares, the VPS Offer Shares and the underlying Company Shares may not be offered, sold, resold, transferred or delivered, directly or indirectly, in or into the United States, Canada, Japan or Australia.

The content of this Prospectus are not to be construed as legal, business, financial or tax advice. Each prospective investor should consult its own legal advisor, business advisor, financial advisor or tax advisor as to legal, business, financial and tax advice.

An investment in the Company involves inherent risk, and several factors could cause the actual results, financial performance and results of the Company to be materially different from any future results, performance or achievements that may be expressed or implied by statements and information in this Prospectus, including, among others, risks or uncertainties associated with the Company's business, segments, development, growth management, financing, market acceptance and relations with customers, and, more generally, general economic and business conditions, changes in domestic and foreign laws and regulations, taxes, changes in competition and pricing environments, fluctuations in market development, limited liquidity in the Shares, as well as other company specific risk factors. Please refer to Section 2 "Risk Factors" for a description of material risk factors related to the Company, the Shares, the Private Placement and the Subsequent Offering. These and other risks could lead to actual results or achievements varying materially from those described in this Prospectus. Potential investors should not base their decision to invest on the Prospectus solely but should independently study and consider relevant information. The value of the Shares may be reduced as a result of these or other risk factors and investors may lose part or all of their investments. An investment in the Company should only be made by investors able to sustain a total loss of their investment.

This Prospectus contains certain forward-looking statements relating to the business, financial performance and results of the Company, the industry in which it operates and/or the market in general. Forward Looking Statements include all statements that are not historical facts, and may be identified by words such as (what follows are examples without excluding words having the same meaning) "anticipate", "believe", "estimate", "expect", "seek to", "may", "plan", "project", "should", "will" or "may" or the negatives of these terms or similar expressions. The forward-looking statements contained in this Prospectus, including assumptions, opinions and views of the Company or cited from third party sources are solely opinions and forecasts which are subject to risks, uncertainties and other factors that may cause actual events to differ materially from any anticipated development. None of the Company or their advisors or representatives or any of their parent or subsidiary undertakings or any such person's officers or employees provides any assurance that the assumptions underlying such forward looking statements are free from errors nor does any of the accept any responsibility for the future accuracy of the opinions expressed in this Prospectus or the actual occurrence of the forecasted developments

Any dispute regarding the Prospectus shall be governed by Norwegian law and Norwegian courts alone shall have jurisdiction in matters relevant hereto, except for the issuance of the new Company Shares in relation to the Private Placement, the Debt Conversion and the Subsequent Offering, which shall be governed by Dutch law and be subject to the jurisdiction of the Dutch courts.

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Appendix 1 – Subscription Form

Appendix 2 – Registrar Agreement

Appendix 3 – Articles of Association (in Dutch and unofficial English translation)

## 1 SUMMARY

*Summaries are made up of disclosure requirements known as "Elements". These Elements are numbered in Sections A – E (A.1 – E.7).*

*This Summary contains all the Elements required to be included in a Summary for this type of securities and issuer. Because some Elements are not required to be addressed, there may be gaps in the numbering sequence of the Elements.*

*Even though an Element may be required to be inserted in the Summary because of the type of securities and issuer, it is possible that no relevant information can be given regarding the Element. In this case a short description of the Element is included in the Summary with the mention of "not applicable".*

### 1.1 Section A – Introduction and warnings

Element	Disclosure requirement	Disclosure
A.1	Warnings	<p>This summary should be read as an introduction to the Prospectus. Any decision to invest in Funcom should be based on a consideration of the Prospectus as a whole by the investor.</p> <p>Where a claim relating to the information contained in the Prospectus is brought before a court, the plaintiff investor might under the applicable national legislation of a Member State, have to bear the costs of translating the Prospectus before the legal proceedings are initiated.</p> <p>Civil liability attaches only to those persons who have tabled the Summary including any translation thereof, and applied for its notification, but only if the Summary is misleading, inaccurate or inconsistent when read together with the other parts of the Prospectus or it does not provide, when read together with the other parts of the Prospectus, key information in order to aid investors when considering whether to invest in such securities.</p> <p>For the definitions of terms used throughout this Prospectus, see Section 16 "Definitions and glossary of terms".</p>
A.2	Consent to use prospectus by financial intermediaries	Not applicable.

## 1.2 Section B – Issuer

Element	Disclosure requirement	Disclosure
B.1	Legal and Commercial Name	The Company's legal name is Funcom N.V. and it is also sometimes referred to commercially as Funcom.
B.2	Domicile/ Legal Form/ Legislation/ Country of Incorporation	<p>The Company is a Dutch public limited liability company (<i>naamloze vennootschap</i>) registered with the Commercial Register of the Chamber of Commerce (<i>Handelsregister van de Kamer van Koophandel</i>) under registration number 28073705. The Company has its corporate seat (<i>statutaire zetel</i>) in Katwijk, the Netherlands.</p> <p>The Company's business address is Keplerstraat 34, Badhoevedorp, 1171 CD, the Netherlands. The Company's telephone number is +31 20 30 55 714. The Company's website is <a href="http://www.funcom.com">www.funcom.com</a>.</p>
B.3	Key factors relating to operations/ Activities/ Products sold/ Services performed/ Principal markets	<p>Funcom's current key activity is to develop and publish video games, and it is specialized in massively multiplayer online games.</p> <p>The most important factors in the business of Funcom is the <i>Dreamworld Technology</i>, under which Funcom's games are developed and the intellectual properties (either developed by Funcom or licensed) utilized in Funcom's games.</p> <p>The core business of Funcom is to develop and publish video games. Funcom has developed and/or published a number of video games. The Group holds (either owned or licensed) intellectual property rights to and have developed and published game titles under the following intellectual properties:</p> <ul style="list-style-type: none"> <li>- <i>The Longest Journey</i><sup>1</sup>;</li> <li>- <i>Anarchy Online</i>;</li> <li>- <i>Conan</i>;</li> <li>- <i>The Secret World</i>; and</li> <li>- LEGO® <i>Minifigures Online</i>.</li> </ul> <p>The Company does not perform any services as part of its business.</p> <p>The Company's games are available online, and thus the Company markets its products to the global video games market.</p>
B.4a	Significant recent trends affecting the issuer and the industries in	The games market is expected to deliver consistent revenue growth the next three years, adapting to new consumer trends and digital devices. According to a global games market report by NewZoo, the games market is expected to grow from USD 83.6bn in 2014 to USD 113.3bn in 2018 <sup>2</sup> , which implies a 7% annual increase in revenue.

<sup>1</sup> The game *Dreamfall Chapters* pertaining to *The Longest Journey* intellectual property is being developed and published by Red Thread Games under license from Funcom.

<sup>2</sup> 2015 Global games market report

	which it operates	<p>The games market consists of four different segments: (i) the computer screen segment; (ii) the personal screen segment; (iii) the floating screen segment; and (iv) the entertainment screen segment.</p> <p>The computer screen segment is expected to maintain its position as the largest segment within the gaming industry, growing by an annual rate of 6.9%, from USD 31.5bn in 2014, to USD 41.2bn in 2018.</p> <p>The personal screen segment is expected to be the fastest growing segment of the four, surpassing entertainment screens as the second largest segment by 2018. In terms of market size, the personal screen and entertainment screen segments are expected to amount to USD 30.2bn and USD 26.8bn, respectively.</p> <p>Floating screens accounted for USD 10.6bn in 2014, and are expected to grow at an annual rate of 9.3% until 2018, to USD 15.1bn. Handheld games are expected to continue to decrease in popularity, decreasing at an annual rate of 22.5 % until 2018. Sales from tablet games are expected to increase, growing at an annual rate of 17.1% until 2018.</p> <p>Different factors contribute to the growth in each individual segment, but some factors apply for all. Some key drivers of growth in the global games market as a whole include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• rapidly increasing broadband penetration in developing markets;</li> <li>• technological innovations;</li> <li>• ageing/expanding demographics – continuing increase in the average age of computer gamers;</li> <li>• more mass market games;</li> <li>• time spent online is still increasing;</li> <li>• continued improvement in hardware performance;</li> <li>• connectivity of the console market; and</li> <li>• increased consumer willingness to use online payments.</li> </ul>
B.4b	Known trends affecting the issuer and the industries in which it operates	<p>In addition to the trends described in Element B.4a above, the new Funcom Strategy is expected to affect Funcom. This new strategy consists of:</p> <ul style="list-style-type: none"> <li>(i) developing small and innovative games, focused on trying new concepts, experimenting with new technology and platforms and utilizing our intellectual properties, while keeping the investment level low;</li> </ul>

		<p>(ii) developing larger games, focused on genres or game types where we can create products of higher production value than the competition, using our own or 3<sup>rd</sup> party intellectual property and drawing from the innovation and experimentation of the smaller products to lower the overall risk;</p> <p>(iii) upgrading the <i>Dreamworld Technology</i> to integrate with third parties; and</p> <p>(iv) leveraging and growing the internal Intellectual Properties such as <i>Anarchy Online</i>, <i>The Longest Journey</i> and <i>The Secret World</i> for both internal and third-party licensing.</p>
B.5	Group	<p>The Company is a holding company, and the ultimate parent company to the following 5 wholly owned subsidiaries:</p> <ol style="list-style-type: none"> <li>1) Funcom Sales GmbH (in liquidation)</li> <li>2) Funcom Games Canada Inc.</li> <li>3) Funcom Inc.</li> <li>4) Funcom Oslo AS</li> <li>5) Funcom Games Beijing Ltd.</li> </ol>
B.6	Persons having an interest in the Issuer's capital or voting rights	<p>All Shares in the Company have equal voting rights, with each Share carrying the right to one vote at the general meeting of the shareholders.</p> <p>Following distribution of the New VPS Shares and the Conversion VPS, but prior to issuance of any VPS Offer Shares, the following registered shareholders have holdings in excess of the statutory thresholds for disclosure requirements:</p> <ul style="list-style-type: none"> <li>- KGJ Investments S.A. SICAV-SIF, which hold 57,777,778 VPS Shares corresponding to 25.02% of the total issued and outstanding Shares;</li> <li>- KGJ Capital AS, which holds 9,500,525 VPS Shares corresponding to 4.11% of the total issued and outstanding Shares;</li> <li>- Funds managed by Storebrand Asset Management AS, which hold 18,181,818 VPS Shares corresponding to 7.87% of the total issued and outstanding Shares; and</li> <li>- Funds managed by Swedbank Asset Management AS, which hold 11,454,545 VPS Shares corresponding to 4.96% of the total issued and outstanding Shares.</li> </ul> <p>KGJI and KGJ Capital AS are companies controlled by Mr. Hans Peter Jebsen. Mr. Hans Peter Jebsen and companies controlled by him holds a total of 67,460,853 VPS Shares corresponding to 29.21% of the total issued and outstanding Shares. In case Mr. Hans Peter Jebsen and companies controlled by him converts both the Bonds and the remainder of the Convertible Loan (assuming no other Share</p>



		issues), the total capital interest <sup>3</sup> of Mr. Hans Peter Jebsen in the Company would be 40.64% after the completion of the Private Placement and the Debt Conversion.																																																							
B.7	Selected historical key financial information	<p>The selected financial information presented below should be read in conjunction with the financial statements incorporated by reference to the Prospectus.</p> <p><b>Selected consolidated statement of comprehensive income</b></p> <table><tr><th>(USD 1,000)</th><th>Q1 2016 (unaudited)</th><th>Q1 2015 (unaudited)</th><th>2015 (audited)</th><th>2014 (audited)</th></tr><tr><td colspan="5"><b>Continuing operations</b></td></tr><tr><td>Revenue</td><td>2,048</td><td>2,772</td><td>10,238</td><td>12,593</td></tr><tr><td>Operating expenses</td><td>-1,785</td><td>-2,285</td><td>-9,845</td><td>-13,265</td></tr><tr><td>Depreciation, amortization and impairment charges</td><td>-923</td><td>-756</td><td>-6,571</td><td>-7,445</td></tr><tr><td><b>Operating result</b></td><td><b>-660</b></td><td><b>-269</b></td><td><b>-6,179</b></td><td><b>-8,117</b></td></tr><tr><td>Share of result from equity-accounted entities</td><td>-</td><td>34</td><td>-173</td><td>-72</td></tr><tr><td>Net financial result</td><td>-101</td><td>71</td><td>-478</td><td>-582</td></tr><tr><td>Result before income tax</td><td>-761</td><td>-164</td><td>-6,829</td><td>-8,770</td></tr><tr><td>Income tax (expense)/income</td><td>-</td><td>19</td><td>40</td><td>9</td></tr><tr><td><b>Result for the period</b></td><td><b>-761</b></td><td><b>-144</b></td><td><b>-6,789</b></td><td><b>-8,761</b></td></tr></table>	(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)	<b>Continuing operations</b>					Revenue	2,048	2,772	10,238	12,593	Operating expenses	-1,785	-2,285	-9,845	-13,265	Depreciation, amortization and impairment charges	-923	-756	-6,571	-7,445	<b>Operating result</b>	<b>-660</b>	<b>-269</b>	<b>-6,179</b>	<b>-8,117</b>	Share of result from equity-accounted entities	-	34	-173	-72	Net financial result	-101	71	-478	-582	Result before income tax	-761	-164	-6,829	-8,770	Income tax (expense)/income	-	19	40	9	<b>Result for the period</b>	<b>-761</b>	<b>-144</b>	<b>-6,789</b>	<b>-8,761</b>
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<sup>3</sup> Total capital interest is calculated as number of Shares owned plus potential Shares issued in the future from the Convertible Loan and the Bonds, divided by the current issued Share capital of the Company.

Selected consolidated statement of financial position				
(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)
<b>Assets</b>				
<b>Non-current assets</b>				
Intangible assets	4,855	7,766	4,394	7,380
Equipment	83	196	100	253
Investment in equity-accounted entities	-	211	-	195
Long term receivables	65	19	65	20
<b>Total non-current assets</b>	<b>5,003</b>	<b>8,192</b>	<b>4,559</b>	<b>7,848</b>
<b>Current assets</b>				
Trade receivables	680	1,151	1,443	1,225
Prepayments and other receivables	217	1,101	506	1,160
Income tax receivable	-	-	-	-
Cash and cash equivalents	1,015	2,452	616	3,705
<b>Total current assets</b>	<b>1,912</b>	<b>4,704</b>	<b>2,562</b>	<b>6,090</b>
<b>Total assets</b>	<b>6,915</b>	<b>12,896</b>	<b>7,124</b>	<b>13,938</b>

		<div>Selected consolidated statement of cash flow</div> <table><tr><th>(USD 1,000)</th><th>Q1 2016 (unaudited)</th><th>Q1 2015 (unaudited)</th><th>2015 (audited)</th><th>2014 (audited)</th></tr><tr><td colspan="5">Cash flows from operating activities</td></tr><tr><td>Profit (loss) before income tax</td><td>-761</td><td>-164</td><td>-6,829</td><td>-8,770</td></tr><tr><td>Adjustments for:</td><td></td><td></td><td></td><td></td></tr><tr><td>- Depreciation, amortization and impairment losses</td><td>923</td><td>756</td><td>6,571</td><td>7,445</td></tr><tr><td>- Share-based payments</td><td>88</td><td>280</td><td>814</td><td>1,228</td></tr><tr><td>- Share of result from equity-accounted entities</td><td>-</td><td>-34</td><td>173</td><td>72</td></tr><tr><td>- Effect of exchange rate fluctuations</td><td>-186</td><td>-480</td><td>442</td><td>-97</td></tr><tr><td>- Changes in working capital</td><td>1,196</td><td>-312</td><td>466</td><td>403</td></tr><tr><td>Net cash from operating activities</td><td>1,261</td><td>46</td><td>1,637</td><td>281</td></tr></table>	(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)	Cash flows from operating activities					Profit (loss) before income tax	-761	-164	-6,829	-8,770	Adjustments for:					- Depreciation, amortization and impairment losses	923	756	6,571	7,445	- Share-based payments	88	280	814	1,228	- Share of result from equity-accounted entities	-	-34	173	72	- Effect of exchange rate fluctuations	-186	-480	442	-97	- Changes in working capital	1,196	-312	466	403	Net cash from operating activities	1,261	46	1,637	281
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B.8	Selected key pro forma financial information	Not applicable.																																																		
B.9	Profit forecast of estimate	Not applicable.																																																		
B.10	Qualifications in audit report	<div>There were qualifications in the auditor's report for the financial years 2014 and 2015:</div> <div>In the 2014 auditor's report, the following qualification was given:</div> <div><b>Material uncertainty related to going concern</b> We draw attention to the going concern paragraph in note 2.1 to the consolidated financial statements where it is described that the</div>																																																		

		<p><i>company has negative equity at the end of 2013 as well as at the end of 2014 and is depending on the ability to generate sufficient cash inflows from both sales and new financing. These conditions indicate the existence of a material uncertainty which may cast significant doubt about the company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.</i></p> <p>In order to remedy to the qualification for 2014, the Company has tried to improve its equity position by increasing its revenues from current and new games, by decreasing its operating costs, and by securing new financing. However, this approach revealed not being successful as the equity deteriorated from USD -2,756,000 as of 31 December 2014 to USD -9,881,000 as of 31 December 2015, mainly due to a loss for the period which amounted to USD 6,591,000.</p> <p>In the 2015 auditor's report, the following qualification was given:</p> <p><b><i>Material uncertainty related to going concern</i></b>  <i>We draw attention to the going concern paragraph in the notes on page 36<sup>4</sup> of the financial statements which indicates that the performance of the Company is largely affected by its ability to generate sufficient cash inflows from both sales and new financing. The Company is depending on the positive outcome of these factors. These conditions indicate that a material uncertainty exists which may cast significant doubt on the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.</i></p>
B.11	Working capital	<p>The Company is of the opinion that the current working capital is sufficient for the Group's present requirements for at least the next twelve months.</p> <p>The raising of additional capital in the Subsequent Offering will result in the Group further strengthening its working capital. Successful completion of the Subsequent Offering is not a condition for the Company having sufficient current working capital for at least the next twelve months. For the sake of clarity, the Company would have sufficient working capital even if the Subsequent Offering is not completed.</p>
B.31	Information about the issuer of the underlying shares	See B.1, B.2, B.3, B.4, B.5, B.6, B.7, B.9, B.10 and D.4
B.32	Information about the issuer of the depositary receipts	Upon receipt of the same number of Company Shares being issued by the Company to DnB Bank ASA, the VPS Shares are issued by DNB Bank ASA acting in its capacity as the Company's VPS Registrar. DNB Bank ASA has its registered address at Dronning Eufemias Gate 30, 0191 Oslo, Norway. DNB Bank ASA was incorporated in Norway on 10

<sup>4</sup> Reference should in fact be made to page 37 of the annual report for 2015.

		September 2002 with registered number 984 851 006 as a public limited liability company under the Norwegian Public Limited Liability Companies Act and is domiciled in Norway.
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### 1.3 Section C – Securities

Element	Disclosure requirement	Disclosure
C.1	Type of class of securities being offered	<p>On 26 May 2016, the Company publicly announced that it had raised a subscription of approximately NOK 52.8 million in gross proceeds through a private placement of 95,970,000 New VPS Shares, each with a par value of EUR 0.04, at a subscription price of NOK 0.55 per New VPS Share. Simultaneously, the Company announced that it had entered into an agreement with KGJl to restructure its debt under the Convertible Loan and the Bonds, <i>inter alia</i> through conversion of USD 7.7 million of the outstanding principal under the Convertible Loan (the Debt Conversion) which implied issuance of 42,777,778 Conversion VPS Shares at a conversion price of USD 0.18 per Conversion VPS Share.</p> <p>Further, on 26 May 2016, the Company publicly announced that it intended to initiate the Subsequent Offering.</p> <p>On 8 June 2016 it was further publicly announced that Eligible Shareholders are offered to subscribe for a total of 15,000,000 VPS Offer Shares at a subscription price of NOK 0.55 per VPS Offer Share, which is equal to the Private Placement Subscription Price. Oversubscription and subscription without Subscription Rights will be permitted.</p> <p>The Company has one class of Shares and all Shares are equal in all respects.</p> <p>The New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares are beneficial interests in the ordinary shares of Funcom (<i>i.e.</i> Company Shares), in the form of Depositary Receipts registered with the VPS. The underlying Company Shares issued to the VPS Registrar in connection with the Private Placement, the Debt Conversion and the Subsequent Offering will be registered in the name of the VPS Registrar in the Company's shareholders' register in the Netherlands. This arrangement has been entered into in order to facilitate registration of the Company Shares (including the new Company Shares) with the VPS, and hence trading of the Shares (including the Company Shares issued in the Private Placement and through the Debt Conversion) on Oslo Børs. The same arrangement will be made in respect of the Company Shares to be issued in connection with the Subsequent Offering. The Company's VPS Registrar is DNB Bank ASA, Verdipapirservice, Dronning Eufemias gate 30, P.O. Box 1600 Sentrum, 0021 Oslo, Norway.</p>

		The New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares will have the same VPS Registrar and the same ISIN Number as the Company's other VPS Shares (international securities identification code NL 0000062461).
C.2	Currency	The New VPS Shares and the VPS Offer Shares have been subscribed or will be subscribed in NOK, while the Conversion VPS Shares was subscribed through conversion of debt denominated in USD. The par value of the Shares is denominated in EUR.
C.3	Number of shares/Par value	At the date of this Prospectus, the Company's share capital is EUR 9,238,236.48 divided into 230,955,912 Company Shares, each with a nominal value of EUR 0.04.
C.4	Rights attached	<p>All of the Shares issued and outstanding will rank equally and will be eligible for any profit or other payment that may be declared on the Shares.</p> <p>Each Share confers the right on the holder to cast one vote at the Company's General Meeting. There are no voting restrictions, other than in accordance with Dutch law.</p> <p>Under Dutch law and the Company's Articles of Association, each holder of a Company Share has a right of pre-emption in proportion to the aggregate nominal value of its shareholding upon the issuance of new Shares (or the granting of rights to subscribe for Shares).</p> <p>Exceptions to this right of pre-emption include the issuance of new Company Shares (or the granting of rights to subscribe for Company Shares): (i) to employees of the Company or another member of the Group pursuant to a stock compensation plan of the Company, (ii) against payment in kind (contribution other than in cash) and (iii) to persons exercising a previously granted right to subscribe for Company Shares.</p> <p>The General Meeting may resolve to limit or exclude the rights of pre-emption upon an issuance of Company Shares, which resolution requires approval of at least two-thirds of the votes cast. The General Meeting may also designate the Supervisory Board to resolve to limit or exclude the rights of pre-emption in relation to the issuance of Shares. Pursuant to the Articles of Association, the designation by the General Meeting may be granted to the Supervisory Board for a specified period of no more than the period up to and including the first ordinary General Meeting which is held after three full calendar years have elapsed since that designation was granted and only if the Supervisory Board has also been designated or is simultaneously designated the authority to resolve to issue Company Shares.</p> <p>The rights described above apply for the Company Shares pursuant to Dutch law and the Company's Articles of Association. The VPS Shares have the same rights pursuant to the Registrar Agreement, as further</p>

		described in Summary Elements B.32, C.14 and Section 2.7.6 "Norwegian depositary receipts".
C.5	Restrictions	The Shares are freely transferable according to Dutch law and the Company's Articles of Association.
C.6	Listing and admission to trading	<p>The VPS Shares are listed on Oslo Børs, under ticker symbol "FUNCOM".</p> <p>The Listing on Oslo Børs of the New VPS Shares is subject to the approval of this Prospectus by the AFM under the DFSA. Such approval was granted on 10 June 2016. The first day of trading of the New VPS Shares and the Conversion VPS Shares on Oslo Børs, will be on or about 14 June 2016.</p> <p>The VPS Offer Shares will be listed on Oslo Børs as soon as the VPS Offer Shares have been registered in the VPS. The Company reserves the right to issue less Company Shares and VPS Offer Shares in the Subsequent Offering if the number of subscriptions is lower than the amount of VPS Offer Shares offered. The issuance of VPS Offer Shares is expected to take place on or about 19 August 2016.</p> <p>Please note that, pursuant to the Registrar Agreement, the VPS Registrar will be registered as the holder of every new Company Share issued in the Private Placement and the Debt Conversion and every new Company Share to be issued in the Subsequent Offering in the Company's shareholders' register in the Netherlands. The VPS Registrar shall register the beneficial interests in such Company Shares in book-entry form with the VPS. Therefore, it is not the shares in registered form issued in accordance with the Dutch Civil Code, but the beneficial interests in such shares in book-entry form (<i>i.e.</i> the VPS Shares) under the category of a "share" that are registered with the VPS, listed and traded on Oslo Børs.</p> <p>Neither the Company Shares nor the VPS Shares are listed on any other regulated market and Funcom does not intend to seek such listing.</p>
C.7	Dividend policy	The principal goal of the Company's shareholder policy is to protect shareholder rights and interests by maximizing the return earned by its shareholders over time within acceptable risk parameters through effective management of the Company's assets and continued growth of the Company's operations and profitability. However, the Supervisory Board considers that any surplus cash should be retained with the Company and invested in the development of Funcom's games. Future distribution of dividends are not foreseen and will only be possible if the equity and liquidity position allow such distributions and the Bondholders and KGJI (in its capacity as creditor under the Convertible Loan) has consented to such distribution (as the Bond Agreement and the Convertible Loan agreement contains restrictions on distribution of dividends).

		The Company has not paid any dividends for the period covering the historical financial information.
C.13	Information about the underlying shares	See C.1, C.2, C.3, C.4, C.5, C.6 and C.7
C.14	Information about the depositary receipts	<p>As stated above, the VPS Shares are registered with the VPS and traded on Oslo Børs as beneficial interests in the Company Shares, in the form of Depositary Receipts registered with the VPS. Further information about the VPS Shares is given below.</p> <p>Following completion of the Private Placement and the Subsequent Offering, the VPS Registrar will register the beneficial interests in the Company Shares in the VPS in the form of Depositary Receipts. The VPS Registrar will maintain the register on Funcom's behalf pursuant to the terms of the registrar agreement entered into with the VPS Registrar (the "<b>Registrar Agreement</b>").</p> <p>The VPS Registrar will be regarded as the legal owner of the new Company Shares, and is regarded as the legal owner of the majority of the existing Company Shares<sup>5</sup>, in the Dutch shareholders' register. In accordance with market practice in Norway and system requirements of the VPS, the investors will be registered in the VPS as beneficial owners of the Shares and the instruments traded will be referred to as shares in Funcom.</p> <p>The Depositary Receipts (<i>i.e.</i> the VPS Shares) entail the same right to dividends as the Company Shares. Holders of the VPS Shares are entitled to a share of the surplus (if any) in proportion to the number of VPS Shares owned by the holder in the event of a liquidation of Funcom.</p> <p>The beneficial owners may be entitled to attend and vote at General Meetings on the basis of a proxy from the VPS Registrar.</p> <p>The VPS Shares will rank <i>pari passu</i> in all respects with each other in relation to the Company Shares, including voting rights, entitlement to dividends, liquidation proceeds in case of our liquidation, subscription or pre-emptive rights in the event of a share issue and pre-emptive rights in the event of the issuance of equity-linked securities. Neither Funcom, nor the VPS Registrar, apply any restrictions or limitations on the transferability of the VPS Shares</p> <p>There are no bank guarantees or other kind of guarantees attached to the VPS Shares which are intended to underwrite the VPS Registrar's obligations.</p>

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<sup>5</sup> A number of 8,075 Company Shares have not been registered with the VPS, as the holders of those Company Shares never have taken the appropriate actions to register their Company Shares with the VPS.



## 1.4 Section D – Risks

Element	Disclosure requirement	Disclosure
D.1	Key information on the key risks that are specific to the issuer or its industry	<p>Prospective investors should consider, among other factors, the following risks relating to the market in which Funcom operates:</p> <ul style="list-style-type: none"> <li>• digital piracy, where consumers obtain an illegal copy of the game instead of purchasing it from an accredited store;</li> <li>• theft or loss of source code;</li> <li>• any game is heavily dependent on the underlying hardware configuration of the device running the game;</li> <li>• hacking activities.</li> </ul> <p>Prospective investors should consider, among other factors, the following risks related to Funcom and its business:</p> <ul style="list-style-type: none"> <li>• the Company is dependent on the performance of individual games, and in particular its Live Games;</li> <li>• the Company is dependent on its <i>Dreamworld Technology</i> to develop new games and new content for its existing games;</li> <li>• rating risks and reviews;</li> <li>• unsuccessful projects under development;</li> <li>• difficulties in enforcing the Company's intellectual property and proprietary rights;</li> <li>• the Company has a history of operating losses;</li> <li>• the Company may require additional capital in the future in order to fulfill its business plan; and</li> <li>• the Company is a Dutch company listed on Oslo Børs which operates in a global industry and the Company is thus subject to laws and regulation in several jurisdictions.</li> </ul>
D.3	Key information on the key risks that are specific to the securities	<p>Prospective investors should consider, among other factors, the following risks related to the securities described herein:</p> <ul style="list-style-type: none"> <li>• the market value of the Shares may fluctuate;</li> <li>• there may occur a lack of liquidity in the Shares;</li> <li>• future share issues may have a material adverse effect on the market price of the Shares;</li> <li>• shareholders will be diluted if they are unable or unwilling to participate in the Subsequent Offering or future share issues;</li> <li>• the VPS Shares listed on Oslo Børs are not the underlying Company Shares, but Depositary Receipts over such. This implies the risk that the shareholders may not be able to exercise their shareholder rights if the VPS Registrar does not fulfill its obligations under the Registrar Agreement;</li> <li>• the Subscription Rights granted to each Eligible Shareholder will have no economic value and lapse without compensation to the holder if the Eligible Shareholder does not use the</li> </ul>

		<p>Subscription Rights to subscribe for VPS Offer Shares or sell the Subscription Rights; and</p> <ul style="list-style-type: none"> <li>• even if an Eligible Shareholder elects to sell its unexercised Subscription Rights, or such Subscription Rights are sold on its behalf, the consideration it receives on the trading market for the Subscription Rights may not reflect the immediate dilution in its shareholding as a result of the completion of the Private Placement, the Debt Conversion and the Subsequent Offering.</li> </ul>
D.4	Information about the underlying shares	See D.1
D.5	Information about the depositary receipts	See D.3

## 1.5 Section E – Offer

Element	Disclosure requirement	Disclosure
E.1	Net proceeds/ Estimated Expenses	<p><b>The Private Placement</b></p> <p>The Private Placement Subscription Price per New VPS Share was NOK 0.55, amounting to an aggregate subscription price and gross proceeds of NOK 52,783,500.</p> <p>The Company will bear the fees and expenses related to the Private Placement, which are estimated to amount to NOK 3,770,000.</p> <p>Total net proceeds from the Private Placement will amount to about NOK 49,030,000.</p> <p><b>The Debt Conversion</b></p> <p>The conversion price in the Debt Conversion per Conversion VPS Share was USD 0.18, amounting to a reduction of the Company's debt obligations of USD 7.7 million.</p> <p>The Company will bear the fees and expenses related to the Debt Conversion, which are estimated to amount to NOK 50,000.</p> <p><b>The Subsequent Offering</b></p> <p>The Subsequent Offering Subscription Price per VPS Offer Share is NOK 0.55, amounting to an aggregate subscription price and gross proceeds of up to NOK 8,250,000.</p>

		<p>The Company will bear the fees and expenses related to the Subsequent Offering, which are estimated to amount to NOK 1,297,500.</p> <p>Total net proceeds from the Subsequent Offering is expected to amount to about NOK 6,952,500.</p>
E.2a	Reasons for the offer/ Use of proceeds/ Estimated net amounts	<p><b>The Private Placement</b></p> <p>The Company decided to raise additional capital to further develop and commercialize new games that will be released in 2016 and 2017. Further, the Private Placement will allow the Company to carry out its planned restructuring activities for long term savings and efficiency. The further commercialization of the Company's product portfolio is a key factor for securing the Company's success.</p> <p>The proceeds from the Private Placement will be used for the following purposes and with the following estimated, net amounts:</p> <ol style="list-style-type: none"> <li>1. USD 762,301 will be used for repayment of a short-term loan to KGJI and repayment of interest owed under the Convertible Loan and the Bonds; and</li> <li>2. NOK 42,834,780<sup>6</sup> will be used for working capital and general corporate purposes, including development of <i>Conan Exiles</i> and two other titles to be developed this year and related marketing expenses.</li> </ol> <p><b>The Debt Conversion</b></p> <p>The Company entered into the agreement to restructure its debt towards KGJI in order to lighten the debt obligations of the Company and to lower the interest rate on its Bonds. The Company considers that the Debt Conversion, along with the Private Placement, strongly improves the Company's financial situation.</p> <p>The proceeds from the Debt Conversion are used solely for settlement of outstanding debt.</p> <p><b>The Subsequent Offering</b></p> <p>Following the terms as agreed with the investors in the the Private Placement, the Supervisory Board has proposed to complete a Subsequent Offering of 15 million VPS Offer Shares. The Supervisory Board has resolved to conduct the Subsequent Offering directed at the Eligible Shareholders. Residents of the United States of America, Canada, Japan and Australia will not be considered as Eligible Shareholders.</p>

<sup>6</sup> Based on an exchange rate between NOK/USD of NOK 8.13 per USD 1.

		<p>The net proceeds of up to approximately NOK 6,952,500 million from the Subsequent Offering will be used for general corporate purposes and working capital.</p>
E.3	Terms and conditions of the offer	<p><b>The Private Placement</b></p> <p>The Private Placement comprises an issuance of 95,970,000 New VPS Shares, each with a par value of EUR 0.04, at a subscription price of NOK 0.55 per New VPS Share. The Private Placement was directed towards certain Norwegian and foreign institutional and professional investors.</p> <p>The Private Placement was completed on 26 May 2016. The first day of trading of the New VPS Shares on Oslo Børs, will be on or about 14 June 2016.</p> <p><b>The Debt Conversion</b></p> <p>The Debt Conversion comprises an issuance of 42,777,778 Conversion VPS Shares, each with a par value of EUR 0.04, at a conversion price of USD 0.18 per Conversion VPS Share. The Conversion VPS Shares was subscribed solely by KGJL.</p> <p>The Debt Conversion was completed on 26 May 2016. The first day of trading of the Conversion VPS Shares on Oslo Børs, will be on or about 14 June 2016.</p> <p><b>The Subsequent Offering</b></p> <p>The Subsequent Offering comprises an issuance of up to 15,000,000 VPS Offer Shares, each with a par value of EUR 0.04, and at a subscription price of NOK 0.55 per VPS Offer Share.</p> <p>The Subsequent Offering will be directed towards Eligible Shareholders, being the holders of the Company's Shares (save for the VPS Registrar in its capacity as VPS Registrar) at the end of trading 30 June 2016 (the Cut-Off Date), as registered in the VPS or the Company's shareholders' register in the Netherlands as of the Record Date, being 4 July 2016.</p> <p>The completion of the Subsequent Offering is conditional upon the following condition being satisfied prior to issuance of any Company Shares or VPS Offer Shares in connection with the Subsequent Offering:</p> <ul style="list-style-type: none"> <li>(i) all necessary corporate resolutions being validly made, including the General Meeting granting the Supervisory Board an authorisation to issue up to 130 million new Shares.</li> </ul> <p>The Subscription Period commences on 5 July 2016 and expires at 8 August 2016 at 16.30 CET.</p>

		<p>The Eligible Shareholders will be granted tradable Subscription Rights giving a preferential right to subscribe for and be allocated VPS Offer Shares. Eligible Shareholders who have not registered their Company Shares with the VPS, must establish a VPS account and contact the Manager in order to facilitate granting of Subscription Rights. Oversubscription and subscription without Subscription Rights will be allowed.</p> <p>The Subscription Rights will be issued and registered in the VPS under ISIN NL 0011896980., and will be listed for trading on Oslo Børs under the ticker symbol "FUNCOM T" from 5 July 2016 to 16:30 (CET) on 4 August 2016. The Subscription Rights will be delivered free of charge and the recipient will not be debited any charges.</p> <p>Allocation of the VPS Offer Shares will take place on or about 9 August 2016 in accordance with the following criteria:</p> <ul style="list-style-type: none"> <li>(i) subscription made on the basis of Subscription Rights will be allotted VPS Offer Shares;</li> <li>(ii) over-subscription by subscribers with Subscription Rights on a pro rata basis; and</li> <li>(iii) subscription by subscribers without Subscription Rights on a pro rata basis.</li> </ul> <p>The Company reserves the right to issue less Company Shares and VPS Offer Shares in the Subsequent Offering if the number of subscriptions is lower than the amount of VPS Offer Shares offered.</p>
E.4	Material interests in the Offer	<p>The Manager (and/or affiliates of the Manager) has (or have) interests in the Private Placement and the Subsequent Offering as they has received and will receive a commission in relation to the Private Placement and the Subsequent Offering, respectively, and have provided from time to time, and may in the future provide, investments and commercial services to the Company and its affiliates in the ordinary course of their respective businesses, for which they have received and may continue to receive customary fees and commissions. The Manager, its employees and any affiliates may currently own existing Shares in the Company. The Manager does not intend to disclose the extent of any such investments or transactions otherwise than in accordance with any legal or regulatory obligation to do so.</p> <p>Other than as set out above, there are no other interests (including conflict of interests) of natural and legal persons involved in the Private Placement or the Subsequent Offering.</p>
E.5	Managers/ Lock-up	<p>ABG Sundal Collier ASA acted as Manager for the Company in connection with the Private Placement and the Subsequent Offering.</p> <p>All New VPS Shares and VPS Offer Shares will be newly issued VPS Shares and no subscriber in the Private Placement or the Subsequent</p>

		Offering are or will be subject to lock-up. However, KGJI has accepted a lock-up undertaking for all Conversion VPS Shares subscribed by it in connection with the Debt Conversion. The lock-up undertaking will, subject to certain customary terms and conditions, be effective until the earlier of; (i) launch of <i>Conan Exiles</i> plus a period of 30 days; or (ii) 31 December 2016.
E.6	Dilution	<p>The dilutive effect following the issuance of 95,970,000 New VPS Shares and 42,777,778 Conversion VPS Shares represents an immediate dilution of approximately 62.5% for Existing Shareholders who did not participate in the Private Placement or the Debt Conversion and who does not intend to participate in the Subsequent Offering<sup>7</sup>.</p> <p>The dilutive effect following the issuance of 95,970,000 New VPS Shares and 42,777,778 Conversion VPS Shares represents an immediate dilution of approximately 60% for Existing Shareholders who did not participate in the Private Placement and who does intend to participate pro rata to their current shareholding in the Subsequent Offering<sup>8</sup>.</p>
E.7	Estimated expenses	Not applicable. The Company will not charge any costs, expenses or taxes directly to any shareholder or to any investor in connection with the Private Placement and the Subsequent Offering.

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<sup>7</sup> The dilutive effect for Existing Shareholders who did not participate in the Private Placement and who does not intend to participate in the Subsequent Offering is based on the maximum amount of VPS Offer Shares being subscribed in the Subsequent Offering.

<sup>8</sup> The dilutive effect for Existing Shareholders who did not participate in the Private Placement and who does intend to participate pro rata to their current shareholding in the Subsequent Offering is based on the maximum amount of VPS Offer Shares being subscribed in the Subsequent Offering.

## 2 RISK FACTORS

*Before investing in the Company, investors should carefully consider all of the information contained in this Prospectus, and in particular the following risk factors, which may affect some or all of the Company's activities, the industry in which it operates and the Company's securities. Any of these risks could have a material adverse effect on the business, operating results and financial condition of the Group and, as a result, the value and trading price of the Company's Shares may decline, which could in turn, result in a loss of all or part of any investment in the Shares. Furthermore, the risks and uncertainties described below may not be the only ones the Group faces. Additional risks and uncertainties not presently known to the Company or the Group or that the Company or the Group currently deems immaterial may also impair its business, financial condition and results of operations in the future. Investing in the Company involves inherent risks. This Section 2 "Risk Factors" contains an overview of the risk factors that are known to the Company and considered material by it. Investors should consult their own expert advisors as to the suitability of an investment in the Company's Shares.*

*An investment in the Shares is suitable only for investors who understand the risk factors associated with this type of investment and who can afford a loss of all or part of the investment.*

*If any of the following risks materialize, the Company's business, financial position and operating results could be materially adversely affected, which may cause a decline in the value and trading price of the Shares that could result in a loss of all or part of any investment in the Shares.*

*The order in which the risks are presented below is not intended to provide an indication of the likelihood of their occurrence nor of their severity or significance.*

### 2.1 Revenue risks

#### 2.1.1 Dependence on performance of individual games and in particular the Live Games

Funcom's medium and long term financial performance, including future income, may be highly influenced by the performance of individual games, especially the performance of the current Live Games and new games to be released in the future. Under the new Funcom strategy (as described in section 7.3 "The new Funcom strategy"), Funcom will develop both smaller and larger games, such as *Conan Exiles*. As Funcom has not yet released any larger games under the new strategy, it does not currently know if it will be dependent on any single game. However, Funcom expects that the financial performance of the Company will be materially dependent on the performance of its larger games, including *Conan Exiles*.

Funcom's medium and long term financial performance are also dependent on a number of other factors related to its games, such as development costs, license costs and successful development of new content for the current Live Games. If some of Funcom's games attain low revenue numbers (*i.e.* only produces sufficient revenue to cover Funcom's investment in the game) there may be a negative impact on future cash flows and the valuation of Funcom. In particular, the Live Games have historically been the main revenue contributor for Funcom. Furthermore, the games in development are intended to be funding sources for the development of new games, and lower cash inflows than expected could also have an indirect effect in terms of reduced revenues, earnings and cash flows from new games and the future funding requirements of the Company.

It is in the nature of computer games, including Funcom's Live Games, that they produce slowly declining revenues over time due to the ageing of the games. There is, thus, a risk that Funcom's Live Games will not produce sufficient revenue in the future if the Company is not able to retain the players of its current Live Games, for example due to ageing or Funcom not being able to produce updates or new content for its current Live Games. There can be no assurance that Funcom is able to develop new games that produce sufficient revenue.

#### 2.1.2 Dependence on the attractiveness of brands used for the games

The success of the new games is dependent on the attractiveness of the brands used for the games. The developments of these brands are often influenced by factors outside of Funcom's control, such as the creative processes of the licensor (if the brand is licensed), development of new content or products under the brand and general market perception. There is a risk that such factors may affect the performance of Funcom's games negatively.

#### 2.1.3 Dependence on consumer satisfaction

The commercial success of Funcom's games is to a high degree dependent on consumer satisfaction. Consumer satisfaction is dependent on the perceived fun factor, quality of service of the support and error correction services. Even though the Company strives to ensure high consumer satisfaction there is a risk that the consumers will be unsatisfied with Funcom products, the support and the number of bugs and errors in the products. Consumer satisfaction may also be affected by the gaming community related to the game.

#### 2.1.4 Rating risks

Funcom is, as a developer of mature games, exposed to the risk that rating agencies in the various markets will set the allowed age level to play the Funcom games too high or too low and thereby potentially limiting the addressable market. Rating agencies, including the Entertainment Software Rating Board<sup>9</sup>, may also change their rating policies, or fine Funcom for rating breaches, although Funcom always strives to adhere to rating regulations. Funcom may also receive the attention of regulatory compliance organizations, such as the US Federal Trade Commission which enforces the Children's Online Privacy Protection Act, focusing on the gaming industry, both through public relations campaigns and through legal procedures. Actions of disloyal employees or outside parties by introducing unknown and controversial material into the games of the Company may constitute a risk for penalties or other actions from rating agencies.

### 2.2 Operational risks

#### 2.2.1 Launch risks for online games

The number of players of newly launched games may increase rapidly over a short amount of time, which may imply risks of technical failure within the games if the game servers cannot support such increase in number of players. Historically, the launch of Funcom's games have not encountered such problems, but the Company cannot exclude the possibility that future launches will encounter such problems. This may lead to a negative consumer perception of the game.

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<sup>9</sup> For more information on the Entertainment Software Rating Board, please refer to [www.esrb.org](http://www.esrb.org).



Even though the launch of a game may be successful initially, there can be no assurance that Funcom succeeds in creating additional content for the game and thereby retaining the players.

#### 2.2.2 Delay of product releases

For the current development projects, the Group has a strong focus on making plans, analyzing risks, estimating time needed in each project phase and measuring progress. There is, however, an inherent development timeline risk in all software development, including in game software development, and there is no assurance that development schedules will be held. If the Group does not manage to release games at the planned dates, the development budgets of the games may increase. There is also a risk that competitors will gain a foothold in the market at the expense of the Group or that the games will be less competitive when launched due to advances of competitors, making users less willing to spend additional time and money on new games from the Group.

#### 2.2.3 Unsuccessful projects under development

Currently, there is a large number of online games in development and operation worldwide. Hence, consumers have and will have a number of options to choose between. Through the history of online games, the market has never accommodated many top-selling products at any one time, although that number is growing. With its upcoming game, *Conan Exiles*, the Company is moving into the segment of "Open world, online, multiplayer Survival games". Even though the number of serious competitors to Funcom in this online space is limited, there is a risk that one or more of Funcom's games within this segment could be unsuccessful. Within this games segment, Funcom's competitors include developers such as Daybreak Game Company, Bohemia Interactive, Facepunch Studios Ltd. and Studio Wildcard. For games developed within other segments, there are a number of competitors which increases the risk that future games will be unsuccessful. In the other segments where Funcom competes, examples of competitors include Activision Blizzard, Electronic Arts, Ubisoft, Bethesda Softworks and Take-Two Interactive.

#### 2.2.4 Reviews

The commercial success of Funcom's games may be, to a high degree, dependent on favorable reviews by gaming publications and consumers. Should Funcom fail to meet the expectations this may have a negative effect in the review scores of its game and thereby potentially on the sales potential of the games.

#### 2.2.5 Competition

The market for Funcom's games is exposed to competitors. The competitors may develop more popular games and achieve higher attention from the customers in the computer games market. Competing games may render the products of Funcom obsolete or limit the ability for Funcom to generate revenue from their products.

#### 2.2.6 Difficulties in recruiting and loss of key employees

Funcom is dependent on the ability to recruit, motivate and retain highly skilled technical, managerial and marketing personnel. Funcom may experience difficulties in recruiting, motivating and retaining the necessary expertise and key employees, or may need to pay higher compensation, which could adversely affect operating results. Further, it should be taken into consideration that

work permits can be difficult to obtain. There is also a risk of losing vital information if key employees, for various reasons, leave Funcom.

#### 2.2.7 External parties

Funcom's success depends also partly on the ability of the Company's partners to effectively fulfill their commitments, including the distribution services offered by Steam, the continued licensing from Conan Properties Inc. of rights to utilize intellectual property related to Conan the Barbarian and the continued right to use the Unreal 4 graphics engine. Funcom also has partners in the areas of hosting and server administration, billing, publishing, sales and distribution, hardware as well as development of technology and games.

#### 2.2.8 Difficulties in enforcing the Company's intellectual property and proprietary rights

Funcom relies on a combination of trade secret, copyright and trademark laws, non-disclosure agreements and contractual provisions to protect its proprietary rights. International copyright and trademark laws protect Funcom's technology. Existing trade secrets and copyright laws afford only limited protection, and unauthorized parties may attempt to copy aspects of Funcom's proprietary rights or to obtain and use information and technology that Funcom regards as proprietary. In addition, the laws of some foreign jurisdictions do not protect Funcom's proprietary rights in the same manner and to the same extent as the laws of the Netherlands, the United States and Norway do. There can be no assurance that the steps taken by Funcom to protect its proprietary rights will be adequate.

#### 2.2.9 Intellectual property rights of others

Funcom operates in a competitive industry. Technology is evolving at a fast pace and innovating companies develop solutions in relatively close technological proximity. This poses the risk that the Company could inadvertently encroach upon the protected rights of others, including rights protected by patents. This is the nature of the industry in which Funcom operates. Funcom is aware of the fact that there may be patents potentially forming basis of infringement claims. United States patents and/or litigation in the United States are particularly worrisome because there are a large number of United States software patents in existence. There is also to a greater extent a culture for opportunistic patent litigation in the United States. Infringement on copyrights, design rights and trademark law could surface as well. There is always an inherent risk of substantial claims related to infringement of intellectual property rights. If any claims of infringement of intellectual properties are submitted towards contract parties from which Funcom licenses intellectual property, this could also have a negative impact on the rights and obligations of the Company under any such contract.

#### 2.2.10 Loss of reputation

Any negative publicity related to the Company or its partners could adversely affect its reputation and the value of the Company's intellectual property. The Company is exposed, among others, to the risk that litigation, consultants, employee or officer's misconduct, operational failures, disclosure of confidential information, negative publicity, whether or not founded could damage the Company's reputation. Any erosion of the Company's reputation may have a material adverse effect on its business, revenues and results of operations or financial conditions.

## 2.3 Technical risks

### 2.3.1 Dependency on the *Dreamworld Technology*

The Company is dependent on the *Dreamworld Technology* to generate revenue, as this technology forms the basis of the games developed and published by Funcom, including its Live Games. The *Dreamworld Technology* provides Funcom with a unique competitive advantage by enabling more flexible, faster and more predictable development and deployment of upcoming games. Funcom is continuously striving to further develop and improve the *Dreamworld Technology*, including by making the *Dreamworld Technology* compatible with third-party software such as the Unreal 4 software engine.

If the Company is not able to utilize the *Dreamworld Technology* in the future or is not able to develop the *Dreamworld Technology* further, including making the *Dreamworld Technology* compatible with appropriate third-party software, in order to meet the standards of future video games, the Company will incur additional development costs and may experience lack of revenue.

### 2.3.2 Technological risks

Any game is heavily dependent on the underlying hardware configuration of the device running the game. Funcom's games support a variety of hardware platforms capable of running the games and each platform can have multiple configurations of its hardware. The number of combinations of platforms and configurations is such that it is unfeasible to guarantee optimal game performance on them all and thus there is a risk that specific configurations do not perform as well as specified and have an adverse effect on Funcom's ability to gain revenues.

Additionally, online games depend on a large number of complicated hardware and software components that need to work successfully together. Any errors, bugs or viruses in any software may harm the operation of the online game and thus have an adverse effect on Funcom's ability to gain revenues. Similarly, any errors, power failures, shortcuts etc. in any hardware component may harm the operation of the online game and thus have an adverse effect on Funcom's ability to gain revenues. Although Funcom endeavors to reduce the technological risks before a game launch and during the operations of a game, these risks will always be present to some degree at launch.

### 2.3.3 Hacking

Funcom's online games may be subject to hacking activities. Any hacking activity may affect Funcom's ability to operate their online games, which will affect Funcom's ability to gain revenues.

### 2.3.4 Risks related to the internet

Funcom's online games are operated on the Internet, as are the digital stores responsible for most of Funcom's games sales. Funcom considers itself materially dependent on the Steam online distribution client for computer games. Funcom's revenues are therefore dependent on the continued and uninterrupted operation of the Internet. Any adverse incident, hereunder but not limited to bugs, viruses, worms, power outages, government restrictions, etc. affecting the Internet may affect Funcom's ability to gain revenues.

### 2.3.5 Theft or loss of source code

Funcom's source code is stored in a fireproof safe, but is also available to employees working on the Company's games. Should all or parts of the source code be stolen or lost, this may affect Funcom's ability to gain revenues or reduce its technological edge in the market.

### 2.3.6 Piracy

Funcom's games are subject to digital piracy, where consumers obtain an illegal copy of the game instead of purchasing it from an accredited store. Funcom's online games with strong server-based gameplay are less affected by this issue, but any single player or limited multiplayer games will potentially be affected.

## 2.4 Economic risks

### 2.4.1 Macroeconomic fluctuations

Funcom is exposed to the economic cycle, since changes in the general economic situation could affect demand for Funcom's products. Computer games are used for entertainment and therefore the demand may decline during recession when disposable income decreases.

### 2.4.2 Variability of operating results etc.

Funcom's operating results may vary from month to month. Funcom's operating result may be hard to forecast due to unpredictable demand for its products, the competitive environment, other general economic and market conditions and unanticipated difficulties in pursuing Funcom's business strategy.

### 2.4.3 Changes in the gaming industry in general

The market for Funcom's products and services is competitive and trend oriented. Failure of Funcom to maintain competitive products and services offering could have a material adverse effect on Funcom. If the generally expected market growth fails to materialize, the profitability of the games is likely to suffer.

### 2.4.4 Contracts

Several of the agreements entered into by Funcom are governed by the laws of jurisdiction in which Funcom does not have a presence. In addition, dispute resolution is set to venues in different places in Europe and the US. This may increase the legal risk and increase the costs in connection with the enforcement of any specific agreement.

### 2.4.5 International operations

Operations in international markets are subject to risks inherent in international business activities, including in particular general economic conditions in each such country, overlapping differing tax structures, managing an organization spread over various jurisdictions, currency fluctuations, and unexpected changes in regulatory requirements and complying with a variety of foreign laws and regulations.

#### 2.4.6 Currency fluctuations

Because a considerable share of the Group's business is conducted in currencies other than its functional currency, Funcom will be exposed to volatility associated with foreign currency exchange rates. Funcom invoices all non-EU customers in US dollar and Russian ruble, while EU customers are invoiced in Euro, British pound or Polish zloty. Normally, the Group's cash position in Norwegian kroner and US dollar is significant compared to its total assets.

The majority of the operational expenses is denominated in Norwegian kroner and US dollar and is perceived by the Executive Management as a natural hedge against the large position in Norwegian kroner and US dollar. However, the Company does not currently use any financial instruments to hedge its exposure to foreign exchange rate risks arising from operational, financing and investment activities.

#### 2.4.7 Tax exposure

The Company is incorporated in the Netherlands with subsidiaries in Canada, Norway, Switzerland<sup>10</sup>, China and the United States. The overall tax charge will depend on where profits are accumulated and taxed since these countries have different tax systems and tax rates. The Group is today taxed under a number of different legal systems with different laws for tax residency, tax credits and tax exemption rules. Consequently, the Group is exposed to changes of tax policies and changes of tax legislations, proactively and/or retroactively. The Company is of the view that it reports profits and losses in accordance with tax rules applicable to the Group. The tax authorities in the jurisdictions where the Group operates are not bound by the judgment of the Company, and there can be no assurance that they will agree to it. If one or more of the relevant tax authorities challenges the Company's view, this may result in an increased overall tax charge.

#### 2.4.8 Sales tax exposure

The Group generates sales transactions from potentially all over the world. Because of this, the Group is exposed to different sales tax issues, including VAT issues. On 1 January 2015 a new EU VAT regulation came into force where electronic services will be taxed in the country where the customer is established rather than where the service provider is located. This change in regulation created VAT exposure in different EU states and increased the overall amount of VAT to be remitted given the difference in VAT rates in each state. The Group obtains from its payment service providers relevant information to calculate and process VAT payments. However, should the Group fail to comply with the different regulations it might lead to real cash costs, including irrecoverable VAT, penalties, and interest.

#### 2.4.9 Deferred tax asset

The Group's tax losses are primarily located in the Swiss subsidiaries and in the Company. The Executive Management has discussed to which extent the Group will be able to utilize the deferred tax asset, and has adjusted the amount in the statement of financial position accordingly. In

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<sup>10</sup> The subsidiary in Switzerland is currently in a liquidation process. The liquidation process is expected to be finalized in the second or third quarter of 2016, as soon as the Swiss Trade Register has cancelled its registration. Such cancellation will only occur as soon as the various tax authorities have confirmed their agreement with that cancellation. At the moment the subsidiary is awaiting final tax forms to be submitted.

evaluating the Group's ability to utilize the deferred tax assets, all available positive and negative evidence has been considered, including past operating results, the existence of cumulative losses in the most recent fiscal years and our forecast of future taxable income on a jurisdiction by jurisdiction basis, as well as feasible and prudent tax planning strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates the Executive Management are using to run the underlying businesses.

There can be no assurance that the Group is able to utilize its deferred tax assets.

#### 2.4.10 Tax credits

The Company receives small amounts of tax credits for their technology research efforts in Norway (*Skattefunn*) and continues to explore additional incentives in different countries to help fund the game and technology development. There can be no assurance that the Company will be eligible for such tax credits in the future.

### 2.5 Financial risks

#### 2.5.1 History of operating losses

The Group has a history of operating losses mainly as a result of the significant investments made in the Company's games and proprietary game engine *Dreamworld Technology*. The Company's strategy going forward is to focus on developing and releasing multiple games per year, smaller and innovate games in addition to larger online games. The long-term goal is to produce titles in parallel releasing more than one game a year. The strategy is expected to restore the profitability and the liquidity of the Company, however, no assurance can be given that the change of strategy will in fact have this effect. Until the goals under the new strategy are achieved the performance of the Company will be affected by its ability to raise external financing in the form of equity issuance or non-dilutive debt instruments. The timing and amount of such financing will depend on market conditions and compliance with financial indebtedness restrictions as well as the Company's overall performance, which could affect the investors' confidence and willingness to invest in the Company.

#### 2.5.2 Additional capital needs

The Company may require additional capital in the future pursuant to its business plan, due to unforeseen liabilities or in order for it to take advantage of opportunities that may be presented to it. Further, negative developments in sales or production cost may lead to a strained liquidity position and the potential need for additional funding through equity funding, debt financing or other means. Any additional equity financing may be dilutive to Existing Shareholders. There can be no assurance that the Company will be able to obtain necessary funding in a timely manner and on acceptable terms. Further, the Company's existing financing through the Bonds contain financial indebtedness restrictions which limit the amount of debt financing which may be raised without consent from the Bondholders.

#### 2.5.3 Covenant compliance

The Company's borrowing facilities contain customary restrictions and covenants, being information covenants, covenants on conduct (*i.e.* no change of nature of business of the Group) or disposal of the business of the Company or any Group company, covenants on related party transactions which

are not made on arms-length terms, restrictions on dividend payments, covenant to keep the VPS Shares registered with the VPS, financial indebtedness restrictions and restrictions on creation of security interests over the Company's assets. There can be no assurance that the Group will be able to comply with all such restrictions and financial covenants or that the Company's lenders will extend waivers or amend terms to avoid any actual or anticipated breaches of such restrictions or financial covenants. This could lead to acceleration of loans, including acceleration based on cross-default provisions in the borrowing facilities, which may in turn cause the Company to become insolvent and/or to file for bankruptcy.

For further information regarding such covenants, please refer to Section 10.10.1 "The Bonds" and Section 10.10.2 "Convertible Loan".

## **2.6 Legal risks**

### **2.6.1 Funcom are subject to laws and regulations in several jurisdictions**

Funcom is a public company with VPS Shares traded on Oslo Børs and a business which is operated globally. Thus, the Company is subject to laws and regulations in a number of jurisdictions. Failure to comply could lead to penalties and other sanctions.

### **2.6.2 Disputes**

The Company may from time to time be involved in dispute, including disputes regarding its intellectual property rights, with all ensuring risks and costs, which could have a material adverse effect on Funcom's business, financial condition and results of operations.

### **2.6.3 Dutch law may limit the shareholders' ability to bring an action against the Company**

The rights of holders of Shares are governed by Dutch law and by the Articles of Association. These rights may differ from the rights of shareholders in other jurisdictions. In addition, it may be difficult to prevail in a claim against the Company under, or to enforce liabilities predicated upon, securities laws in jurisdictions other than the Netherlands.

## **2.7 Risks relating to the Shares**

### **2.7.1 The market value of the Shares may fluctuate**

The trading price for the Shares may fluctuate significantly and may not always reflect the underlying asset value of the Company. A number of factors outside Funcom's control may impact its performance and the price of the Shares, including, but not limited to, quarterly variations in operating results, adverse business developments, changes in market sentiment regarding the VPS Shares, the operating and share price performance of other companies in the industry and markets in which the Group operates, changes in financial estimates and investment recommendations or ratings. Changes in market sentiment may be due to speculation about Funcom's business in the media or investment community, changes to Funcom's profit estimates, the publication of research reports by analysts and changes in general market conditions. If any of these factors actually occurs, they may have a material adverse effect on the pricing of the Shares.

The market price of the Shares could decline due to sales of a large number of the Shares in the market or the perception that such sales could occur, including that the Manager may waive the lock-up undertaking of KJGI and KGJ Capital AS (as further described in section 5.14 "Transferability of the New VPS Shares and the Conversion VPS Shares"). Such sales could also make it more difficult for the Company to offer equity securities in the future at a time and at a price that are deemed appropriate.

In recent years, the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies, including companies in the same industry as the Company. Those changes may occur without regard to the operating performance of these companies. The price of the Shares may therefore fluctuate based upon factors that have little or nothing to do with the Company, and these fluctuations may materially affect the price of the Shares.

Specifically, the Share has been subject to higher volatility than other listed shares and shares in other companies who operate within the same market as Funcom. Historically, this has been due to the revenues of Funcom being very dependent on upcoming game titles. Funcom believes that their new strategy (see Section 7.3 "The new Funcom strategy" for further information) will contribute to reduce the volatility in the Funcom Share, but each investor should be aware of the historical volatility of the Funcom Shares and no assurance can be made that such new strategy will in fact reduce the volatility of the Share.

The Company will not undertake any price stabilizing activities in relation to the Private Placement or the Subsequent Offering.

#### 2.7.2 Lack of liquidity in the Shares

The majority of the Company's Shares are currently listed on Oslo Børs (8,075 Shares are not listed because the holders of those Shares never took the appropriate actions to have those Shares listed). The current listing does not imply that there will always be a liquid market for the Shares. An investment in the Shares may thus be difficult to realize. Investors should be aware that the value of the Shares may be volatile and may go down as well as up. In the case of low liquidity of the Shares, or limited liquidity among the Company's shareholders, the share price can be negatively affected and may not reflect the underlying asset value of the Company. Investors may, on disposing of the Shares, realize less than their original investment or lose their entire investment.

#### 2.7.3 Funcom's ability to pay dividends is dependent on the availability of distributable reserves and the consent of the Bondholders

Dutch law provides that any declaration of dividends must be adopted by the General Meeting. Dividends may only be declared to the extent that Funcom has distributable funds and Funcom's Supervisory Board finds such a declaration to be prudent in consideration of the size, nature, scope and risks associated with Funcom's operations and the need to strengthen its liquidity and financial position.

The Company's General Meeting may not declare higher dividends than the Supervisory Board has proposed or approved. If, for any reason, the General Meeting does not declare dividends in accordance with the above, a shareholder will, as a general rule, have no claim in respect of such



non-payment, and Funcom will, as a general rule, have no obligation to pay any dividend in respect of the relevant period.

The Bond Agreement implies that dividend distributions may only be made with the consent of the Bondholders or by the trustee on behalf of the Bondholders. Further, dividend distributions are also subject to consent by KGJl (in its capacity as creditor under the Convertible Loan). In addition, any dividend distribution is subject to the requirements described in section 11.12 "Distribution of dividends".

#### 2.7.4 Future share issues may have a material adverse effect on the market price of the Shares

Funcom currently has no concrete plans for an offering of additional VPS Shares other than the Subsequent Offering. However, it is possible that Funcom may decide to offer additional Shares or securities in the future in order to strengthen its capital base or for other reasons. Any additional offering of Shares may be made at a significant discount to the prevailing market price and could have a material adverse effect on the market price of the outstanding Shares.

#### 2.7.5 Risk of dilution

Unless otherwise resolved by the General Meeting, shareholders in Dutch public limited liability companies, such as Funcom, have pre-emptive rights proportionate to the aggregate number of Shares they hold with respect to any new Shares issued. Due to regulatory requirements under foreign securities laws or other factors (including that the shareholder's pre-emptive rights may be set aside), foreign investors may be unable to participate in a new issuance of Shares or other securities. Any investor that is unable or unwilling to participate in any future share issues will be diluted.

In addition, the Company has issued convertible Bonds and has also entered into an agreement regarding a Convertible Loan. Conversion of the Bonds or outstanding debt in the Convertible Loan to VPS Shares will have a dilutive effect to shareholders who do not hold Bonds or is a creditor in the Convertible Loan.

#### 2.7.6 Norwegian depositary receipts

Funcom has entered into the Registrar Agreement, attached as Appendix 2 to this Prospectus, to facilitate registration of the Company Shares in connection with the listing of the Company Shares at Oslo Børs. In accordance with the Registrar Agreement the VPS Registrar is registered as the legal owner of the Company Shares. Under the Registrar Agreement, the VPS Registrar registers the beneficial interests in the VPS Shares in book-entry form in the VPS. Accordingly, it is not the Company Shares issued in accordance with Dutch law that are registered in the VPS and may be traded on Oslo Børs, but the beneficial interests in the Company Shares (*i.e.* the VPS Shares).

In accordance with market practice in Norway and system requirements of the VPS, the beneficial interests in the Company Shares will be registered in the VPS under the category of a "share". Although each "share" registered with the VPS will represent evidence of beneficial ownership of one Company Share, such beneficial ownership will not necessarily be recognized by a Dutch court. As such, investors may have no direct rights against Funcom and may be required to obtain the cooperation of the VPS Registrar in order to assert claims against Funcom, and to look solely to the VPS Registrar for the payment of any dividends, for exercise of voting rights attaching to the

underlying Company Shares and for all other rights arising in respect of the underlying Company Shares. Exercising such shareholder rights through the VPS Registrar is subject to certain terms and conditions, as further described in Section 12.4 "The VPS and transfer of VPS Shares – Beneficial interests in the Company Shares" of this Prospectus. Funcom cannot guarantee that the VPS Registrar will be able to execute its obligations under the Registrar Agreement, including that the beneficial owners of the Company Shares will receive the notice of a general meeting in time to instruct the VPS Registrar to either effect a re-registration of their VPS Shares or otherwise vote for their Company Shares in the manner desired by such beneficial owners. Any such failure may *inter alia*, limit the access for, delay or prevent, the beneficial shareholders being able to exercise the rights attaching to the underlying Company Shares.

The VPS Registrar may terminate the Registrar Agreement by not giving less than three months' prior written notice. Further, the VPS Registrar may terminate the Registrar Agreement if Funcom does not perform its payment obligations to the VPS Registrar (and such non-payment has not been remedied by Funcom within ten business days following receipt of notice regarding this from the VPS Registrar) or commit any other material breach of the Registrar Agreement. In the event the Registrar Agreement is terminated, Funcom will use its reasonable best efforts to enter into a replacement agreement for purposes of permitting the uninterrupted registration of the Company Shares in the VPS and the listing of the VPS Shares at Oslo Børs. There can be no assurance, however, that it would be possible to enter into such new agreements on substantially the same terms or at all. A termination of the Registrar Agreement could therefore have a material and adverse effect on Funcom and its shareholders.

The Registrar Agreement limits the VPS Registrar's liability for any loss suffered by Funcom. The VPS Registrar disclaims any liability for any loss attributable to circumstances beyond the VPS Registrar's control, including, but not limited to, errors committed by others. The VPS Registrar is liable for direct losses incurred as a result of events within the VPS. Thus, Funcom may not be able to recover its entire loss if the VPS Registrar does not perform its obligations under the VPS Registrar Agreement.

#### 2.7.7 Certain transfer and selling restrictions may limit the possibility of the shareholders to sell or otherwise transfer their Shares

The VPS Shares have been admitted to trading in Norway. This Prospectus has been approved by the AFM and passported into Norway as described above in the preliminary text of this Prospectus under "Important Information". Funcom has not registered the Shares under the U.S. Securities Act or securities laws of other jurisdictions, including Canada, Australia and Japan, and it does not expect to do so in the future. The Shares may not be offered or sold in the United States, Canada, Australia, Japan or in any other jurisdiction in which the registration or qualification of the Shares is required but has not taken place, unless an exemption from the applicable registration or qualification requirement is available or the offer or sale of the Shares occurs in connection with a transaction that is not subject to such provisions. In addition, there can be no assurances that shareholders residing or domiciled in the United States or other jurisdictions will be able to participate in future capital increases or subscription rights.

## **2.8 Risks Relating to the Subsequent Offering**

### **2.8.1 Dilution risk due to Subsequent Offering, lapse of Subscription Rights and restrictions on sale and transfer**

Subscription Rights that are not exercised by the end of the Subscription Period will have no value and will automatically lapse without compensation to the holder. The shareholders will be diluted as part of the Private Placement and the Debt Conversion (even if they subscribe for VPS Offer Shares) and to the extent that an Eligible Shareholder does not exercise its Subscription Rights prior to the expiry of the Subscription Period, whether by choice or due to a failure to comply with procedures set forth in Section 6 "The Subsequent Offering", or to the extent that an Eligible Shareholder is not permitted to subscribe for VPS Offer Shares as further described in Section 14 "Selling and Transfer restrictions", such Eligible Shareholder's proportionate ownership and voting interests in the Company after the completion of the Subsequent Offering will be further diluted.

### **2.8.2 Other risks related to the Subscription Rights**

An active trading market in the Subscription Rights may not develop on Oslo Børs. In addition, because the trading price of the Subscription Rights depends on the trading price of the VPS Shares, the price of the Subscription Rights may be volatile and subject to the same risks as described for the VPS Shares elsewhere in this Prospectus. The existing volatility of the VPS Shares may also have an effect on the volatility of the Subscription Rights.

### **2.8.3 Volatility of the market price of Subscription Rights**

Certain Existing Shareholders may be unable to take up and exercise their Subscription Rights as a matter of applicable law. The Subscription Rights of such Existing Shareholders, with the exception of Subscription Rights held through financial intermediaries, may be sold on their behalf in the market by the Company, as further described in Section 6.10 "Subscription Rights", but no assurance can be given as to whether such sales may actually take place or as to the price that may be achieved. The sale of Subscription Rights by or on behalf of holders of such rights and the sale of Subscription Rights by other shareholders could cause significant downward pressure on, and may result in a substantial reduction in, the price of the Subscription Rights and the VPS Shares.

## **2.9 Notice**

**Note that the list of risk factors above is not exhaustive and only represents a summary of material risk factors related to the Company, the Shares, the Private Placement, the Debt Conversion and the Subsequent Offering. Other risk factors not mentioned in this document may also adversely affect the Company's business and the value of the Shares. Potential investors are urged to independently evaluate the risks involved in investing in the Company and to consult with their own advisors, in addition to acquaint themselves with the risk factors, other information in this Prospectus and other relevant information. In particular, the Company's performance may be affected by changes in legal, regulatory and tax requirements in any of the jurisdictions in which the Company operates or intends to operate as well as overall global financial conditions.**

### **3 RESPONSIBILITY STATEMENT**

This Prospectus is made available by Funcom and Funcom accepts sole responsibility for the information contained in this Prospectus.

The Management Board of Funcom N.V. hereby declares that, after having taken all reasonable care to ensure that such is the case, the information contained in this Prospectus is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

10 June 2016

The Management Board of Funcom N.V.

Rui Manuel Monteiro Casais  
CEO

The Supervisory Board of Funcom N.V. hereby declares that, after having taken all reasonable care to ensure that such is the case, the information contained in this Prospectus is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

10 June 2016

The Supervisory Board of Funcom N.V.

Michel Henry Georges Cassius  
Chairman

Alain Léon Tascan  
Vice-Chairman

## 4 GENERAL INFORMATION

### 4.1 Third party information

In certain Sections of this Prospectus, information sourced from third parties has been reproduced. In such cases, the source of the information is identified. Such third party information has been accurately reproduced, and as far as the Company is aware and is able to ascertain from information published by that relevant third party, no facts have been omitted which would render the reproduced information inaccurate or misleading.

### 4.2 Forward looking statements

This Prospectus contains forward-looking statements ("**Forward Looking Statements**") relating to the Company's business and the sectors in which it operates. Forward Looking Statements include all statements that are not historical facts, and can be identified by words such as (what follows are examples without excluding words having the same meaning): "anticipates", "believes", "expects", "intends", "may", "projects", "should", or the negatives of these terms or similar expressions. These statements appear in a number of places in this Prospectus, in particular in Section 2 "Risk Factors", Section 8 "Market overview" and Section 10 "Operating and Financial Information" and include statements regarding the Company's management's intent, belief or current expectations with respect to, among other things:

- strategies for the Company's services, segments and business;
- global and regional economic conditions;
- sales volumes, price levels, costs and margins;
- competition and actions by competitors and others affecting the global or regional market of the Company;
- the Company's planned capacity and utilization rates;
- fluctuations in foreign exchange rates, interest rates, earnings, cash flows, dividends and other expected financial results and conditions;
- cash requirements and use of available cash;
- financing plans;
- anticipated capital spending;
- growth opportunities;
- development, production, commercialization and acceptance of new services and technologies;
- environmental and other regulatory matters;
- legal proceedings; and
- intellectual property.

No Forward Looking Statements contained in this Prospectus should be relied upon as predictions of future events. No assurance can be given that the expectations expressed in these Forward Looking Statements will prove to be correct. Actual results could differ materially from expectations expressed in the Forward Looking Statements if one or more of the underlying assumptions or expectations proves to be inaccurate or is unrealized. Some important factors that could cause actual results to differ materially from those in the Forward Looking Statements are, in certain instances, included with such Forward Looking Statements and in Section 2 "Risk Factors".

## 5 THE PRIVATE PLACEMENT AND THE DEBT CONVERSION

### 5.1 Background and use of proceeds

The Company needed to raise additional capital to fund its ongoing operations, and develop and commercialize new games that will be released in 2016 and 2017. Further, the Private Placement will allow the Company to carry out its planned restructuring activities for long term savings and efficiency. The further development and commercialization of the Company's product portfolio is a key factor for securing the Company's success. To meet this objective, the Company decided to raise additional capital through the Private Placement.

The net proceeds of approximately NOK 49,030,000 from the Private Placement will be used for purposes listed above. More specifically, the net proceeds will be used for (in prioritized order):

1. USD 762,301 will be used for repayment of a short-term loan to KGJI and repayment of interest owed under the Convertible Loan and the Bonds; and
2. NOK 42,834,780<sup>11</sup> will be used for working capital and general corporate purposes, including development of *Conan Exiles* and two other titles to be developed this year and related marketing expenses.

In addition to raising new capital through the Private Placement, the Company has entered into an agreement with KGJI for the restructuring of the Convertible Loan and the Bonds. Pursuant to such debt restructuring, KGJI has converted USD 7.7 million of the principal amount owed by the Company under the Convertible Loan into 42,777,728 new Shares (the "**Conversion VPS Shares**") at a conversion price of USD 0.18 per Conversion VPS Share.

### 5.2 The Private Placement

On 26 May 2016, the Company publicly announced that it had raised a subscription of approximately NOK 52.8 million in gross proceeds through a private placement of 95,970,000 New VPS Shares, each with a par value of EUR 0.04, at a subscription price of NOK 0.55 per share (the "**Private Placement Subscription Price**").

The Private Placement was directed towards certain Norwegian and foreign institutional and professional investors, which subscribed New VPS Shares for NOK 52,783,500 and were allotted New VPS Shares for an equivalent amount.

The Supervisory Board resolved to increase the share capital related to the New VPS Shares on 25 May 2016 in accordance with an authorisation to increase the share capital granted by the general meeting on 25 February 2016.

### 5.3 The Debt Conversion

On 26 May 2016, the Company publicly announced that it has entered into an agreement with KGJI for the restructuring of the Convertible Loan and the Bonds implying the issuance of 42,777,728 Conversion VPS Shares, each with a par value of EUR 0.04, at a conversion price of USD 0.18 per Conversion VPS Share.

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<sup>11</sup> Based on an exchange rate between NOK/USD of NOK 8.13 per USD 1.

Completion of the Debt Conversion was conditional upon the completion of the Private Placement.

#### **5.4 Resolutions regarding the Private Placement**

On 25 February 2016, the general meeting of Funcom granted an authorisation to issue up to a maximum of 70,000,000 new Company Shares in Funcom, specifically including the authority to issue rights to acquire shares (*rechten tot het nemen van aandelen*) in the capital of Funcom, by voting unanimously in favour of the following proposal:

*Proposal to designate (aanwijzen), pursuant to Section 4.9 and 4.1 of Funcom N.V.'s articles of association, the Board of Supervisory Directors as body (orgaan) of Funcom N.V. authorized to issue up to a maximum of 70,000,000 (seventy million) shares (aandelen) in the capital of Funcom N.V., specifically including the authority to issue rights to acquire shares (rechten tot het nemen van aandelen) in the capital of Funcom N.V., and to determine the terms and conditions of each and any such issuance(s), which proposed designation of the Board of Supervisory Directors shall be valid from the date of the Meeting until the first ordinary general meeting of shareholders of Funcom N.V. to be held in the year 2017.*

On 25 May 2016, the Supervisory Board passed a resolution to issue 95,970,000 New VPS Shares in connection with the Private Placement.

#### **5.5 Resolutions regarding the Debt Conversion**

On 25 February 2016, the general meeting of Funcom granted an authorisation to issue up to a maximum of 50 million new Company Shares in Funcom, specifically including the authority to issue rights to acquire shares (*rechten tot het nemen van aandelen*) in the capital of Funcom, by voting unanimously in favour of the following proposal:

*Proposal to designate (aanwijzen), [...], pursuant to Section 4.9 and 4.1 of Funcom N.V.'s articles of association, the Board of Supervisory Directors as body (orgaan) of Funcom N.V. authorized to issue up to a maximum of 50,000,000 (fifty million) shares (aandelen) in the capital of Funcom N.V., specifically including the authority to issue rights to acquire shares (rechten tot het nemen van aandelen) in the capital of Funcom N.V., and to determine the terms and conditions of each and any such issuance(s), which proposed designation of the Board of Supervisory Directors shall be valid from the date of the Meeting until the first ordinary general meeting of shareholders of Funcom N.V. to be held in the year 2017.*

On 13 April 2016, the Supervisory Board passed a resolution to issue rights to acquire shares (*rechten tot het nemen van aandelen*) to KGJL. These rights were used to acquire the 42,777,778 Conversion VPS Shares issued in the Debt Conversion.

#### **5.6 The New VPS Shares and the Conversion VPS Shares**

The new Company Shares issued in relation to the Private Placement and the Debt Conversion were issued as ordinary shares in accordance with Dutch law on 31 May 2016. In order to facilitate registration with the VPS, the new Company Shares are registered in the name of the VPS Registrar in the Company's shareholders' register in the Netherlands. Following the receipt of the underlying Dutch notarial deed, the VPS Registrar issued the New VPS Shares to the subscribers in the Private

Placement and the Conversion VPS Shares to KGJL on 2 June 2016, at a separate ISIN. The New VPS Shares and the Conversion VPS Shares will be converted to the ISIN of the Company's other VPS Shares as soon as practically possible after the date of this Prospectus.

Both the new Company Shares, the New VPS Shares and the Conversion VPS Shares will rank pari passu in all respects with the existing Shares. The Company Shares will carry full shareholder rights in the Company from the time of issuance. The new Company Shares issued in connection with the Private Placement and the Debt Conversion and the New VPS Shares and the Conversion VPS Shares are eligible for any dividends that the Company may declare after said date. For a description of rights attached to the Shares, see Section 11 "Share capital, shareholder matters and Dutch corporate law".

## **5.7 Share capital following completion of the Private Placement and the Debt Conversion**

The Company's share capital following the completion of the Private Placement and the Debt Conversion is EUR 9,238,236.48 divided into 230,955,912 Shares, each with a par value of EUR 0.04.

## **5.8 Dilution**

The dilutive effect following the issuance of 95,970,000 New VPS Shares and 42,777,778 Conversion VPS Shares represents an immediate dilution of approximately 62.5% for Existing Shareholders who did not participate in the Private Placement or the Debt Conversion and who does not intend to participate in the Subsequent Offering<sup>12</sup>.

The dilutive effect following the issuance of 95,970,000 New VPS Shares and 42,777,778 Conversion VPS Shares represents an immediate dilution of approximately 60% for Existing Shareholders who did not participate in the Private Placement or the Debt Conversion and who does intend to participate pro rata to their current shareholding in the Subsequent Offering<sup>13</sup>.

## **5.9 The Private Placement Subscription Price and the conversion price in the Debt Conversion**

The Private Placement Subscription Price was determined through a book building process following the exploration of the various funding alternatives available to the Company. The following factors were also taken into account; the Company's historical and expected earnings, the limited range of funding alternatives available to the Company, future market prospects, and a comparison of these factors with the market valuation of comparable companies, the expected liquidity of the VPS Shares as well as a wider assessment of the stock market in general.

The Private Placement Subscription Price represented a 78% discount compared to the closing price for the Company's VPS Shares on Oslo Børs on 25 May 2016.

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<sup>12</sup> The dilutive effect for Existing Shareholders who did not participate in the Private Placement and who do not intend to participate in the Subsequent Offering is based on the maximum amount of VPS Offer Shares being subscribed in the Subsequent Offering.

<sup>13</sup> The dilutive effect for Existing Shareholders who did not participate in the Private Placement and who do intend to participate pro rata to their current shareholding in the Subsequent Offering is based on the maximum amount of VPS Offer Shares being subscribed in the Subsequent Offering.



The Private Placement Subscription Price was announced through Oslo Børs' information system on 26 May 2016.

The Private Placement Subscription Price was determined by the Supervisory Board, in its absolute discretion and based on advice from the Manager.

The conversion price of USD 0.18 per Conversion VPS Share in the Debt Conversion had been agreed upon in the Convertible Loan agreement.

#### **5.10 Allocation of the New VPS Shares**

The Supervisory Board allocated the New VPS Shares towards certain Norwegian and foreign institutional and professional investors, in its sole discretion. All applicants were allocated the amount of New VPS Shares applied for by them at the Private Placement Subscription Price.

The Supervisory Board decided to set aside the Existing Shareholders pre-emptive right to subscribe for new Shares in the Company. The Supervisory Board viewed the proposal in line with market practice, advantageous for the transaction, an expeditious placement, participation of external investors, and reduced the risk of trading based on assumptions regarding the share price development. The Supervisory Board also took into consideration the strained liquidity of the Company and the limited range of funding alternatives available to the Company.

#### **5.11 Share lending agreement**

Prior to announcing the Private Placement, the Manager, the Company, KGJI and KGJ Capital AS entered into a share lending agreement whereby 24,500,000 VPS Shares were lent from KGJI and KGJ Capital AS to the Manager in order to arrange for delivery of immediately tradable VPS Shares for a certain part of the subscriptions made in the Private Placement (being a total of 24,500,000 New VPS Shares divided between the subscribers). The Manager was not able to enter into share lending agreements for the whole amount of New VPS Shares, and therefore the share lending agreement only relates to a certain part of the New VPS Shares.

As part of the share lending agreement, the Company undertook to issue New VPS Shares to the Manager after completion of the Private Placement. This undertaking has been fulfilled and on 2 June 2016, an amount of VPS Shares equal to the borrowed VPS Shares was returned by the Manager to KGJ Capital AS on a separate ISIN. The re-delivered VPS Shares will be converted to the ordinary ISIN of the VPS Shares as soon as possible following the approval of this Prospectus.

KGJI does not receive any consideration for lending out its VPS Shares pursuant to the share lending agreement.

#### **5.12 Participation of major Existing Shareholders and members of the Supervisory Board, the Management Board and the Executive Management**

No major Existing Shareholders (*i.e.* Existing Shareholders holding more than 3% of the total outstanding VPS Shares prior to the completion of the Private Placement) nor members of the Company's Supervisory Board, Management Board and Executive Management participated in the Private Placement. However, KGJI subscribed for all 42,777,778 Conversion VPS Shares issued in the Debt Conversion.

### 5.13 Listing of the New VPS Shares and the Conversion VPS Shares

The AFM approved this Prospectus on 10 June 2016. The New VPS Shares and the Conversion VPS Shares are expected to be listed on Oslo Børs at 14 June 2016, where 92,200,059 VPS Shares are already listed (8,075 Company Shares have not been registered with the VPS and listed because the holders of those Shares never took the appropriate actions in order to have those Shares registered with the VPS and listed).

### 5.14 Transferability of the New VPS Shares and the Conversion VPS Shares

A subscriber for the New VPS Shares or the Conversion VPS Shares will not under any circumstances be entitled to sell or transfer the New VPS Shares issued in the Private Placement or the Conversion VPS Shares until the New VPS Shares or the Conversion VPS Shares (as applicable) have been credited on the subscribers' VPS account. In addition, KGJI has, subject to certain customary terms and conditions, accepted a lock-up undertaking on its Conversion VPS Shares until the earlier of; (i) launch of *Conan Exiles* plus a period of 30 days; or (ii) 31 December 2016 (save if any event described below occurs).

The lock-up undertaking accepted by KGJI was made in favor of the Manager on 26 May 2016. The lock-up implies that KGJI may not, without prior written consent<sup>14</sup> from the Manager, directly or indirectly:

- (i) offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of any Conversion VPS Shares, options or any securities convertible into or exercisable or exchangeable for Conversion VPS Shares; or
- (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Conversion VPS Shares

whether any such transaction described in (i) or (ii) above is to be settled by delivery of Conversion VPS Shares, cash or other securities.

In addition to the termination grounds referred to above, the lock-up undertaking shall cease if:

- (i) a voluntary offer is launched for the shares in the Company (or similar transaction);
- (ii) the Company enters into a merger or business combination agreement in which the ownership of the existing shareholders of the Company are diluted to less than 80% of the merged company;
- (iii) the Company issues new shares to a strategic investor in which such investor acquires through such share subscription more than 20% of the shares in the Company (post equity issuance).

### 5.15 VPS registration and delivery of the New VPS Shares

The New VPS Shares and the Conversion VPS Shares will, together with the existing VPS Shares, be registered as Depositary Receipts over the underlying Company Shares and may be identified by ISIN number NL 0000062461. The VPS Shares are issued by the Company's VPS Registrar, DNB Bank ASA, Verdispapirservice, Dronning Eufemias gate 30, P.O. Box 1600 Sentrum, 0021 Oslo, Norway.

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<sup>14</sup> Such consent may be given at any time for the term of the lock-up undertaking and at the Manager's sole discretion.

The New VPS Shares and the Conversion VPS Shares will be tradable on Oslo Børs, and issued to the subscribers' respective VPS accounts following approval of this Prospectus by the AFM.

Please note that, pursuant to the Registrar Agreement, the VPS Registrar will be registered as the holder of every new Company Share in the Company's shareholders' register in the Netherlands. The VPS Registrar shall register the beneficial interests in the new Company Shares in book-entry form with the VPS. Therefore, it is not the shares in registered form issued in accordance with the Dutch Civil Code, but the beneficial interests in such shares in book-entry form under the category of a "share" that are registered with the VPS and traded on Oslo Børs. The beneficial interests in the new Company Shares, in the form of New VPS Shares, are registered in the VPS as of the date of this Prospectus. Each such VPS Share registered with the VPS represents beneficial ownership of one Company Share.

#### **5.16 Selling and transfer restrictions**

For a description of selling and transfer restrictions applicable to the Private Placement, please refer to Section 14 "Selling and Transfer restrictions".

#### **5.17 Proceeds and expenses related to the Private Placement**

The gross proceeds from the Private Placement and the Debt Conversion to Funcom will be approximately NOK 52.8 million and USD 7.7 million, respectively. The net proceeds from the Private Placement and the Debt Conversion, following a deduction of transaction costs, will be up to approximately NOK 49,030,000 million and USD 7.7<sup>15</sup> million, respectively.

#### **5.18 Governing law and jurisdiction**

This Prospectus and the terms and conditions of the Private Placement and the Debt Conversion shall be governed by and construed in accordance with Norwegian law. The issuance of the new Company Shares in relation to the Private Placement shall be governed by and construed in accordance with Dutch law. The issuance of the New VPS Shares shall be governed by and construed in accordance with Norwegian law.

#### **5.19 Advisors**

ABG Sundal Collier ASA, PO-Box 1444, N-0115 Oslo, Norway is acting as Manager.

Advokatfirmaet CLP DA is acting as the Company's legal adviser on Norwegian law matters in relation to the Private Placement and the Debt Conversion. Weidema van Tol (Netherlands) B.V. is acting as the Company's legal adviser on Dutch law matters in relation to the Private Placement and the Debt Conversion.

#### **5.20 Interests of natural and legal persons involved in the Private Placement**

The Manager (and/or affiliates of the Manager) has (or have) interests in the Private Placement as it has received a commission in connection with the Private Placement and have provided from time

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<sup>15</sup> The estimated transactions costs related to the Debt Conversion are NOK 50,000.

to time, and may in the future provide, investments and commercial services to the Company and its affiliates in the ordinary course of their respective businesses, for which they have received and may continue to receive customary fees and commissions. The Manager, its employees and any affiliates may currently own existing VPS Shares in the Company. The Manager does not intend to disclose the extent of any such investments or transactions otherwise than in accordance with any legal or regulatory obligation to do so.

Other than as set out above, there are no other interests (including conflicts of interests) of natural and legal persons involved in the Private Placement.

## 6 THE SUBSEQUENT OFFERING

### 6.1 Overview

On 26 May 2016, the Company publicly announced that it intended to initiate the Subsequent Offering.

On 8 June 2016 it was further publicly announced that Eligible Shareholders are offered to subscribe for a total of 15,000,000 VPS Offer Shares at a subscription price of NOK 0.55 per VPS Offer Share (the "**Subsequent Offering Subscription Price**"), which is equal to the Private Placement Subscription Price. Oversubscription and subscription without Subscription Rights will be permitted.

The Subsequent Offering will be directed towards Eligible Shareholders, being the holders of the Company's Shares (save for the VPS Registrar in its capacity as VPS Registrar) at the end of trading 30 June 2016 (the "**Cut-Off Date**"), as registered in the VPS and the Company's shareholders' register in the Netherlands as of the Record Date, being 4 July 2016. Eligible Shareholders will be granted tradable subscription rights to subscribe for and be allocated VPS Offer Shares in the Subsequent Offering ("**Subscription Rights**"). Eligible Shareholders who have not registered their Company Shares with the VPS, must establish a VPS account and contact the Manager in order to facilitate granting of Subscription Rights. The Company will issue 0.0649 Subscription Rights per 1 (one) VPS Share held in the Company on the Record Date.

The number of Subscription Rights issued to each Eligible Shareholder will be rounded down to the nearest whole number of Subscription Rights without compensation to the holder. Each Subscription Right grants the owner the right to subscribe for and be allocated 1 (one) VPS Offer Share in the Subsequent Offering.

The completion of the Subsequent Offering is conditional upon the following condition being satisfied prior to issuance of any Company Shares or VPS Offer Shares in connection with the Subsequent Offering:

- (i) all necessary corporate resolutions being validly made, including the General Meeting granting the Supervisory Board an authorisation to issue up to 130 million new Shares.

No expenses or taxes will be charged by the Company to the subscribers in the Subsequent Offering. No action has been taken to permit a public offering of the VPS Offer Shares in jurisdiction outside of Norway.

Any announcements regarding the Subsequent Offering will be made as stock exchange notices published at [www.newsweb.no](http://www.newsweb.no).

### 6.2 Background and use of proceeds

Following the terms agreed with the investors in the Private Placement, the Supervisory Board has proposed to complete a Subsequent Offering of 15 million VPS Offer Shares. The Supervisory Board has resolved to conduct the Subsequent Offering directed at the Eligible Shareholders. Residents of the United States of America, Canada, Japan and Australia will not be considered as Eligible Shareholders.

The net proceeds of up to NOK 8.25 million from the Subsequent Offering will be used for general corporate purposes and working capital.

### **6.3 Resolutions regarding the Subsequent Offering**

The completion of the Subsequent Offering is conditional upon the Supervisory Board being granted an authorisation to issue the VPS Offer Shares. In the upcoming annual General Meeting to be held on 30 June 2016, the following proposal will be voted over:

*Proposal to designate (aanwijzen), pursuant to Section 4.9 and 4.1 of Funcom N.V.'s articles of association, the Board of Supervisory Directors as body (orgaan) of Funcom N.V. 3 authorized to issue up to a maximum of 130,000,000 (hundred thirty million) shares (aandelen) in the capital of Funcom N.V., specifically including the authority to issue rights to acquire shares (rechten tot het nemen van aandelen) in the capital of Funcom N.V., and to determine the terms and conditions of each and any such issuance(s), which proposed designation of the Board of Supervisory Directors shall be valid from the date of the Meeting until the first ordinary general meeting of shareholders of Funcom N.V. to be held in the year 2017. This proposed designation of the Board of Supervisory Directors shall be in addition to – expand – the authorities granted to the Board of Supervisory Directors in the Extraordinary General Meeting of Shareholders of Funcom N.V. of 25 February 2016. This proposed designation may at all times be revoked by the general meeting of Funcom N.V. The general meeting of Funcom N.V. furthermore remains authorized to (i) resolve on any issuance of shares (aandelen) and/or rights to acquire shares (rechten tot het nemen van aandelen) during the period of this proposed designation of the Board of Supervisory Directors and (ii) to designate (aanwijzen), pursuant to Section 4.9 and 4.1 of Funcom N.V.'s articles of association, the Board of Supervisory Directors as body (orgaan) of Funcom N.V. authorized to issue shares (aandelen) in the capital of Funcom N.V., specifically including the authority to issue rights to acquire shares (rechten tot het nemen van aandelen) in the capital of Funcom N.V.*

If the abovementioned proposal is accepted by the annual General Meeting, the Supervisory Board will utilize this authorisation to issue the VPS Offer Shares.

### **6.4 The VPS Offer Shares**

The Company will issue new Company Shares as ordinary shares in accordance with Dutch law in relation to the Subsequent Offering on or about 19 August 2016. In order to facilitate registration with the VPS, the new Company Shares issued in the Subsequent Offering will be registered in the name of the VPS Registrar in the Company's shareholders' register in the Netherlands. Following the receipt of the underlying Dutch notarial deed, the VPS Registrar will issue the VPS Offer Shares to the subscribers in the Subsequent Offering as soon as practically possible.

Both the new Company Shares to be issued in relation with the Subsequent Offering and the VPS Offer Shares will rank pari passu in all respects with the existing Shares. The new Company Shares will carry full shareholder rights in the Company from the time of issuance. The new Company Shares to be issued in connection with the Subsequent Offering and the VPS Offer Shares will be eligible for any dividends that the Company may declare after said date. For a description of rights attached to the Shares, see Section 11 "Share capital, shareholder matters and Dutch corporate law".

## 6.5 Share capital following completion of the Subsequent Offering

The Company's share capital following the completion of the Private Placement, the Debt Conversion and the Subsequent Offering will be up to EUR 9,838,236.48 divided into 245,955,912 Shares, each Share with a par value of EUR 0.04 (dependent on the subscriptions actually made in the Subsequent Offering). The Company reserves the right to issue less Company Shares and VPS Offer Shares if the number of subscriptions is lower than the amount of VPS Offer Shares offered.

## 6.6 Timetable for the Subsequent Offering

The timetable below set out below provides certain indicative key dates for the Subsequent Offering, which may be subject to change:

Event	Date
Last day of trading in the VPS Shares including Subscription Rights.....	30 June 2016
First day of trading in the VPS Shares excluding Subscription Rights.....	1 July 2016
Record Date.....	4 July 2016
Trading in Subscription Rights commences on Oslo Børs.....	5 July 2016
Subscription Period commences.....	5 July 2016
Trading in Subscription Rights ends.....	4 August 2016
Subscription Period ends.....	8 August 2016
Allocation of the VPS Offer Shares.....	On or about 9 August 2016
Payment Date.....	12 August 2016
Issuance of the VPS Offer Shares.....	On or about 19 August 2016
Listing and commencement of trading in the VPS Offer Shares on Oslo Børs.....	On or about 19 August 2016

## 6.7 Subsequent Offering Subscription Price

The subscription price in the Subsequent Offering has been set to NOK 0.55 per VPS Offer Share, which is identical to the Private Placement Subscription Price.

The Subsequent Offering Subscription Price represents a discount of approximately 65% to the closing price of NOK 1.57 per VPS Share as quoted on Oslo Børs on 6 June 2016, and a discount of approximately 63.5% to the theoretical opening price of the VPS Shares without Subscription Rights of NOK 1.51 (TERP), calculated on the basis of the closing price per VPS Share on 6 June 2016.

No expenses or taxes are charged to the subscribers in the Subsequent Offering by the Company.

## 6.8 Subscription Period

The subscription period in the Subsequent Offering (the "**Subscription Period**") will commence on 5 July 2016 and end on 8 August 2016 at 16.30 hours (CET).

## **6.9 Record Date for Existing Shareholders**

Only shareholders who are registered in the Company's shareholders' register in the VPS as of 4 July 2016 (the "**Record Date**") may be considered as Eligible Shareholders.

Provided that the delivery of traded VPS Shares was made with ordinary T+2 settlement in the VPS, VPS Shares that were acquired on or before 30 June 2016 will give the right to be considered as an Eligible Shareholder, whereas VPS Shares that were acquired from and including 1 July 2016 will not give the right to be considered as an Eligible Shareholder.

## **6.10 Subscription Rights**

Eligible Shareholders will be granted Subscription Rights giving a preferential right to subscribe for and be allocated VPS Offer Shares. Each Eligible Shareholder will be granted 0.0649 Subscription Right for every existing VPS Share registered as held by such Eligible Shareholder on the Cut-Off Date (as appearing in the VPS on the Record Date). One (1) Subscription Right will, subject to applicable securities laws, give the right to subscribe for and be allocated one (1) VPS Offer Share.

The number of Subscription Rights issued to each Eligible Shareholder will be rounded down to the nearest whole number of Subscription Rights without compensation to the holder. Each Subscription Right grants the owner the right to subscribe for and be allocated 1 (one) VPS Offer Share in the Subsequent Offering.

The Subscription Rights will be credited to and registered on each Eligible Shareholder's VPS account on 5 July 2016 under an International Securities Identification Number (ISIN) NL 0011896980, but will not be tradable before the trading period starts. The Subscription Rights are distributed free of charge to Eligible Shareholders.

**Eligible Shareholders who have not registered their Company Shares with the VPS, must establish a VPS account and contact the Manager in order to facilitate granting of Subscription Rights.**

The Subscription Rights may be sold before the expiry of the Trading Period on 4 August 2016 or used to subscribe for VPS Offer Shares before the expiry of the Subscription Period on 8 August 2016 at 16:30 hours (CET). Acquired Subscription Rights will give the same right to subscribe for and be allocated VPS Offer Shares as Subscription Rights held by Eligible Shareholders on the basis of their shareholdings on the Record Date.

**The Subscription Rights, including acquired Subscription Rights, must be used to subscribe for VPS Offer Shares before the end of the Subscription Period (i.e., 8 August 2016 at 16:30 hours (CET)) or sold before the end of the Trading Period (i.e., 4 August at 16:30 hours (CET)). Subscription Rights that are not sold before 16:30 hours (CET) on 4 August 2016 or exercised before 16:30 hours (CET) on 8 August 2016 will have no value and will lapse without compensation to the holder. Holders of Subscription Rights (whether granted or acquired) should note that subscriptions for VPS Offer Shares must be made in accordance with the procedures set out in this Prospectus and that the acquisition of Subscription Rights does not in itself constitute a subscription of VPS Offer Shares.**



## 6.11 Trading in Subscription Rights

Subscription Rights of Eligible Shareholders resident in jurisdictions where the Prospectus may not be distributed and/or with legislation that, according to the Company's assessment, prohibits or otherwise restricts subscription for VPS Offer Shares (the "**Ineligible Shareholders**") will initially be credited to such Ineligible Shareholders' VPS accounts. Such credit specifically does not constitute an offer to Ineligible Shareholders to subscribe for VPS Offer Shares. To the extent any Shareholders are Ineligible Shareholders, their Subscription Rights may be sold by the Company and/or the Manager and credited to the accounts of the relevant Ineligible Shareholders, net of cost and expenses, if they have a value exceeding the cost involved in selling the Subscription Rights and there is a market for acquiring such Subscription Rights. There can be no assurances that the Company and/or the Manager will sell any Subscription Rights or, in the event a sale is carried out, be able to sell the Subscription Rights with a profit.

The Subscription Rights will be tradable and listed on Oslo Børs with assumed ticker code "FUNCOM T"<sup>16</sup> from 5 July 2016 until 16:30 (CET) on 4 August 2016.

**The Subscription Rights will hence only be tradable during part of the Subscription Period.**

Persons intending to trade in Subscription Rights should be aware that the exercise of Subscription Rights by holders who are located in jurisdictions outside Norway may be restricted or prohibited by applicable securities laws. Please refer to Section 14 "Selling and Transfer restrictions" for a description of such restrictions and prohibitions.

## 6.12 Subscription procedure

Subscriptions for VPS Offer Shares must be made by submitting a correctly completed subscription form (such form is enclosed to this Prospectus as Appendix 1, the "**Subscription Form**") to the Manager during the Subscription Period. The Subscription Forms may be submitted to:

**ABG Sundal Collier ASA**  
Postboks 1444 Vika  
N-0115 Oslo  
Norway  
E-mail: [subscription@abgsc.no](mailto:subscription@abgsc.no)  
Facsimile: +47 22 01 60 62

Correctly completed Subscription Forms must be received by the Manager no later than 8 August 2016 16.30 hours (CET).

Neither the Company nor the Manager may be held responsible for postal delays, internet lines, unavailable facsimile lines, servers, or other logistical or technical problems that may result in subscriptions not being received in time or at all by the Manager. Subscription Forms received after the end of the Subscription Period and/or incomplete or incorrect Subscription Forms and any subscription that may be unlawful may be disregarded at the sole discretion of the Company without notice to the subscriber.

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<sup>16</sup> If the ticker code of the Subscription Rights will not be FUNCOM T, the correct ticker code for the Subscription Rights will be disclosed prior to start of the Subscription Period through [www.newsweb.no](http://www.newsweb.no).

Norwegian citizens who hold their VPS Shares through VPS may also subscribe for VPS Offer Shares on the internet, from the start of the Subscription Period, through the VPS online subscription system. All online subscribers must verify that they are Norwegian citizens by entering their national identity number (Nw. "*personnummer*"). Neither the Manager nor the Company assumes any responsibility for failure to subscribe or inability to subscribe for VPS Offer Shares due to technical or internet problems.

Subscriptions are binding and irrevocable, and cannot be withdrawn, cancelled or modified by the subscriber after having been received by the Manager. The subscriber is responsible for the correctness of the information filled into the Subscription Form. By signing and submitting a Subscription Form, the subscribers confirm and warrant that they have read this Prospectus and are eligible to subscribe for VPS Offer Shares under the terms set forth herein.

There is no minimum subscription amount for which subscriptions in the Subsequent Offering must be made. Oversubscription and subscription without Subscription Rights will be permitted.

Multiple subscriptions (*i.e.* subscriptions on more than one Subscription Form) are allowed. Please note, however, that two separate Subscription Forms submitted by the same subscriber with the same number of VPS Offer Shares subscribed for on both Subscription Forms will only be counted once unless otherwise explicitly stated in one of the Subscription Forms.

### **6.13 Mandatory anti-money laundering procedures**

The Subsequent Offering is subject to the Norwegian Money Laundering Act No. 11 of 6 March 2009 and the Norwegian Money Laundering Regulations No. 302 of 13 March 2009 (collectively, the "Anti-Money Laundering Legislation").

Subscribers who are not registered as existing customers of the Manager must verify their identity to the Manager in accordance with the requirements of the Anti-Money Laundering Legislation, unless an exemption is available. Subscribers who have designated an existing Norwegian bank account and an existing VPS account on the Subscription Form are exempted, unless verification of identity is requested by the Manager. Subscribers who have not completed the required verification of identity prior to the expiry of the Subscription Period will not be allocated VPS Offer Shares.

Furthermore, participation in the Subsequent Offering is conditional upon the subscriber holding a VPS account. The VPS account number must be stated in the Subscription Form. VPS accounts can be established with authorized VPS registrars, who can be Norwegian banks, authorized securities brokers in Norway and Norwegian branches of credit institutions established within the EEA. However, non-Norwegian investors may use nominee VPS accounts registered in the name of a nominee. The nominee must be authorized by the NFSA. Establishment of a VPS account requires verification of identification to the VPS registrar in accordance with the Anti-Money Laundering Legislation.

## **6.14 Financial intermediaries**

### **6.14.1 General**

All persons or entities holding VPS Shares or Subscription Rights through financial intermediaries (e.g., brokers, custodians and nominees) should read this Section 6.14 "Financial intermediaries". All questions concerning the timeliness, validity and form of instructions to a financial intermediary in relation to the exercise, sale or purchase of Subscription Rights should be determined by the financial intermediary in accordance with its usual customer relations procedure or as it otherwise notifies each beneficial shareholder.

The Company is not liable for any action or failure to act by a financial intermediary through which VPS Shares are held.

### **6.14.2 Subscription Rights**

If an Existing Shareholder holds VPS Shares registered through a financial intermediary on the Record Date, the financial intermediary will, subject to the terms of the agreement between the Eligible Shareholder and the financial intermediary, customarily give the Eligible Shareholder details of the aggregate number of Subscription Rights to which it will be entitled and the relevant financial intermediary will customarily supply each Eligible Shareholder with this information in accordance with its usual customer relations procedures. Eligible Shareholders holding VPS Shares through a financial intermediary should contact the financial intermediary if they have received no information with respect to the Subsequent Offering

Subject to applicable law, Eligible Shareholders holding VPS Shares through a financial intermediary may instruct the financial intermediary to sell some or all of their Subscription Rights, or to purchase additional Subscription Rights on their behalf. Please refer to Section 14 "Selling and Transfer restrictions" for a description of certain restrictions and prohibitions applicable to the sale and purchase of Subscription Rights in certain jurisdictions outside Norway.

### **6.14.3 Subscription Period and period for trading in Subscription Rights**

The time by which notification of exercise instructions for subscription of VPS Offer Shares must validly be given to a financial intermediary may be earlier than the expiry of the Subscription Period. The same applies for instructions pertaining to trading in Subscription Rights and the last day of trading in such rights (which accordingly will be a deadline earlier than 4 August 2016 at 16:30 hours (CET)). Such deadlines will depend on the financial intermediary. Eligible Shareholders who hold their VPS Shares through a financial intermediary should contact their financial intermediary if they are in any doubt with respect to deadlines.

### **6.14.4 Subscription**

Any Eligible Shareholder who holds its Subscription Rights through a financial intermediary and wishes to exercise its Subscription Rights, should instruct its financial intermediary in accordance with the instructions received from such financial intermediary. The financial intermediary will be responsible for collecting exercise instructions from the Eligible Shareholders and for informing the Manager of their exercise instructions.

A person or entity who has acquired Subscription Rights that are held through a financial intermediary should contact the relevant financial intermediary for instructions on how to exercise the Subscription Rights.

Please refer to Section 14 "Selling and Transfer restrictions" for a description of certain restrictions and prohibitions applicable to the exercise of Subscription Rights in certain jurisdictions outside Norway.

#### 6.14.5 Method of payment

Any Existing Shareholder who holds its Subscription Rights through a financial intermediary should pay the Subsequent Offering Subscription Price for the VPS Offer Shares that are allocated to it in accordance with the instructions received from the financial intermediary. The financial intermediary must pay the Subscription Price in accordance with the instructions in the Prospectus. Payment by the financial intermediary for the VPS Offer Shares must be made to the Manager no later than the Payment Date. Accordingly, financial intermediaries may require payment to be provided to them prior to the Payment Date.

#### 6.15 Allocation of the VPS Offer Shares

Allocation of the VPS Offer Shares will take place on or about 9 August 2016 in accordance with the following criteria:

- (i) Subscription made on the basis of Subscription Rights will be allotted VPS Offer Shares;
- (ii) Over-subscription by subscribers with Subscription Rights on a pro rata basis; and
- (iii) Subscription by subscribers without Subscription Rights on a pro rata basis.

The Company reserves the right to round off, reject or reduce any subscription for VPS Offer Shares. In the event the Company rounds off, rejects or reduces any subscription amount for VPS Offer Shares, any payments made in connection with such subscriptions will be returned without interest or other compensation.

Allocation of fewer VPS Offer Shares than subscribed for by a subscriber will not impact on the subscriber's obligation to pay the number of VPS Offer Shares actually allocated.

The Company will not distinguish subscribers by which securities firm, if any, the subscription has been made through.

The result of the Subsequent Offering is expected to be published on or about 9 August 2016 in the form of a stock exchange notification from the Company through the Oslo Børs information system and at the Company's website ([www.funcom.com](http://www.funcom.com)). Notifications of allocated VPS Offer Shares and the corresponding subscription amount to be paid by each subscriber are expected to be distributed in a letter on or about 9 August 2016. Subscribers having access to investor services through their VPS account will be able to check the number of VPS Offer Shares allocated to them from 12:00 hours (CET) on 9 August 2016. Subscribers who do not have access to investor services through their VPS account manager may contact the Manager from 12:00 hours (CET) on 9 August 2016 to request information about the number of VPS Offer Shares allocated to them.

The VPS Offer Shares may not be traded until they are listed on Oslo Børs, which is expected to be on or about 19 August 2016.

## 6.16 Payment for the VPS Offer Shares

### 6.16.1 Payment due date

The payment for VPS Offer Shares allocated to a subscriber falls due on 12 August 2016 (the "**Payment Date**"). Payment must be made in accordance with the requirements set out in ("Subscribers who have a Norwegian bank account" or "Subscribers who do not have a Norwegian bank account") below.

### 6.16.2 Subscribers who have a Norwegian bank account

Subscribers who have a Norwegian bank account must, and will by signing the Subscription Form, provide the Manager with a one-time irrevocable authorization to debit a specified bank account with a Norwegian bank for the amount payable for the VPS Offer Shares which are allocated to the subscriber. Payment by direct debiting is only available for subscribers who are allocated VPS Offer Shares for an amount below NOK 5,000,000.

The specified bank account is expected to be debited on or after the Payment Date. The Manager is only authorized to debit such account once, but reserves the right to make up to three debit attempts, and the authorization will be valid for up to seven working days after the Payment Date. The subscriber furthermore authorizes the Manager to obtain confirmation from the subscriber's bank that the subscriber has the right to dispose over the specified account and that there are sufficient funds in the account to cover the payment.

If there are insufficient funds in a subscriber's bank account or if it for other reasons is impossible to debit such bank account when a debit attempt is made pursuant to the authorization from the subscriber, the subscriber's obligation to pay for the VPS Offer Shares will be deemed overdue.

Payment by direct debiting is a service that banks in Norway provide in cooperation. In the relationship between the subscriber and the subscriber's bank, the standard terms and conditions for "Payment by Direct Debiting – Securities Trading" will apply, provided, however, that subscribers who are allocated VPS Offer Shares for an amount exceeding NOK 5,000,000 must contact the Manager for further details and instructions, and ensure that payment with cleared funds for the VPS Offer Shares allocated to them is made on or before the Payment Date.

### 6.16.3 Subscribers who do not have a Norwegian bank account

Subscribers who do not have a Norwegian bank account must ensure that payment with cleared funds for the VPS Offer Shares allocated to them is made on or before the Payment Date.

Prior to any such payment being made, the subscriber must contact the Manager for further details and instructions.

### 6.16.4 Overdue payments

Overdue and late payments will be charged with interest at the applicable rate from time to time under the Norwegian Act on Interest on Overdue Payment of 17 December 1976 No. 100, which is currently 8.75% per annum. If payment for the allotted VPS Offer Shares is not received when due, the subscribed VPS Offer Shares will not be delivered to the subscriber, and Funcom reserves the

right, at the risk and cost of the subscriber, to cancel the subscription in respect of the Offers Shares for which payment has not been made, or to sell or otherwise dispose of the VPS Offer Shares and hold the subscriber liable for any loss, cost or expense suffered or incurred in connection therewith. The original subscriber remains liable for payment of the entire amount due, including interest, costs, charges and expenses accrued, and the Manager and/or the Company may enforce payment of any such amount outstanding.

#### **6.17 Delivery of the VPS Offer Shares and listing of the VPS Offer Shares**

The Company expects that the share capital increase pertaining to the Subsequent Offering will be formalized by Dutch notarial deed on or about 19 August 2016 and that the VPS Offer Shares will be delivered to the VPS accounts of the subscribers to whom they are allocated on or about 19 August 2016.

The VPS Shares are listed on Oslo Børs under ISIN NL0000062461 and ticker code "FUNCOM".

The VPS Offer Shares will be listed on Oslo Børs as soon as the VPS Offer Shares have been registered in the VPS. This is expected to take place on or about 19 August 2016.

The VPS Offer Shares may not be transferred or traded before they are fully paid and said registration in the VPS has taken place (expected to take place on or about 19 August 2016).

#### **6.18 Participation of major Existing Shareholders and members of the Supervisory Board, the Management Board and the Executive Management**

To the extent known by the Company, no major Existing Shareholders (*i.e.* Existing Shareholders holding more than 3% of the total outstanding VPS Shares) or member of the Company's Supervisory Board, Management Board and Executive Management intends to participate in the Subsequent Offering.

#### **6.19 VPS registration**

The VPS Offer Shares will, together with the existing VPS Shares, be registered as Depositary Receipts over the underlying Company Shares issued in connection with the Subsequent Offering and may be identified by ISIN number NL 0000062461. The VPS Offer Shares are issued by the Company's VPS Registrar, DNB Bank ASA, Verdipapirservice, Dronning Eufemias gate 30, P.O. Box 1600 Sentrum, 0021 Oslo, Norway.

Please note that, pursuant to the Registrar Agreement, the VPS Registrar will be registered as the holder of every new Company Share issued in connection with the Subsequent Offering in the Company's shareholders' register in the Netherlands following completion of the Subsequent Offering. The VPS Registrar will register the beneficial interests in the new Company Shares to be issued in connection with the Subsequent Offering in book-entry form with the VPS through the VPS Offer Shares. Therefore, it is not the Company Shares in registered form issued in accordance with the Dutch Civil Code, but the beneficial interests in such Company Shares in book-entry form under the category of a "share" that are registered with the VPS and traded on Oslo Børs. The VPS Offer Shares will be registered in the VPS following completion of the Subsequent Offering. Each VPS Offer Share will represent beneficial ownership of one Company Share to be issued in connection with the Subsequent Offering.

## **6.20 Dilution**

The dilutive effect following the Private Placement, the Debt Conversion and the Subsequent Offering assuming subscription of 15,000,000 VPS Offer Shares represents an immediate dilution of approximately 62.5% for Existing Shareholders who did not participate in the Private Placement or the Debt Conversion, but does intend to participate in the Subsequent Offering.

The dilutive effect following the Private Placement, the Debt Conversion and the Subsequent Offering assuming subscription of 15,000,000 VPS Offer Shares represents an immediate dilution of approximately 60% for Existing Shareholders who did not participate in the Private Placement or the Debt Conversion and who does not intend to participate in the Subsequent Offering.

## **6.21 Selling and transfer restrictions**

For a description of selling and transfer restrictions applicable to the Subsequent Offering, please refer to Section 14 "Selling and Transfer restrictions".

## **6.22 Proceeds and expenses related to the Subsequent Offering**

The gross proceeds to the Company in the Subsequent Offering will be up to NOK 8.25 million.

The Company will bear the fees and expenses related to the Subsequent Offering and the listing of the VPS Offer Shares, which are estimated to amount to approximately NOK 1,297,500. No expenses or taxes have been charged by the Company to the subscribers in the Subsequent Offering. The net proceeds from the Subsequent Offering will be up to approximately NOK 6.95 million.

## **6.23 Governing law and jurisdiction**

This Prospectus and the terms and conditions of the Subsequent Offering shall be governed by and construed in accordance with Norwegian law. The issuance of the new Company Shares in relation to the Subsequent Offering shall be governed by and construed in accordance with Dutch law. The issuance of the VPS Offer Shares shall be governed by and construed in accordance with Norwegian law.

## **6.24 Advisors**

ABG Sundal Collier ASA, Munkedamsveien 45, Vika Atrium, 0250 Oslo, Norway is acting as Manager.

Advokatfirmaet CLP DA is acting as the Company's legal adviser on Norwegian law matters in relation to the Subsequent Offering. Weidema van Tol (Netherlands) B.V. is acting as the Company's legal adviser on Dutch law matters in relation to the Subsequent Offering.

## **6.25 Interests of natural and legal persons involved in the Subsequent Offering**

The Manager (and/or affiliates of the Manager) has (or have) interests in the Subsequent Offering as they will receive a commission in connection with the Subsequent Offering and have provided from time to time, and may in the future provide, investments and commercial services to the Company and its affiliates in the ordinary course of their respective businesses, for which they have received and may continue to receive customary fees and commissions. The Manager, its employees and any

affiliates may currently own existing Shares in the Company. The Manager does not intend to disclose the extent of any such investments or transactions otherwise than in accordance with any legal or regulatory obligation to do so.

Other than as set out above, there are no other interests (including conflicts of interests) of natural and legal persons involved in the Subsequent Offering.



## **7 PRESENTATION OF FUNCOM N.V.**

### **7.1 Overview**

The Company was incorporated as private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) under the law of the Netherlands on 29 November 1996 under the name Funcom B.V. Funcom B.V was converted into a limited liability company (*naamloze vennootschap*) on 16 October 2000. The Company's name was changed accordingly to Funcom N.V. The Company's commercial name is Funcom.

The Company is registered with the Commercial Register of the Chamber of Commerce (*Handelsregister van de Kamer van Koophandel*) under registration number 28073705. The Company's registered office is at Keplerstraat 34, 1171CD Badhoevedorp, the Netherlands and may be reached at telephone number +31 20 30 55 714.

The principal activities of the Company (and the Group) are to develop, market and carry on business in computer games in the broadest sense. This is further elaborated in article 2 of the Company's articles of association, which states that the operational objective of the Company is to develop, market and carry on business in computer games, hereunder massively multiplayer online games, online role playing games and related games on electronic devices of different kinds. The objectives of the Company further include to take and grant licenses and other industrial property interests, assume commitments in the name of any enterprise with which it may be associated within a group of companies, to take financial interests in such enterprises and to take any other action, such as but not limited to the granting of securities or the undertaking of obligations on behalf of third parties, which in the broadest sense of the term, may be related or contribute to the aforesaid objectives.

The key criteria for the overall performance of the Group are (i) cost of development of new products; (ii) cost of maintenance and support of Live Games; (iii) overall reach and sales of products; (iv) lifetime retention and revenues per customers; and (v) lifetime of the Group's products.

The Group also has offices in Oslo, Norway and in Raleigh, North Carolina, the United States. As of the date hereof, the Group has a total of 90 employees. In addition, the Group has also currently hired five consultants.

### **7.2 Business concept**

Funcom is a developer of video games, which specializes in the making of massively multiplayer online games (MMO's). However, Funcom has also developed and published several single-player games. Funcom's games are published on a number of different platforms, which implies a wide potential reach for its games.

Since the incorporation of Funcom, the Company has developed and published over 25 game titles across several genres and gaming platforms. Most notable of these are the online games "*The Secret World*", "*Age of Conan*" and "*Anarchy Online*" and the single player games "*The Longest Journey*"

and "*Dreamfall*". In its early days, Funcom developed console games such as "Pocahontas" and "Casper", and also created numerous ports<sup>17</sup> of existing games to various platforms.

One of the key reasons for Funcom's achievements in the MMO segment is the development of the Company's proprietary technology platform "*Dreamworld Technology*". This platform and all its associated tools gives the developers the flexibility and power needed to create some of the most advanced virtual worlds on the market. The Company continues to expand and enhance its proprietary technology simultaneously with all its game production. For further information on the *Dreamworld Technology*, please refer to Section 7.7 "Technology".

### 7.3 The new Funcom strategy

The Company decided to shift strategy in the course of 2015, focusing on different types of products and production cycles. The Company decided to change its strategy to be able to adapt easier to fast changing market trends, to lower the investment levels required for each game and to be able to produce game titles faster and more agile. This new strategy consists of:

- (i) developing small and innovative games, focused on trying new concepts, experimenting with new technology and platforms and utilizing our intellectual properties, while keeping the investment level low;
- (ii) developing larger games, focused on genres or game types where we can create products of higher production value than the competition, using our own or 3<sup>rd</sup> party intellectual property<sup>18</sup> and drawing from the innovation and experimentation of the smaller products to lower the overall risk;
- (iii) upgrading the *Dreamworld Technology* to integrate with third parties; and
- (iv) leveraging and growing the internal Intellectual Properties such as *Anarchy Online*, *The Longest Journey* and *The Secret World* for both internal and third-party licensing.

The product development and release plan for this strategy is a minimum of one small game released per year and one larger game to be in development at all times per development studio. Additionally, the Company will keep developing and supporting the existing MMORPGs as they are an important source of revenue and drive the internal intellectual properties. The Company intends to publish their games through a number of various distribution services, but considers Steam to be the most important. The Company considers that it is materially dependent on Steam as this is the biggest online distribution client of computer games with the best reach for games that will be produced under the new Funcom strategy.

The strategy is meant to reduce the overall risk exposure of the Company, control costs through careful budgeting throughout the Group and increase the financial stability by having more revenue sources. The Company has implemented a cost-saving scheme called "Structural cost". Under this scheme, the Company intends to reduce Group costs by liquidating companies that do no longer bring any value to the Group.

Furthermore, the Company will streamline its business by simplifying the company structure under the Structural cost scheme (cf. above), evaluating strategic options including but not restricted to

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<sup>17</sup> Ports are games developed for one platform and subsequently made compatible for another platform.

<sup>18</sup> The Company considers itself materially dependent on the intellectual property rights related to Conan the Barbarian licensed from Conan Properties Inc. Please refer to section 7.10 "Licenses and intellectual property" for further information.

partnerships, mergers, acquisitions etc. The Company will continue its constructive dialogue with its major creditor, KGJL, to ensure a favorable debt structure for both parties.

The games developed and published prior to the shift of strategy are part of the new strategy only as a revenue contributor and as part of the legacy of the Company. This implies that the Company expects that the games developed and published prior to the shift of strategy will continue to generate revenue in the future, however with a slow down-going trend, and that the Company may decide to produce new game titles based on its existing intellectual property rights.

Both development studios are scheduled to have fully switched to this strategy by 2Q16.

The first game that was released under this new strategy is "*The Park*", released for PC on 27 October 2015.

The above mentioned statements and objectives are forward looking and are subject to change along with industry trends. The Company strongly encourages all investors, analysts, press and others to investigate and analyze the gaming industry. The industry has drastically changed over the past few years. It is the Company's clear goal to align itself with the market, leverage its technology and know-how and adapt its portfolio of products to address the current as well as future needs.

#### 7.4 History and development

The table below highlights the Company's most significant events from its incorporation until the date of this Prospectus:

Year	Significant event
1993	The business that is now Funcom was founded by Erik Gløersen, Tyr Nielsen, Andre Backen, Gaute Godager and Olav Mørkrid.
1995	The Company is incorporated as Funcom B.V.
1999	<i>The Longest Journey</i> is released for Windows PC's.
2000	The Company is converted from Funcom B.V. into Funcom N.V.
2001	<i>Anarchy Online</i> is released.
2002	Trond Arne Aas is appointed new CEO of Funcom.
2005	Funcom is listed on the Oslo Børs
2006	<i>Dreamfall: The Longest Journey</i> is released for Windows PC's and Microsoft Xbox platforms.
2007	The Company lowers the priority traditional "offline" product distribution in favor of digital distribution.
2008	<i>Age of Conan</i> is released for Windows PC's.
2009	Funcom announces the establishment of a new development studio in Montreal, Canada.
2012	Funcom announces Ole Schreiner as the new CEO of Funcom and as a new member of the Management Board.
2012	<i>The Secret World</i> is released.
2013	Funcom announces a restructuring of the Company.
2014	<i>The Longest Journey</i> is released for iOS devices.
2014	<i>Dreamfall: Chapters</i> is released for the Windows, Mac OS X and Linux platforms on license by Red Thread Games.
2014	LEGO® <i>Minifigures Online</i> is released.

2014	Funcom developed the core of its <i>Dreamworld Technology</i> to fully support Mac OS, Android and iOS devices.
2015	Funcom announces Rui Casais as the new CEO of Funcom.
2015	Funcom announces its new strategy.
2015	Funcom accepts a fine of NOK 1,500,000 from Økokrim and the investigation of the Company is discontinued and the case closed for Funcom.
2015	<i>The Park</i> is released.
2016	The Company completed the Private Placement, raising gross proceeds of approximately NOK 52.8 million, and a Debt Conversion which implied a reduction of the Company's debt obligations with USD 7.7 million.

## 7.5 Vision, goals and strategy

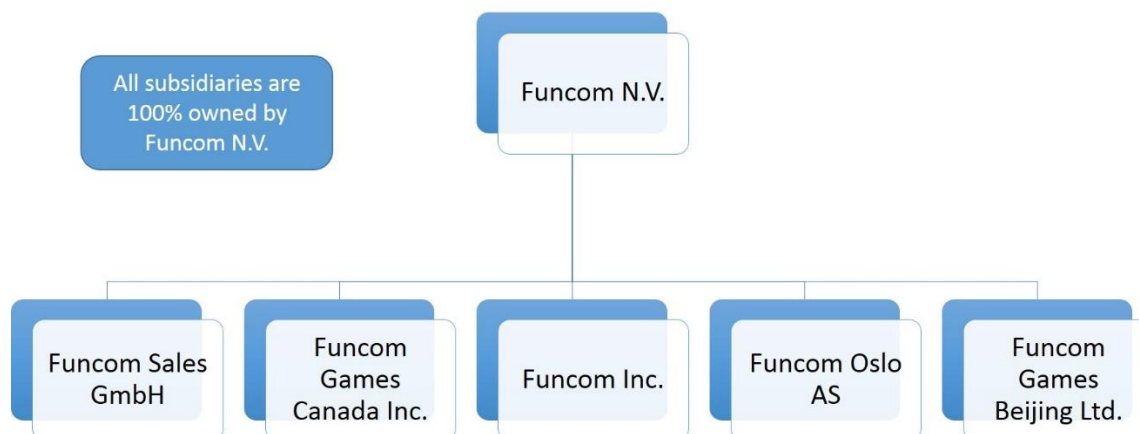
Funcom's long term vision is to become a leading developer and publisher of interactive entertainment, focused on online game experiences for gamers across multiple platforms, owning and developing an exciting intellectual property portfolio for internal and 3<sup>rd</sup> party licensing use and embracing new and emerging markets and technologies such as Open World Survival games, eSports games, Virtual Reality, Augmented Reality and others.

Funcom plans to achieve this vision through the aforementioned strategy of developing and releasing multiple games per year, with the smaller games being the catalyst for innovation and experimentation and the larger games being the solid bets to drive revenue.

## 7.6 Legal structure

### 7.6.1 Overview

The Company is a holding company. The legal structure of the Group is set out below.



### 7.6.2 Subsidiaries

The Company is the ultimate parent company of 5 wholly owned subsidiaries. The table below provides an overview of the Group's subsidiaries.

Subsidiary	Registered office	Principal activity	Ownership (%)	Voting rights (%)
Funcom Sales GmbH in Liquidation	Kohlrainstrasse 8, 8700 Küsnacht ZH, Switzerland	The operations have been discontinued as this company is currently under liquidation.	100	100
Funcom Games Canada Inc.	320-1440 rue Sainte-Catherine O, Montréal (Québec), H3G1R8 Canada	Group support functions within finance	100	100
Funcom Inc.	10 Laboratory Drive, Building 2, Suite 105, RTP, NC 27709, the United States	The development of computer games.	100	100
Funcom Oslo AS	Bestumstubben 11, 0281 Oslo	The development of computer games.	100	100
Funcom Games Beijing Ltd.	No. 1-22, Building 78 F1, Dongsihuan Zhonglu, Chaoyang District, Beijing	Business development	100	100

In 2014 Funcom has taken the decision to reorganize and simplify its group structure, by reducing the number of subsidiaries and by moving the business to Funcom Oslo AS. In consequence, Funcom GmbH in Liquidation and Funcom Sales GmbH in Liquidation was put in voluntary liquidation back in January 2015. Funcom GmbH in Liquidation was finally liquidated and deregistered on 11 May 2016. The liquidation process of a company in Switzerland takes at least 12 months. It is expected that Funcom Sales GmbH will be liquidated and deregistered in the second or third quarter of 2016.

## 7.7 Technology

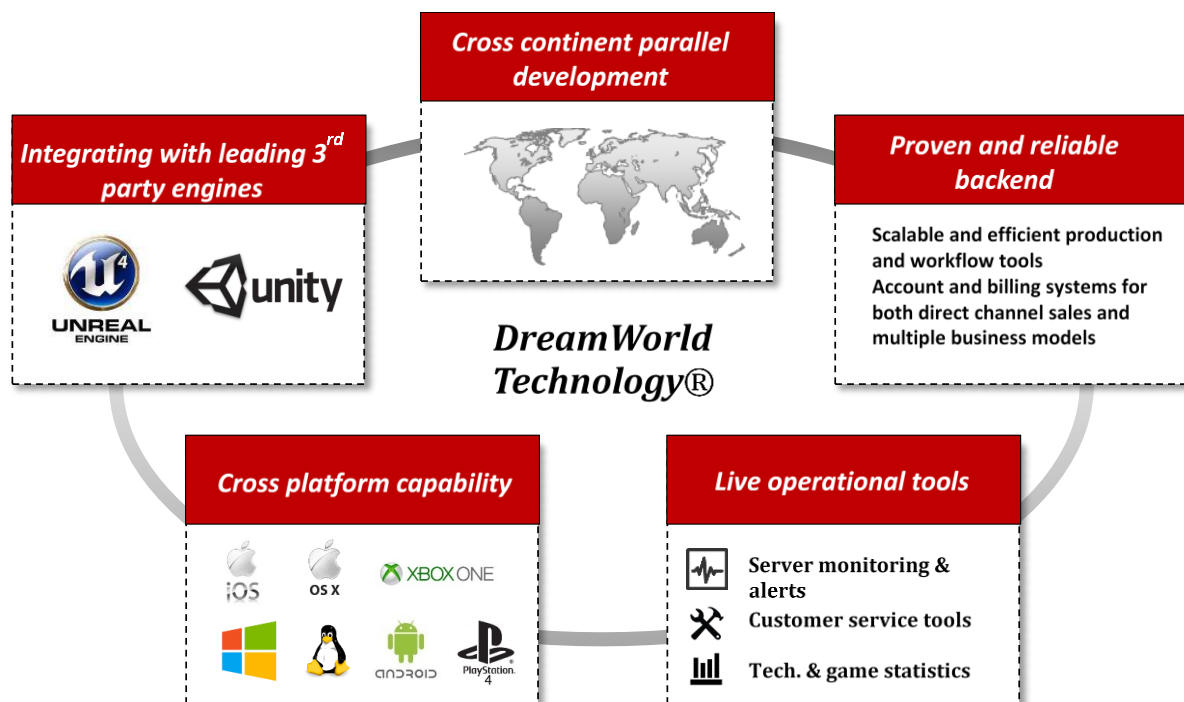
### 7.7.1 The *Dreamworld Technology*

Funcom has since 2000 developed its own proprietary and trademarked technology for development of computer games, called the "*Dreamworld Technology*". The *Dreamworld Technology* is the technological foundation on which Funcom's games are built, including *Age of Conan*, *The Secret World* and LEGO® *Minifigures Online*.

The *Dreamworld Technology* is tailored and optimized for creating world class MMO's. The technology has a highly modular structure in which new and upgraded technology modules can be integrated into the technology base.

The *Dreamworld Technology* provides Funcom with a unique competitive advantage by enabling more flexible, faster and more predictable development and deployment of upcoming games.

As part of the strategy to focus on multiple types of games and have faster development cycles, the *Dreamworld Technology* is now being adapted to work together with leading third-party engines, with Unreal Engine 4 being the first of such engines to be integrated. The integration of third-party engines in the *Dreamworld Technology* will give the Company the possibility to use software and tools developed by third parties when such third-party software and tools are considered to be of a higher quality than those developed and Funcom and when such can be accessed and used at a lower price than the investment costs needed to develop proprietary software and tools of an equal quality. The possibility to integrate third-party software and tools into the *Dreamworld Technology* will provide Funcom with a flexible means for developing games and allow Funcom to retain the competitive edge on all online and multiplayer aspects while leveraging the front-end strengths of third-party engines.



The Company is dependent on the *Dreamworld Technology* to generate revenue as this technology forms the basis of the games developed and published by Funcom, including its Live Games, as described above.

## 7.8 Game Intellectual Properties and associated products

### 7.8.1 *The Longest Journey*

Under the intellectual property related to *The Longest Journey*, the Company has developed and/or published four games.

#### ***The Longest Journey***

*The Longest Journey* was released for Windows PC's in 1999 and 2000 (depending on geographic location). *The Longest Journey* is a single player point-and-click adventure video game where the

player interacts with objects on the screen to solve puzzles and advance the story. *The Longest Journey* was released for iOS in late 2014.

The game takes place in the parallel universes of the magic-dominated *Arcadia* and the technologically advanced world of *Stark*. The protagonist is April Ryan, an 18-year old art student living in *Stark*. More than 450,000 copies of *The Longest Journey* have been sold until the date of this Prospectus.

Together with the associated games *Dreamfall* and *Dreamfall Chapters*, *The Longest Journey* has a following of 1 – 1.5 million players. These numbers have been relatively stable and has not fluctuated much over time as long as there are activities directed towards the community like updates to a game, a new game or marketing activities around games. Usually it increases with activity and decreases when it has been a while since last update to the games or with new games.

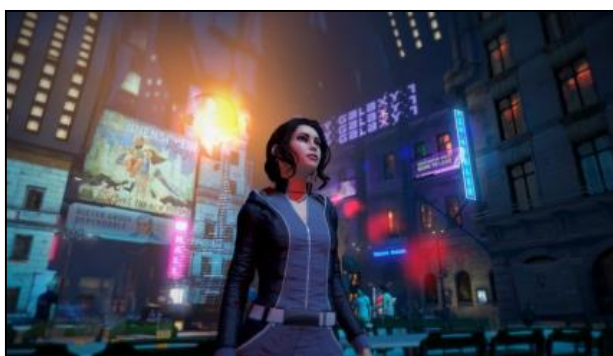
### ***Dreamfall: The Longest Journey***

*Dreamfall: The Longest Journey* was released for Windows PC's and Microsoft Xbox platforms in 2006. *Dreamfall: The Longest Journey* is a singly player adventure video game and a sequel to *The Longest Journey*. Approximately 350,000 copies of *Dreamfall: The Longest Journey* has been sold until the date of this Prospectus.

The story in *Dreamfall: The Longest Journey* takes place ten years after the events of the first game. The story focuses on three characters (Zoë Castillo, April Ryan and Kian Alvane) that live in two parallel worlds, the magic-dominated *Arcadia* and the technologically advanced world of *Stark*.

### ***Dreamfall Chapters***

*Dreamfall Chapters* is an ongoing single player 3D adventure game with emphasis on character interaction, exploration of the game world and puzzle solving. *Dreamfall Chapters* consists of five different episodes, which may be independently purchased and played. Four of the planned five episodes have been released for the Windows, Mac OS X and Linux platforms. More than 90,000 copies have been sold in total of the four episodes released.



*Picture from Dreamfall Chapters*

*Dreamfall Chapters* continues the story of *Dreamfall: The Longest Journey*.

*Dreamfall Chapters* is being developed and published by Red Thread Games under license from Funcom.

### 7.8.2 *Anarchy Online*

*Anarchy Online* is a massively multiplayer online role-playing game (MMORPG), which was released in the summer of 2001. *Anarchy Online* is one of the few MMO's from that era which still offers its players both an exciting game and continuous updates and improvements.



Picture from *Anarchy Online*

*Anarchy Online* is set in a unique science fiction world tens of thousands of years into the future on the planet *Rubi-Ka*, where the rebellious *Clans* are fighting the corporation *Omni-Tek*. *Anarchy Online* offers a huge and ever expanding game world. Through the years, the world and game systems of *Anarchy Online* have continuously been made bigger and deeper through expansions such as *The Notum Wars*, *Shadowlands*, *Alien Invasion*, *Lost Eden* and *Legacy of the Xan*.

The keys behind the game's longevity are both a strong and tightly knit community and incredibly deep game systems, which allow the players to develop their characters to great extents.

More than 2 million players have engaged in the game, and Funcom has an active email address pool<sup>19</sup> for *Anarchy Online* with more than 500,000 addresses. These numbers have been relatively stable and has not fluctuated much over time as long as there are activities directed towards the community like updates to a game, a new game or marketing activities around games. Usually it increases with activity and decreases when it has been a while since last update to the games or with new games.

### 7.8.3 *Age of Conan*

#### ***Age of Conan***

*Age of Conan* is a fantasy-themed MMORPG, which was released in May 2008 for Windows PC's.

*Age of Conan* offers a brutal and mature world, capturing the essence and magic of Robert E. Howard's incredible stories about Conan the Barbarian and the world of Hyboria. It combines action based combat with deep character progression, captivating stories and extraordinary content.

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<sup>19</sup> Active e-mail addresses are e-mail addresses which are valid and from which the owner is still a subscriber of the newsletter connected to that e-mail address.





Picture from *Age of Conan*

*Age of Conan* has since its release been expanded with numerous updates. The *Age of Conan* also offers an in-game Item Shop where players may make purchases to increase the items owned by and the abilities of their character.

On 17 December 2015, Funcom Oslo AS entered into an agreement with Conan Properties LLC. Under this agreement, Funcom Oslo AS is the preferred partner for PC and console games based on the "Conan the Barbarian" brand and the agreement gives Funcom Oslo AS the rights to develop multiple games based on "Conan the Barbarian" and the world of "Hyboria".

More than 4 million players have engaged in the game, Funcom has an active email address pool<sup>20</sup> for *Age of Conan* with more than 2,200,000 addresses. These numbers have been relatively stable and has not fluctuated much over time as long as there are activities directed towards the community like updates to a game, a new game or marketing activities around games. Usually it increases with activity and decreases when it has been a while since last update to the games or with new games.

#### 7.8.4 *The Secret World*

Under the intellectual property related to *The Secret World*, the Company has developed and published two games.

##### ***The Secret World***

*The Secret World* is a MMORPG set in a modern-day real world under attack from occult forces, which was released in July 2012.

*The Secret World* offers deep and creative storylines, free form character progression and challenging content in a modern-day setting. The players join one three *Secret Societies*; (i) the *Dragon*; (ii) the *Templars*; or the *Illuminati* to battle a tide of rising darkness threatening the whole world.

*The Secret World* uses a subscription-optional, "buy-to-play" business model, requiring players only to buy the game with no additional subscription fees. Players who pay a subscription fee receive additional benefits.

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<sup>20</sup> Active e-mail addresses are e-mail addresses which are valid and from which the owner is still a subscriber of the newsletter connected to that e-mail address.



Picture from *The Secret World*

*The Secret World* has since its release been expanded with several updates. *The Secret World* also offers an in-game Item Shop where players may make purchases to increase the items owned by and the abilities of their character.

More than 650,000 players have engaged in the game, Funcom has an active email address pool<sup>21</sup> for *The Secret World* with more than 600,000 addresses. These numbers have been relatively stable and has not fluctuated much over time as long as there are activities directed towards the community like updates to a game, a new game or marketing activities around games. Usually it increases with activity and decreases when it has been a while since last update to the games or with new games.

### ***The Park***

*The Park* is a first-person single player psychological horror adventure video game, which was released in October 2015. *The Park* utilizes *The Secret World* intellectual property and is set in a location called "Atlantic Island Park".

As a project, *The Park*'s main objective was to prepare the Funcom Oslo team to adapt the new Funcom strategy and to build the skills needed for the larger game to be released in 2016.

More specifically, it was meant as an experimental title to develop Funcom Oslo's team expertise with Unreal Engine 4, its ability to develop and release a game in a very short timeframe (6 months), to test the Single Player Horror market and to test releasing a horror/thriller game around the Halloween timeframe, all while generating a new revenue stream.

The Xbox One and PlayStation 4 release of *The Park* on 3 May 2016 is meant to build internal expertise regarding developing and launching on the new generation of game consoles.

*The Park* has sold around 40,000 units on the PC platform.

### **7.8.5 LEGO® Minifigures Online**

LEGO® *Minifigures Online* is an online MMO for kids of all ages based on the LEGO® *Minifigures Online*. LEGO® *Minifigures Online* was released on PC in October 2014, and was released for the Mac OS, iOS and Android systems throughout 2015. The game features full cross-platform play, allowing

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<sup>21</sup> Active e-mail addresses are e-mail addresses which are valid and from which the owner is still a subscriber of the newsletter connected to that e-mail address.

anyone to play together in the same world regardless of which device they are playing on. LEGO® *Minifigures Online* is free to play.

The game is based on the LEGO® Minifigures theme, allowing players to unlock and play as the various characters from the theme, while also incorporating elements from classic LEGO® themes. In addition to unlocking new Minifigures through normal gameplay, players are also able to unlock Minifigures by purchasing physical LEGO® Minifigures blind bags, which contain special codes that, once entered, allow the character to be unlocked instantly.

LEGO® *Minifigures Online* have been developed and published under license from the LEGO® Group. The brand name LEGO®, the LEGO® logo, the "Brick" and the "Knob" configurations and the "Minifigures" are trademarks of the LEGO® Group.

#### 7.8.6 Upcoming games

##### ***Conan Exiles***

Funcom is working on an open world survival game set in the world of Conan the Barbarian called *Conan Exiles*.

The game is targeted to be released on the PC platform in the "Steam" store in "Early Access" mode on 13 September 2016, with full launch on PC and Consoles at a later stage<sup>22</sup>. The game will be commercialized using a premium (also called "Pay to play") business model, details of which will be revealed closer to the release of the game.

The game is being developed by the team in Funcom Oslo and will represent an estimated investment of between 4 and 10 Million USD, adjustable based on the reception and sales performance of the game to be measured starting with the Early Access release. The estimated investment refers to Funcom's total investment in *Conan Exiles* for the lifetime of this game. Funcom expects that the financial performance of the Company will be materially dependent on the performance of the larger games, including *Conan Exiles*, developed under the new Funcom strategy. However, as only one game has yet been published under the new Funcom strategy, the actual dependency on such games is uncertain.

#### 7.8.7 Games in early stage development

In addition to *Conan Exiles*, Funcom is in the early stages of planning and development for two small games as described in the Company's strategy. These titles will have a limited budget, *i.e.* a budget of less than one million USD, and timeframe, *i.e.* around 3 – 12 months development time, and will explore different genres and market segments than the larger *Conan Exiles* game described above. The goal of these games are to explore different market segments and genres to a lower cost than the cost of a larger game like *Conan Exiles*.

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<sup>22</sup> The time spent from Early Access launch until full launch has not yet been finally determined and will depend on the reception of *Conan Exiles*. However, Funcom does not expect that the period between Early Access and full launch of *Conan Exiles* will last for longer than one year.

## 7.9 Development of the Company's games

The Company follows an iterative development process for its games based on frequent milestone deliveries, with most of the development done in-house and some outsourcing/subcontractor work when necessary. The Company uses outsourcing and subcontractor work for more basic tasks in addition to in-house production, for example related to graphics or music production.

It is the Company's intention to have a solid development team with experienced developers that can interface with outsourcing/subcontractors for periods of time when the development demands are higher, *i.e.* when the Company has a production need which cannot be met with in-house capabilities, to avoid inflating the Company's headcount and personnel costs in an unsustainable way.

## 7.10 Licenses and intellectual property

The Company is dependent on the intellectual property rights held by it, to develop and publish games. The Company considers itself materially dependent on its proprietary intellectual property rights utilized in its Live Games, including *The Longest Journey*, *Anarchy Online* and *The Secret World*.

The Company holds a number of trademarks related to their games and the branding of the Company, which are registered in all jurisdictions the Company has deemed it appropriate to register trademarks and copyrights.

The table below list the Group's trademark portfolio as of the date of this Prospectus:

Trademark	Countries	Registration no.	Classes	Case status	Earliest priority
<i>Anarchy Online</i>	European Mark/ Countries which are a party to the Madrid protocol system <sup>23</sup>	IR874576	9, 28, 41	Approved	14 November 2005
<i>Anarchy Online</i>	The United States	3237605	9, 41	Approved	1 May 2007
<i>Anarchy Online</i>	Norway	233041	9, 28, 41	Registered	2 June 2006
<i>Dreamfall</i>	European Mark/ Countries which are a party to the Madrid protocol system	IR874577	9, 28, 41	Approved	14 November 2005
<i>Dreamfall</i>	The United States	3237606	9, 41	Approved	1 May 2007
<i>Dreamfall</i>	Norway	233040	9, 28, 41	Registered	2 June 2006
<i>Dreamworld Technology</i>	European Mark/ Countries which are a party to the	IR881648	9, 42	Approved	14 November 2005

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<sup>23</sup> For further information on the Madrid Protocol system for registration of trademarks, please refer to <http://www.wipo.int/madrid/en/>.

	Madrid protocol system				
<i>Dreamworld Technology</i>	The United States	3237657	9, 42	Registered	1 May 2007
<i>Dreamworld Technology</i>	Norway	233738	9, 42	Registered	3 July 2006
Funcom	China/ European Mark/ Countries which are a party to the Madrid protocol system/ Russia/ Singapore	IR874580	9, 28, 41, 42	Approved/ Registered	14 November 2005
Funcom	Japan	IR874580	9, 41, 42	Approved	14 November 2005
Funcom	South Korea	IR874580	41, 42	Approved	14 November 2005
Funcom	European Mark/ Countries which are a party to the Madrid protocol system/ Russia/ Singapore	IR874579	9, 28, 41, 42	Approved/ Registered	14 November 2005
Funcom	China	IR874579	28, 41, 42	Approved	14 November 2005
Funcom	Japan	IR874579	9, 41, 42	Approved	14 November 2005
Funcom	South Korea	IR874579	41, 42	Approved	14 November 2005
Funcom	The United States	3245104/ 3245103	9, 41, 42	Approved	22 May 2007
Funcom	United Kingdom	2028063	9, 28	Registered	24 July 1995
Funcom	Norway	235287/ 235286	9, 28, 41, 42	Registered	3 October 2006
<i>The Dreamworld Technology</i>	Norway	233039	9, 42	Registered	2 June 2006
<i>The Longest Journey</i>	European Mark/ Countries which are a party to the Madrid protocol system	IR874581	9, 28, 41	Approved/ Registered	14 November 2005
<i>The Longest Journey</i>	Norway	233042	9, 28, 41	Registered	2 June 2006
<i>The Longest Journey</i>	The United States	2560221	9	Registered	9 April 2002
<i>The Secret World</i>	European Mark/ Countries which are a party to the	IR874609	9, 28, 41	Approved/ Registered	14 November 2005

	Madrid protocol system				
<i>The Secret World</i>	The United States	3245105	9, 41	Approved	22 May 2007
<i>The Secret World</i>	Norway	235787	9, 28, 41	Registered	23 October 2006
<i>The Park</i>	Norway	286048/ 286049	9, 28, 41	Registered	22 October 2015

The Company is also dependent on know-how and trade secrets, which the Company seeks to protect through appropriate confidentiality undertakings.

In addition, the source codes related to the games of Funcom are proprietary intellectual property rights of Funcom.

The Company does not own any patents.

The Company has also entered into license agreements as part of its business. The license agreements are both inbound (meaning that the Company may utilize intellectual property owned by third parties) and outbound (meaning that third parties may utilize intellectual property owned by Funcom). The Company has entered into the following license agreements:

**In-going license agreements:**

- (i) LEGO® – Funcom has the License to develop one game, LEGO® *Minifigures Online*. This agreement expires on October 2016 and the Company has no current plans to renew it. The license agreement with LEGO® is a normal license agreement where Funcom was allowed to make one game based on the LEGO® Minifigures brand. The expiry of the license agreement will not have a material impact on the business of the Company, as the game has not performed in accordance with the Company's expectations.
- (ii) Conan Properties – License to produce multiple games based on the Conan brand on the PC and console platforms. The underlying agreement was entered into in December 2015 and has an initial contract term of 5 years. The Company is materially dependent on the licenses granted from Conan Properties Inc.

**Out-going license agreements:**

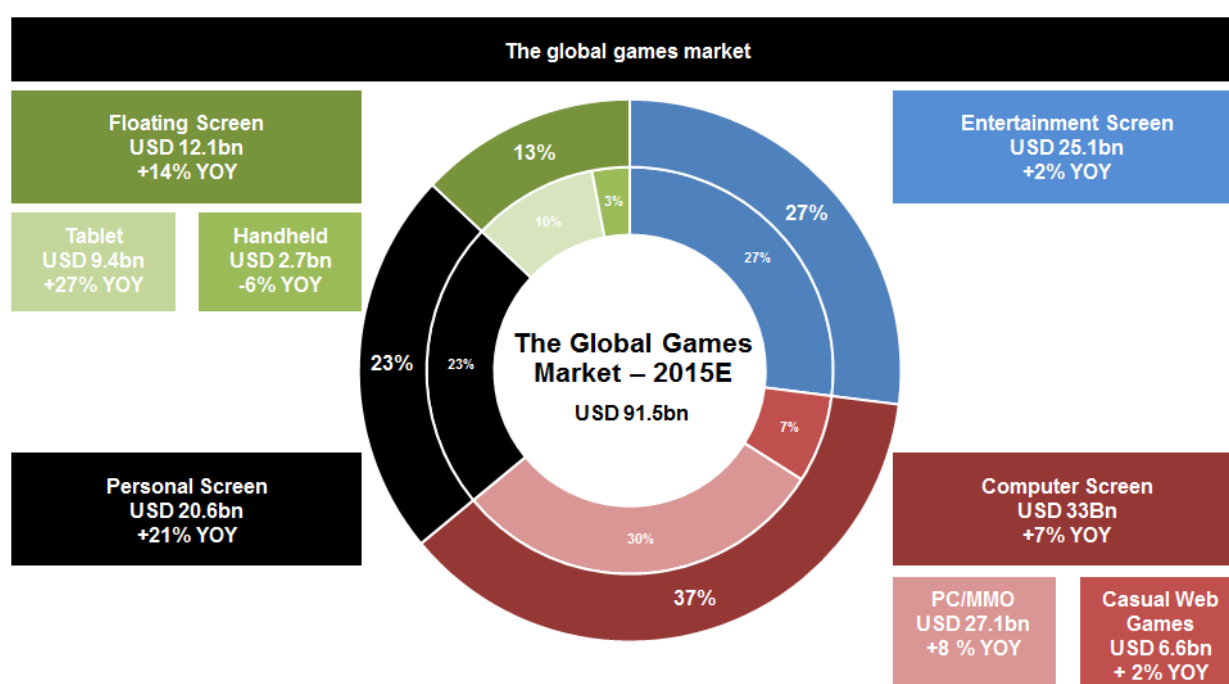
- Red Thread Games for *The Longest Journey* - license to develop and publish *Dreamfall Chapters*. The agreement expired in September 2015. Red Thread Games has approached the Company with the intent to negotiate in good faith in order to take advantage of the two-year extension possibility agreed in the original agreement.

## 8 MARKET OVERVIEW

### 8.1 Global games market

The global games market produces, publishes and distributes interactive content to its users worldwide. Just as the movie- and music industry, the games industry directs its focus towards production, publication and distribution of intellectual property rights. The games market can be divided into segments in many different ways, based on distribution platform, game genre or for instance level of connectivity. In this Prospectus, unless specified, the market segmentation is based on public information provided by the independent research company NewZoo. They divide the market into four different types of platforms that enable players to engage in gaming content: Computer Screen, Personal Screen, Floating Screen, and Entertainment Screen.

*The figure below presents the global games market, and estimated market shares per segment for 2015.*



Funcom's main focus will be directed towards the Computer Screen and Entertainment Screen markets, while third-party developers will be able to license Funcom's intellectual properties and develop games for the Personal Screen segment. As mentioned in section 7.5 "Vision, goals and strategy", an important part of Funcom's strategy is to distribute its upcoming games across multiple platforms.

#### 8.1.1 Computer Screen segment

The Computer Screen market is the largest of the four segments, and is according to NewZoo expected to grow 7 % in 2015, to USD 33.7bn. The Computer Screen segment can be divided into two sub-segments, PC/MMO Games and Casual Webgames. The PC/MMO sub-segment accounts for USD 27.1bn, or 80% of revenues. Popular PC/MMO Games include titles such as League of Legends, CrossFire, Skyrim and GTA5.

Casual Webgames is the smaller sub-segment within Computer Screens, accounting for approximately 20 % of revenue volume, or USD 6.6bn. Casual Webgames are small online games which require a minimum of long-term commitment from the user, and are typically a plug-in application installed at a games website.'

#### 8.1.2 Personal Screen segment

Personal Screen games are games which are played on either a smartphone or a smartwatch. Revenue volume is primarily driven by Smartphone Games as the Smartwatch Games market is still in its infancy. The Personal Screen segment is expected to grow 21 %, to USD 20.6 bn in 2015.

#### 8.1.3 Floating Screen segment

The Floating Screen segment can be divided into two different sub-segments, Tablet Games and Handheld Games. The Handheld Games segment includes games made for devices such as Nintendo 3DS and other portable devices, while Tablet Games include games deployed for different tablet operating systems. The Floating Screen segment is expected to generate USD 12bn in 2015, increasing 13 % from 2014. The strong growth within Floating Screens is fully attributable to Tablet Games, expected to grow 27 % to USD 9.4 bn. Handheld Games however are experiencing a decline in popularity, mainly due to the strong growth in smartphones and tablets. Total revenue is expected to decrease by 16 % in 2015, to USD 2.7 bn.

#### 8.1.4 Entertainment Screen segment

The Entertainment Screen segments consist of games developed for traditional consoles such as Xbox and PlayStation, but also of games developed for the new virtual reality (VR) consoles. Entertainment Screens are estimated to grow by 2% in 2015, to USD 25.1bn.

### 8.2 Future outlook of the global games market

The games market is expected to deliver consistent revenue growth the next three years, adapting to new consumer trends and digital devices. According to a global games market report by NewZoo, the games market is estimated to grow from USD 83.6bn in 2014 to USD 113.3bn in 2018<sup>24</sup>, which implies a 7% increase in revenue.

The Computer Screen segment is expected to maintain its number one position within the gaming industry, growing by an annual rate of 6.9%, from USD 31.5bn in 2014, to USD 41.2bn in 2018. According to Superdata Research, PC gamers made a successful transition to online purchasing in 2015, securing the continued success of the PC segment.

Personal Screens are expected to be the fastest growing segment, surpassing Entertainment Screens as the second largest segment by 2018. In terms of market growth, the Personal Screen is expected to amount to USD 30.2bn by 2018.

Entertainment Screens are expected to grow at an annual rate of 2.3%, from USD 24.2bn in 2014 to USD 26.8 bn in 2018.

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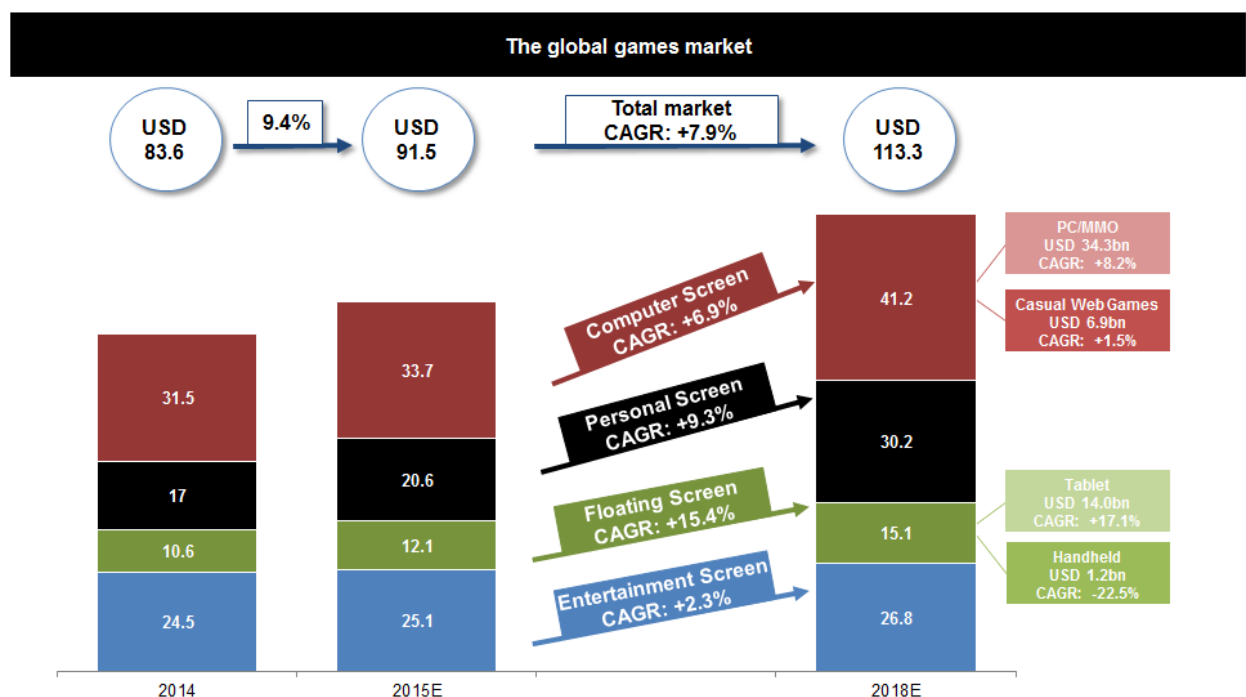
<sup>24</sup> 2015 Global games market report



Floating Screens accounted for USD 10.6bn in 2014, and are expected to grow at annual rate of 9.3% until 2018, to USD 15.1bn. Handheld Games are expected to continue to fall in popularity, decreasing at an annual rate of 22.5 % until 2018. Sales from tablet games are expected to increase, growing at an annual rate of 17.1% until 2018.

Different factors contribute to the growth in each individual segment, but some factors apply for all. Some key drivers of growth in the global games market as a whole include, but are not limited to:

- rapidly increasing broadband penetration in developing markets;
- technological innovations;
- ageing/expanding demographics – continuing increase in the average age of computer gamers;
- more mass market games;
- time spent online is still increasing;
- continued improvement in hardware performance;
- connectivity of the console market; and
- increased consumer willingness to use online payments.



### 8.3 Global online games market

An online game is a video game that is primarily or partially played online. The online game market has increased alongside the increased usage of internet. German research group Statista predicts

that the global online game industry will generate revenues of USD 41.2bn by the end of 2015<sup>25</sup>, growing 6.2% from 2014.

The use of digital distribution platforms has increased drastically since early 2000, also in the global games industry. Compared to traditional retail distribution of games, digital distribution platforms offer several additional advantages to both gamers and developers. Such advantages include, but are not limited to:

- the user can purchase the game instantly from his home. No need to travel to any retail location;
- the product is a digital file; there is no risk for the desired game to be sold out;
- the game is often cloud-based; no need for physical storage;
- digital distribution entails lower costs for the developers, which often would imply a lower price for the end-user;
- digital distribution cuts-off the retailer and its share of the profits, which should also imply lower prices for the end-user;
- digital distribution offer unlimited deployment size for developers; and
- developers can easily deploy updates that are updated automatically across all of the users devices.

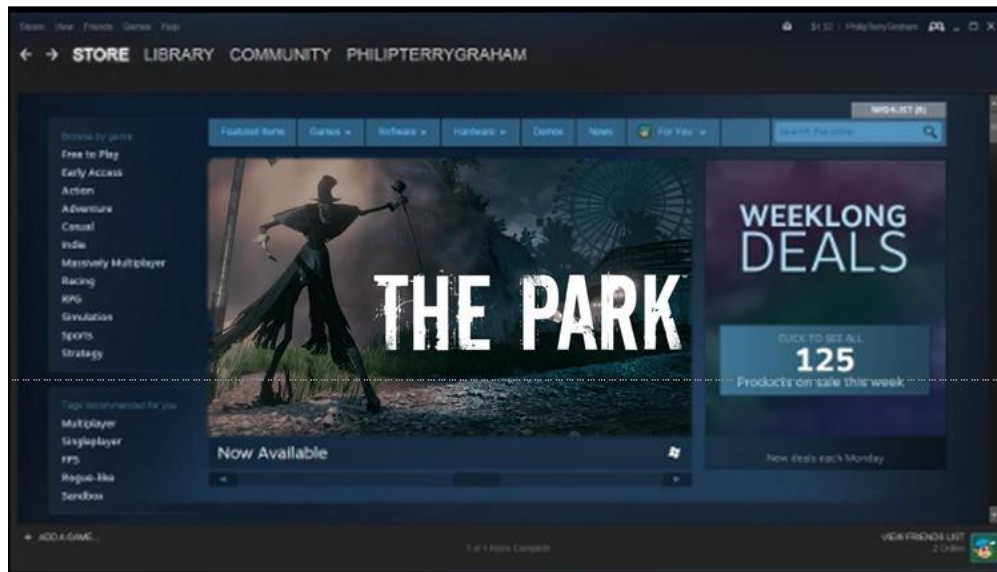
#### 8.3.1 Steam game platform

The market leading online gaming distribution platform is Steam, which is developed by the gaming software company Valve. The Company considers itself to be materially dependent on the Steam online gaming distribution platform as Steam provides the Company with the widest distribution of its games compared to other distribution platforms. In addition to the advantages mentioned above, the Steam gaming platform provides users with features such as friend's lists, groups, cloud saving and in-game voice and chat-functionality. Steamworks, a Steam application programming interface (API), enables third-party developers to implement these Steam features directly into their games. In 2015, the amount of active Steam users surpassed 125 million<sup>26</sup>, which highlights the platforms popularity. The picture below illustrates the Steam platform's user interface.

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<sup>25</sup> Statista statistics, statista.com, 2016

<sup>26</sup> Valve – Steam user statistics

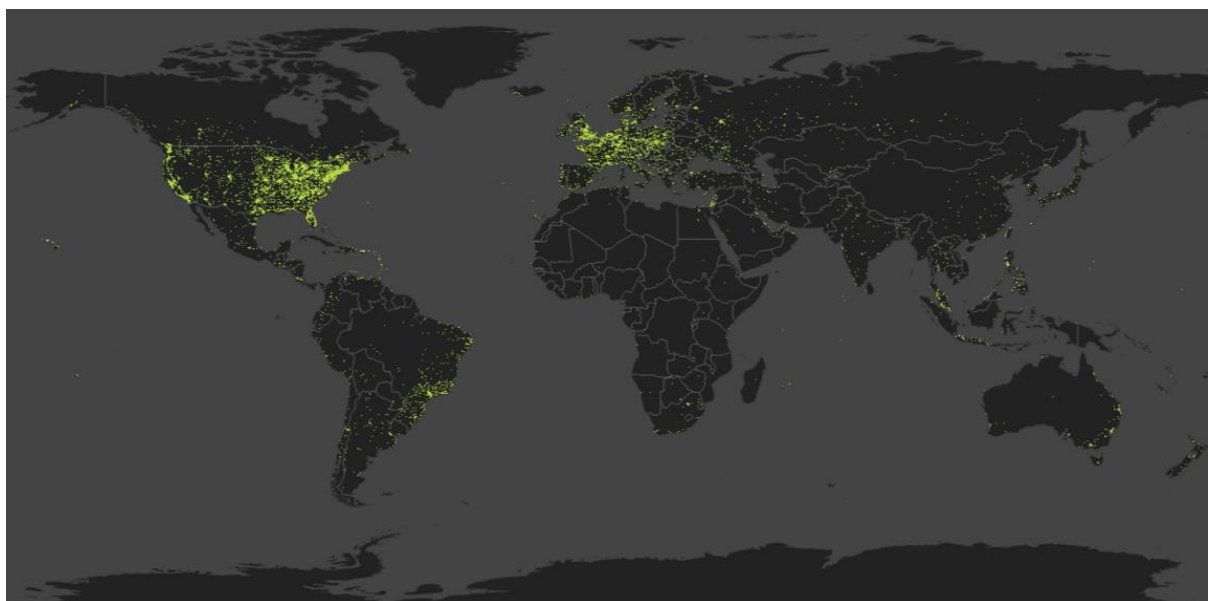


*Screenshot of the Steam Client in March 2015*

Valve does not share all of its market data with the public, and all partners have to sign non-disclosure agreements before entering into partnerships. However, Steam Spy, an independent Steam statistics website, estimates Steam to be responsible for 15% of the global PC game sales in 2015.

Steam's market share is however not the only reason for Steam's popularity. Its user base, combined with the platform's comprehensive third-party integration, makes the platform attractive for third-party developers.

Steam's user base consists primarily of users from Europe and North America. Steam's popularity in other parts of the world, such as Asia and the Pacific, is limited. This is highlighted in the figure below:



*Steam user activity in 2014*

### 8.3.2 Xbox Live

Xbox Live is an online gaming and entertainment service platform developed by Microsoft, and is accessible after the launch of Windows 8 from any Windows-based device. This includes Xbox consoles, PCs and other handheld Windows devices running Windows 8, 10 or Windows mobile. The subscription based games platform has approximately 39 million active users as of 2015<sup>27</sup>.

### 8.3.3 PlayStation (PS) Network

PlayStation Network is a games platform and entertainment service developed by Sony, and is accessible from PlayStation Consoles<sup>28</sup>, both portable and stationary, and from Sony BRAVIA TVs and Xperia Handsets. PlayStation Network has 65 million active monthly users as of 2015<sup>29</sup>.

## 8.4 Relevant segments

As mentioned in the section 7.5 "Vision, goals and strategy", Funcom has in the past specialized in the deployment of MMO's. In conjunction with Funcom's future strategy for game deployment, this section highlights current and prospective genres.

### 8.4.1 Massive Online Multiplayer (MMO) and Massive Online Multiplayer Role-playing Game (MMORPG) segment

MMO games are games which support a large amount of players in the same world simultaneously. MMO's have traditionally attracted hard-core gamers due to the time and social commitment needed in order to develop a MMO game character. MMO games are typically developed in a way that enables the user to interact in real-time. Some MMO games employ instanced worlds where players are distributed across multiple game servers. Funcom's game, *The Secret World*, is an example of a game that deploys instanced world.

The popularity of MMO games has only increased since the genre introduction in the early 1980's, and estimates indicate that there are 23.4 million active MMO subscribers worldwide<sup>30</sup>. The most popular sub-genre within the MMO segment is MMORPG. The genre is a role playing game (RPG) where the player assumes the role of a character and takes control over many of that character's actions. Examples of MMORPG games include World of Warcraft, *The Secret World*, *Age of Conan* and Final Fantasy XIV.

### 8.4.2 Open World Survival segment

Open World Survival games are a new segment inheriting different aspects of the MMO, RPG and Minecraft segments.

The games often start the player in a hostile and unknown environment, and the survival concept signifies that the player is constantly in jeopardy. In the life course of the game, the player must collect resources, weapons, craft tools, and find shelter and so forth. The experience is often open

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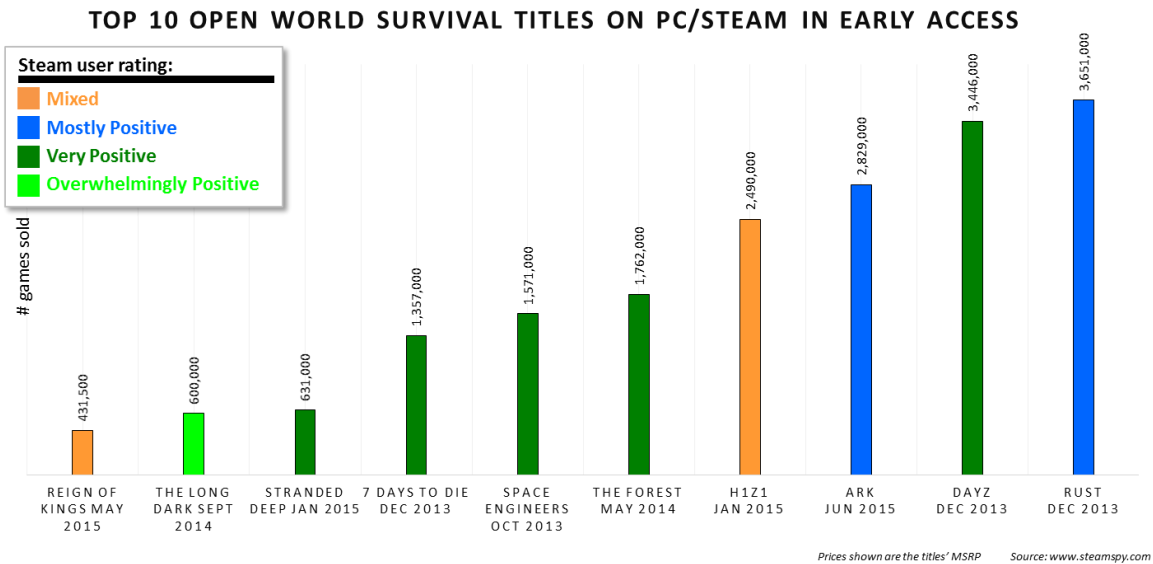
<sup>27</sup> Microsoft

<sup>28</sup> Includes PS3, PS4, PS Vita, PS Portable, PS Mobile

<sup>29</sup> Softpedia.com

<sup>30</sup> Statista, July 2014

ended, and the main objective is usually to stay alive, and eventually come to master the environment. The Open World Survival Segment typically features multiplayer, supporting one or more players per game world. The genre is being characterized as up and coming, currently dominated by small and medium games, developed by small to medium-sized studios. The chart below shows the top ten selling open world survival games launched on the online gaming platform Steam.



The number of games sold varies from just over 400,000 units, to about 3,400,000 units amongst the top 10 games<sup>31</sup>. Four out of the ten list entries were launched last year, which exemplifies the genre's increasing popularity.

<sup>31</sup> Steam Database

## 9 BOARD OF SUPERVISORY DIRECTORS, MANAGEMENT, EMPLOYEES AND RELATED PARTY TRANSACTIONS

### 9.1 Board of Supervisory Directors

#### 9.1.1 General

The Board of Supervisory Directors of Funcom (the "**Supervisory Board**") is responsible for the supervision and administration of the Company's affairs and for ensuring that the Company's operations are organized in a satisfactory manner.

The Supervisory Board consists, in accordance with the Dutch Civil Code, Book 2 (*Burgerlijk Wetboek* 2) and Section 17 of the Articles of Association, of one or more members, to be appointed by the General Meeting. The members of the Supervisory Board are, in accordance with section 17 of the Articles of Association, elected by the General Meeting for a period of up to and including the first ordinary General Meeting which is held after two full calendar years have elapsed since the day as per which he was appointed. Members of the Supervisory Board may be re-elected.

For further information about the organization of the Supervisory Board, please refer to Section 11.13.3 "The Supervisory Board".

As of the date of this Prospectus, the Supervisory Board consists of two members, being one Chairman and one Vice-Chairman.

#### 9.1.2 Overview of the members of the Supervisory Board

The table below sets out the name, position, current term of office, shareholding (including shares allocated in the Private Placement) and annual remuneration (excluding committee work for the period when the Company did have audit and remuneration committees, *i.e.* until 16 November 2015) for each member of the Board of Directors as of the date of this Prospectus.

Name	Member since	Term expires	VPS Shares owned prior to the Private Placement	New VPS Shares allocated in the Private Placement	Options owned	Remuneration paid in 2015	Options granted in 2015	Business address
Michel Cassius	2015 <sup>32</sup>	2017	49,034	0	900,000	EUR 13,896.86 + GBP 90,145.44 <sup>33</sup>	450,000	60 Percy Road, Hampton TW12 2JR, United Kingdom
Alain Tascan	2012	2017	0	0	250,000	EUR 18,000	100,000	410 St Nicolas St. Suite 260,

<sup>32</sup> Mr. Cassius also served on the Supervisory Board in the period from November 2006 to October 2014

<sup>33</sup> The remuneration received by Mr. Cassius includes the period for which he served on the Management Board, and also includes GBP 12,145.44 as reimbursement of travel expenses.

### 9.1.3 Brief biographies of the members of the Supervisory Board

Set out below are brief biographies of the members of the Supervisory Board of Funcom as of the date of this Prospectus.

#### **Michel Cassius (born 1957), Chairman**

Mr. Cassius has been a member of the Supervisory Board since 26 June 2015<sup>34</sup>.

Mr. Cassius is a director and co-owner of Cassius & Co Ltd., a consultancy company. He is also director and Chief Marketing Officer of digi.me Limited. In the past, Mr Cassius was co-founder and Director of YoYo Games Ltd., publisher of Game Maker, the multi-platform development tool and platform for Indy games developers. YoYo Games has been acquired by Playtech in 2015. He also served as the European Managing Director of Fun Technologies and as Senior Director of Microsoft's Xbox business in Europe, the Middle East and Africa where he managed the publishing and Xbox Live businesses and launched the Xbox 360. He previously spent seven years at Electronic Arts, where he led EA.com, Electronic Art's online gaming business in Europe and launched Ultima Online, one of the first MMOG's in Europe.

In the last 7 years, Mr. Cassius has worked either as an MD/CEO or as non-executive director in technology and games companies. Beyond his tenure on the Supervisory Board of Funcom, he is a seed investor in tech start-ups – games and non-games; co-founder of French Connect London; a mentor at TechStars, the largest start-up accelerator worldwide and at Playhubs, the incubator for games start-ups in London.

Mr. Cassius holds 900,000 options in the Company and 49,034 VPS Shares.

#### *Overview of directorships, partnerships and management positions*

##### *Current:*

Cassius & Co Ltd., director, co-owner

Digi.me, director and Chief Marketing Officer

##### *Past five years:*

YoYo Games Ltd., director, Chief Marketing Officer and co-founder

The Up Group, Chief Operational Officer

Gekko – Director and Chief Executive Officer

CocoFish Ltd., co-owner

#### **Alain Tascan (born 1967), Vice-Chairman**

Mr. Tascan has been a member of the Supervisory Board since 27 June 2012.

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<sup>34</sup> Mr. Cassius current term on the Supervisory Board started on 26 June 2015, but he has previously held positions in both the Supervisory Board and the Management Board. Mr. Cassius served on the Supervisory Board in the period from 14 November 2006 to 29 October 2014. On 29 October 2014, Mr. Cassius stepped down from the Supervisory Board to join the Management Board in a position which he held until 13 May 2015.

Mr. Tascan was a co-founder of Ubisoft in Montreal and a founder of EA Montreal which he managed for seven years. He also created Ubisoft's licensing group that partners with the major Hollywood studios. Previously, Mr. Tascan also held executive positions in the media industry in France at companies such as Radio France International and Telerama. Currently, Mr. Tascan works as an entrepreneur in the multimedia and gaming industry. Mr. Tascan holds a Master degree in Economics from the University of Nice-Sophia Antipolis and a post-graduate degree in cultural management from the Institut Supérieur de Management Culturel de Paris.

Mr. Tascan holds 250,000 options in the company and zero VPS Shares.

#### *Overview of directorships, partnerships and management positions*

##### *Current:*

- President and CEO of UMI Mobile Inc., Montreal Canada since August 2015

##### *Past five years:*

- President and CEO of Sava Transmedia Inc., Montreal, Canada from March 2011 to June 2014
- Board member of Transcontinental Inc., Montreal Canada from Sept 2012 March 2015

#### 9.1.4 Remuneration and benefits

The benefits received from the Company by the members of the Supervisory Board are described in Section 9.1.2 "Overview of the members of the Supervisory Board" above. None of the members of the Supervisory Board have received any other benefits from the Company. No member of the Supervisory Board has any service contracts with the Company or any of its subsidiaries providing for benefits upon termination of employment.

#### 9.1.5 Loans and guarantees

As of the date of this Prospectus, the Company has no outstanding loans or guarantees to any member of the Supervisory Board.

## **9.2 Board of Managing Directors**

### 9.2.1 General

The Management Board is responsible for the management of the Company's affairs. The Management Board is supervised by the Supervisory Board.

The Management Board consists, in accordance with the Dutch Civil Code, Book 2 (*Burgerlijk Wetboek Boek 2*) and Section 10 of the Articles of Association, of one or more members, to be appointed by the General Meeting. The members of the Management Board are, in accordance with Section 10 of the Articles of Association, elected by the General Meeting for service periods of up to two years. Members of the Management Board may be re-elected.

For further information on the organization of the Management Board, please refer to Section 11.13.2 "The Management Board".

As of the date of this Prospectus, the Management Board consists of one member.



### 9.2.2 Overview of the members of the Management Board

The table below sets out the name, position, current term of office, shareholders (including VPS hares allocated in the Private Placement) and annual remuneration (excluding committee work for the period when the Company did have audit and remuneration committees, *i.e.* until 16 November 2015) for the sole member of the Management Board as of the date of this Prospectus.

Name	Member since	Term expires	VPS Shares owned prior to the Private Placement	New VPS Shares allocated in the Private Placement	Options owned	Remuneration paid in 2015	Options granted in 2015	Business address
Rui Casais	2014	2016	38,731	0	1,171,664	NOK 1,247,660 <sup>35</sup>	300,000 <sup>36</sup>	Bestumstubben 11, N-0281 Oslo, Norway

### 9.2.3 Brief biographies of the sole member of the Management Board

For biographies of the sole member of the Management Board, please refer to Section 9.4.2 "Brief Biographies of the Members of the Executive Management".

### 9.2.4 Remuneration and benefits

The benefits received from the Company by the members of the Management Board are described in Section 9.4 "Executive Management". The sole member of the Management Board, Mr. Rui Casais, has received options for his service on the Management Board. The total amount of options held by Mr. Rui Casais is described in Section 9.4.4 "Remuneration and benefits to the Executive Management".

The sole member of the Management Board has not received any other benefits from the Company. The sole member of the Management Board has no service contracts with the Company or any of its subsidiaries providing for benefits upon termination of employment.

### 9.2.5 Loans and guarantees

As of the date of this Prospectus, the Company has no outstanding loans or guarantees to the sole member of the Management Board.

## 9.3 Audit- and Remuneration Committee

As of the date of this Prospectus, the Company does not have an audit- or remuneration committee.

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<sup>35</sup> The remuneration refers to Rui Casais' salary as CEO of the Company.

<sup>36</sup> Includes options granted in Rui Casais' capacity as CEO.

## 9.4 Executive Management

### 9.4.1 Overview of the Executive Management

The Executive Management of Funcom comprises 5 executives with good domain knowledge within their job functions and with senior management experience from across the industry. The Executive Management of Funcom currently includes the following persons:

Name	Position	Business address
Rui Casais	Chief Executive Officer	Bestumstubben 11, N-0281 Oslo, Norway
Christian Olsthoorn	Interim Chief Financial Officer	Temmes Management Services Monaco SARL Le Roc Fleuri - 1, rue du Ténao 98000 Monte Carlo Monaco
Lawrence Poe	Vice-president of Digital Products	Bestumstubben 11, N-0281 Oslo, Norway
Ole Schreiner	Executive Vice-President Business Operations	Bestumstubben 11, N-0281 Oslo, Norway
Erling Ellingsen	Vice-President of PR & Marketing	Bestumstubben 11, N-0281 Oslo, Norway

### 9.4.2 Brief Biographies of the Members of the Executive Management

Set out below are brief biographies of the members of the Executive Management of Funcom as of the date of this Prospectus.

#### Rui Casais

Rui Casais holds a Master Degree in Computer Science and Engineering from the Technical University of Lisbon and joined Funcom in 2004 as an Artificial Intelligence programmer for *Age of Conan* and quickly rose to become Lead Programmer in 2006 and Chief Technology Officer in 2008, in charge of the *Dreamworld technology*.

In 2009 he moved to Canada to open the Montreal based Funcom Games Canada studio where he stayed for two years before returning to Norway.

From 2012 Rui joined the executive management team and in 2014 stepped in to take a more active role in the management of the business, culminating with his appointment as group CEO in May 2015.

In addition to his activities in Funcom, he is involved with technology startup ecosystem in Oslo.

#### *Overview of directorships, partnerships and management positions*

##### *Current:*

- None, except for his positions at Funcom.

##### *Past five years:*

- MMORPG Technologies Inc., President
- Board member at Outracks Technologies AS.

## **Christian Olsthoorn**

Christian Olsthoorn is acting as the Chief Financial Officer of Funcom since November 2014. He fulfils this position on a consultancy basis through the firm Temmes Management Services Monaco S.A.R.L.

Christian holds a chartered accountant degree ("*diplôme d'expertise comptable*") in both France and Luxembourg. He has gained a strong experience in the financial industry after having worked as an auditor and financial consultant at Mazars in Amsterdam, at KPMG in France, and at PwC in Monaco. In 2012, Christian has actively participated in the establishment and subsequent development of Temmes Management Services in both Monaco and France. He has since then developed an expertise in the provision of accounting, tax, and treasury management services to multinational corporations in a wide range of jurisdictions and industries. His technical knowledge, dedication and availability are valued by Funcom.

### *Overview of directorships, partnerships and management positions*

#### *Current:*

- EVPA Group S.A.R.L. (Luxembourg): liquidator
- MVW International Holding Company S.A.R.L., bureau administratif (Monaco): branch manager
- Temmes Management Services Monaco S.A.R.L. (Monaco): Manager
- Temmes Management Services France S.A.S. (France): Chairman
- Temmes Financial Services Limited (British West Indies): Board member

#### *Past five years:*

- European Value Partners S.A. (Luxembourg): liquidator
- Funcom S.A.R.L. (Luxembourg): liquidator
- Micromania GameStop S.A.S. (formerly 'GameStop France S.A.S.', France): board member

## **Lawrence Poe**

A 16-year games industry veteran, Lawrence Poe joined Funcom in 2006 as a Senior Game Designer for *The Secret World*. In 2008, he became Design Director for Funcom, charged with improving design processes and training within the company. In 2010, he undertook the role of Director of Publishing, responsible for securing external licensing and publishing deals with companies like LEGO®, as well as having ownership of smaller live games. He served as Executive Producer for the Oslo Studio from 2012-2015 before joining the executive management team in 2015 as Vice President of Digital Products

### *Overview of directorships, partnerships and management positions*

#### *Current:*

- Rosegården Handleri AS, board member

#### *Past five years:*

- Funcom, director of publishing
- Funcom, design director

## **Ole Schreiner**

Mr. Schreiner has worked 13 years at Funcom, 8 years as COO. Formerly CEO in Funcom, now acting as Executive Vice President of Business Operations. Mr. Schreiner has built and lead Funcom Games Beijing, Funcom Inc. in US, Funcom GmbH, Funcom Sales GmbH and Funcom Games Canada. Has held several Board Positions in Norwegian and International companies and has an economical background with a four-year study focusing on consumer behavior.

*Overview of directorships, partnerships and management positions*

*Current:*

- Funcom Oslo AS, chairman of the board of directors
- Funcom Games Canada, board member
- Funcom Beijing, Legal Representative
- Stunlock Studios AB, Board member
- Hus og Hagehjelpen AS, chairman of the board of directors

*Past five years:*

- CEO of the Group
- Managing Director of the Company
- Funcom Inc., President
- MMORPG Technologies Inc., board member
- Sweet Robot AS, chairman of the board of directors
- Sweet Robot GmbH, manager
- Funcom Sales GMBH, manager
- Funcom GmbH, manager
- Funcom SARL, administrator Class B

**Erling Ellingsen**

Mr. Ellingsen has worked 10 years at Funcom. He started as Product Manager in 2006. Formerly Director of Communications for 6 years. Mr. Ellingsen has a background as a journalist in both gaming and national mainstream media.

He is responsible for the strategic planning and execution of all PR and marketing initiatives, press relations, web and brand profile, social media and more.

*Overview of directorships, partnerships and management positions*

*Current:*

None, except for his positions at Funcom (including current position as board member of Funcom Oslo AS)

*Past five years:*

Operaverket Buskerud, board member

**9.4.3 Shareholdings of the members of the Executive Management**

The table below sets out the shareholding (including New VPS Shares allocated in the Private Placement) and number of options held for each of the members of the Executive Management of Funcom, as of the date of the Prospectus. None of the members of the Executive Management holds any warrants.

Name	VPS Shares owned prior to the Private Placement	New VPS Shares allocated in the Private Placement	Options	Date of option grant	Strike price options	Option period
Rui Casais	38,731	0	1,171,664	Variable <sup>37</sup>	Variable <sup>38</sup>	Variable <sup>39</sup>
Christian Olsthoorn	0	0	0	N/A	N/A	N/A
Lawrence Poe	0	0	270,419	Variable <sup>40</sup>	Variable <sup>41</sup>	Variable <sup>42</sup>
Ole Schreiner	70,017	0	900,000	Variable <sup>43</sup>	Variable <sup>44</sup>	Variable <sup>45</sup>
Erling Ellingsen	0	0	269,443	Variable <sup>46</sup>	Variable <sup>47</sup>	Variable <sup>48</sup>

No member of the Executive Management has paid any consideration for the options.

#### 9.4.4 Remuneration and benefits to the Executive Management

The salaries and other benefits paid to members of the Executive Management for the financial year ended 31 December 2015 are set out in the table below.

<sup>37</sup> Rui Casais has been granted options on several occasions between August 2011 and February 2016.

<sup>38</sup> The options held by Rui Casais may be exercised at prices ranging between NOK 1.87 and NOK 6.73 per option.

<sup>39</sup> As Rui Casais has been granted options on several occasions, the option periods vary both in terms of vesting period and expiry date.

<sup>40</sup> Lawrence Poe has been granted options on several occasions between August 2011 and June 2014.

<sup>41</sup> The options held by Lawrence Poe may be exercised at prices ranging between NOK 1.87 and NOK 6.73 per option.

<sup>42</sup> As Lawrence Poe has been granted options on several occasions, the option periods vary both in terms of vesting period and expiry date.

<sup>43</sup> Ole Schreiner has been granted options on several occasions between August 2011 and June 2014.

<sup>44</sup> The options held by Ole Schreiner may be exercised at prices ranging between NOK 1.87 and NOK 6.73 per option.

<sup>45</sup> As Ole Schreiner has been granted options on several occasions, the option periods vary both in terms of vesting period and expiry date.

<sup>46</sup> Erling Ellingsen has been granted options on several occasions between August 2011 and June 2014.

<sup>47</sup> The options held by Erling Ellingsen may be exercised at prices ranging between NOK 1.87 and NOK 6.73 per option.

<sup>48</sup> As Erling Ellingsen has been granted options on several occasions, the option periods vary both in terms of vesting period and expiry date.

Name	Salary	Options granted in 2015	Bonus	Pension	Other allowances	Total
Rui Casais	NOK 1,247,660	300,000 <sup>49</sup>	0	NOK 15,627	0	NOK 1,263,287
Christian Olsthoorn	EUR 121,987 <sup>50</sup>	0	0	0	0	EUR 121,987
Lawrence Poe	NOK 764,355	0	0	NOK 12,492	0	NOK 776,847
Ole Schreiner	NOK 1,431,210	0	0	NOK 21,283	0	NOK 1,452,493
Erling Ellingsen	NOK 662,627	0	0	NOK 11,530	0	NOK 674,157
<b>Total</b>	<b>NOK 4,105,852</b>	<b>300,000</b>	<b>0</b>	<b>NOK 60,932</b>	<b>0</b>	<b>NOK 4,166,784</b>
	<b>plus EUR 121,987</b>					<b>plus EUR 121,987</b>

The employment agreements for Rui Casais, Ole Schreiner, Lawrence Poe and Erling Ellingsen provide for benefits upon involuntary termination of the employment agreements. Upon involuntary termination, Erling Ellingsen will receive full salary and other benefits according to the Norwegian Work Environment Act for the full resignation period of six (6) months. He is exempt from his duty to work in the resignation period. Lawrence Poe will receive full salary and other benefits according to the Norwegian Work Environment Act for the full resignation period of three (3) months. He is exempt from his duty to work in the resignation period. In addition, he will receive three (3) months' salary upon termination. Ole Schreiner will receive full salary and other benefits according to the Norwegian Work Environment Act for the full resignation period of three (3) months. He is not exempt from his duty to work in the resignation period. In addition, he will receive nine (9) months' salary upon termination. Rui Casais will receive full salary and other benefits according to the Norwegian Work Environment Act for the full resignation period of three (3) months. He is not exempt from his duty to work in the resignation period. In addition, he will receive nine (9) months' salary upon termination.

#### 9.4.5 Service contracts

No members of the Company's Executive Management or supervisory bodies have any service contracts with the Company or any of its subsidiaries providing for benefits upon termination of employment, except for the normal term of notice.

#### 9.4.6 Loans and guarantees

As of the date of the Prospectus, the Company has no outstanding loans or guarantees to any member of the Executive Management.

### 9.5 Employees

#### 9.5.1 General

The table below shows the development in the average number of employees in the Company as of 31 December 2013, 31 December 2014 and 31 December 2015. There has not been a material change in the number of employees from 31 December 2015 to the date of this Prospectus.

<sup>49</sup> Includes options granted in Rui Casais' capacity as sole member of the Management Board.

<sup>50</sup> Christian Olsthoorn is hired as a consultant and the EUR 121,987 received in 2015 is a consultancy fee.

	Oslo	Durham	Badhoevedorp	Beijing	Montreal	Sum
31.12.13	46	53	1	7	28	135
31.12.14	47	50	1	1	22	121
31.12.15	44	50	1	1	2	98

#### 9.5.2 Employee incentive scheme

The Company has established an option program for its Executive Management and key personnel, members of the Management Board and members of the Supervisory Board. For further information on this option program, please refer to Section 11.5.2 "Options"

#### 9.6 Conflicts of interest and restrictions on transfer of securities

Erling Ellingsen was board member of a small theater company, Operaverket Buskerud, which went bankrupt. Ole Schreiner has held positions in the liquidated companies Funcom Sàrl, MMORPG Technologies Inc. in Liquidation, Sweet Robot AS and Sweet Robot GmbH (all former subsidiaries in the Group) and currently hold a position in Funcom Sales GmbH in Liquidation. In addition, Rui Casais held a position in MMORPG Technologies Inc. in Liquidation.

Save from the above, during the last five years preceding the date of this Prospectus, no members of the Supervisory Board, the Management Board or the Executive Management has:

- (i) had any convictions in relation to fraudulent offences;
- (ii) been officially publicly incriminated and/or sanctioned by any statutory or regulatory authorities (including designated professional bodies) or been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of a company or from acting in the management or conduct the affairs of a company; or
- (iii) been associated with any bankruptcy, receivership or liquidation.

No member of the Supervisory Board, the Management Board or the Executive Management have any potential conflicts of interests between their private interests and the duties owed to the Company and/or the Group. There are no arrangements or understanding with major shareholders, customers, suppliers or others, pursuant to which such major shareholder, customer, supplier or other person have been selected as a member of the Supervisory Board, the Management Board or the Executive Management. There are no family relationships between any members of the Supervisory Board, the Management Board and the members of the Executive Management.

The Company has adopted regulations, which *inter alia* restrict the possibility of the Group's employees (including the members of the Executive Management) and the members of the Management Board and the Supervisory Board to transfer VPS Shares, and other securities related to the Company, in certain time periods prior to the publications of financial reports or prospectuses.

## 9.7 Related party transactions

### 9.7.1 Transactions with subsidiaries and equity-accounted entities

There were continuously transactions between the Group companies and between the Group and its two equity-accounted entities, being Stunlock Studios AB (Sweden) and MMORPG Technologies Inc. (Canada), up to 31 December 2013. Funcom owned as of 31 December 2014 a 33% interest in the shares in the Swedish company Stunlock Studios AB. This percentage of ownership decreased from 42% in 2013 due to the issue of 700 new shares by Stunlock Studios AB. The principal activity of Stunlock Studios AB is the development of online computer games. This company was considered an associated company for Funcom until Funcom disposed its entire investment in Stunlock Studios AB on 30 June 2015.

Funcom owned as of 31 December 2014 a 50% share in MMORPG Technologies INC. Another party owned the remaining 50%. This company was considered a joint venture for Funcom until it was voluntarily liquidated and dissolved on 31 December 2015. The principal activity of MMORPG Technologies Inc. was the development of online computer games, although the company did not have active business in 2014 and 2015. On 30 December 2014 a dividend of CAD 320 thousands was declared with 100% of this amount due to Funcom. In satisfying this obligation the dividend amount of CAD 320 thousands was transferred on 30 December 2014 to Funcom by way of a receivable balance. As the dividend was paid to Funcom only and not the other party, the investment balance for this entity was reduced to zero and the remainder of the dividend income was recognized as dividend income directly in the Statement of Comprehensive Income. Similarly, on 30 December 2015 a dividend of CAD 21 thousands was declared with 100% of this amount due to Funcom, satisfied through the transfer of an intercompany receivable amounting to CAD 13 thousands and by a payment in cash amounting to CAD 8 thousands.

The receivables at the end of 2015 is the final dividend payout of MMORPG Technologies Inc. Please see the table below for further information on such transactions (all numbers in thousands of USD):

	Q1 2016	Q1 2015	2015	2014	2013
Purchase of services	0	0	0	0	582
Revenue from services	0	0	0	0	128
Receivables as at end of period	0	0	0	4	1,075
Liabilities as at end of period	0	0	0	34	1,411

### 9.7.2 Transactions with shareholders

Mr. Hans Peter Jebsen, the largest shareholder of Funcom controls the company Kristian Gerhard Jebsen Group Ltd. that in turn controls KGJ Investments S.A., SICAV-SIF ("**KGJI**"). Mr. Hans Peter Jebsen also controls the company Tom Dahl AS. The actual, indirect holdings in Funcom N.V. of Mr. Jebsen through the companies KGJI, KGJ Capital AS (formerly Nexus Capital AS) and Tom Dahl were 27.29 % as of 31 December 2014 (2013: 18.25%). The following transactions took place in 2013, 2014, 2015 and in the period from January 2016 until the date of this Prospectus between Funcom and companies controlled by Mr. Jebsen:



- (i) in November 2013, the Company entered into a working capital loan facility with KGJI (the "**Working Capital Loan**") and in December 2013 the Company made a drawdown under the Working Capital Loan of an amount equal to USD 3,000,000. In 2014, the Company drew down two new installments under the Working Capital Loan, totaling USD 2,500,000, and thereby raising the principal total amount under the Working Capital Loan to USD 5,500,000;
- (ii) on 26 August 2014, Funcom entered into an interest bearing convertible loan agreement with KGJI (the "**Convertible Loan**") by restructuring an amount of USD 1,550,000 of the Working Capital Loan and an amount of USD 2,450,000 due under an existing interest bearing loan into such Convertible Loan. Following the restructuring of the principal amount under the Convertible Loan amounted to USD 4,000,000, the principal amount under the Working Capital Loan amounted to USD 3,950,000, and the existing interest bearing loan was repaid. For further information on the he Convertible Loan, please refer to Section 10.8 "Debt overview";
- (iii) throughout 2014, KGJI exercised in total 15,000,000 warrants at an exercise price of USD 0.37 per warrant. The warrants were issued in 2010 and 2013;
- (iv) in August 2015, KGJI confirmed that it is willing to continue to support the Company by deferring the maturity of the Working Capital Loan and the Bonds from the earlier of 30 June 2016 or the 2016 AGM to 15 December 2016. The terms of the Bond Agreement were formally amended on 26 October 2015. For further information on the Bonds and the terms of the Bond Agreement, please refer to Section 11.5.1 "Convertible loans";
- (v) in January 2016, KGJI confirmed that it is willing to continue to support the Company by deferring the maturity of the Bonds from 15 December 2016 to 31 December 2018. The deferral of the maturity will be formally resolved at a bondholders' meeting planned to be held in June or July 2016;
- (vi) in January 2016, KGJI confirmed that it is willing to continue to support the Company by deferring the maturity of the Working Capital Loan by integrating this loan into the Convertible Loan. The principal amount under the Convertible Loan was following such restructuring USD 7,950,000. As part of the integration of the Working Capital Loan into the Convertible Loan, KGJI has been granted additional rights to acquire Shares (*rechten tot het nemen van aandelen*), as a result of which KGJI now holds 44,166,667 rights to acquire Shares (*rechten tot het nemen van aandelen*) in relation to the Convertible Loan. The integration of the Working Capital Loan into the Convertible Loan was formally approved by the General Meeting on 25 February 2016. The General Meeting also formally approved amended terms for the conversion price under the Convertible Loan. The amendment agreement was entered into and formalized on 13 April 2016. For further information on the Convertible Loan, please refer to Section 10.10.2 "Convertible Loan";
- (vii) in April 2016, the Company entered into a short term loan agreement with KGJI for an amount of USD 500,000; and
- (viii) in May 2016, the Company entered into an agreement with KGJI to restructure its debt under the Convertible Loan and the Bonds through the Debt Conversion and a decrease of the interest level of the Bonds to 3.5% p.a. The decrease of interest rate of the Bonds will be formally resolved at a bondholders' meeting to be held in June or

July 2016.

Save from the above, there have not been any transactions between the Company and its shareholders after 31 December 2015 and until the date of this Prospectus.

## 10 OPERATING AND FINANCIAL INFORMATION

The following section presents selected financial information derived from the Group's audited consolidated statements (including the notes thereto) as of, and for the years ended, 31 December 2014 and 2015 (the "**Financial Statements**") and the Group's unaudited consolidated financial statements for the financial periods ended 31 March 2015 and 2016 (the "**Interim Financial Statements**"). The Financial Statements have been audited by BDO Audit & Assurance B.V. The Financial Statements have been prepared in accordance with IFRS, as adopted by the EU. The Interim Financial Statements has been prepared in accordance with IAS 34 and has neither been reviewed or audited.

The Financial Statements and the Interim Financial Statements have been incorporated by reference, and may be found on the Company's website, [www.funcom.com](http://www.funcom.com). For documents incorporated by reference, please refer to Section 15.6 "Documents incorporated by reference".

### 10.1 Accounting principles

A summary of the main accounting principles applied by the Company are set out in this Section. For a comprehensive version of Funcom's significant accounting principles, please refer to the financial statements for 2015, pages 37-48. The financial statements for 2015 have been incorporated by reference, and may be found on the Company's website, [www.funcom.com](http://www.funcom.com). For documents incorporated by reference, please refer to Section 15.6 "Documents incorporated by reference".

#### 10.1.1 Going concern assessment

The funding of the operations for a period of at least one year after the date of this Prospectus is realistic and achievable. Therefore, the Executive Management is of the opinion that the going concern assumption is justified and consequently the audited condensed consolidated financial statements of the Company for the twelve months ended 31 December 2015 have been prepared on a going concern basis. Notwithstanding the above, the Management Board of the Company emphasizes that the above assessments indicate the existence of material uncertainty with regards to the performance of the games and the outcome of the current strategic review of the Company. Therefore, the actual performance of the Company may deviate significantly from the projections which may cast significant doubt on the entity's ability to continue as a going concern.

#### 10.1.2 Statement of compliance

The consolidated financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) and interpretations (IFRIC) as issued by the International Accounting Standards Board (IASB) and adopted by the EU.

The unaudited condensed consolidated financial statements of the Company for the three months ended 31 March 2016 have been prepared in accordance with IAS 34. The latter means that these interim financial statements do not include all information and disclosures required in annual financial statements but only selected significant information. The principles applied are consistent with those used in the 2015 annual report.

The Group has as of 1 January 2015 adopted the mandatory revised standards, amendments to existing standards and interpretations as adopted by the EU, applicable for this period. Their

adoption has not had any significant impact on the amounts reported in this interim report but may affect the accounting for future transactions or arrangements. The Executive Management has not yet completed the evaluation of the impact on the financial statements of standards issued but which have an adoption date on 1 January 2016 or later.

#### 10.1.3 Presentation and functional currency

The consolidated financial statements are presented in US dollar (USD), which is the Company's functional currency, rounded to thousands. It is expected that US dollar will remain as the main currency in the Group's economic environment, due to a majority of US dollar revenues. All amounts are in USD thousand unless stated otherwise. There may be some minor rounding differences or the total may deviate from the total of the individual amounts. This is due to the rounding to whole thousands of individual amounts.

#### 10.1.4 Basis of measurement

The consolidated financial statements have been prepared on an historical cost basis unless otherwise stated in these accounting policies.

#### 10.1.5 Estimates and judgments

The preparation of financial statements in conformity with IFRS requires the Executive Management to make judgments, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgments about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

#### 10.1.6 Basis of consolidation

The Financial Statements and the Interim Financial Statements comprise of Funcom and companies in which Funcom has a controlling interest. Investments in associated companies and jointly controlled entities are incorporated using the equity method.

#### 10.1.7 Accounting policies

The accounting policies are set out under Note 2 and following of the financial statement for 2015. These accounting policies have been applied consistently to all periods presented in these consolidated financial statements, and have been applied consistently by Group entities.

### **10.2 Historical financial information**

The following section presents a summary of the Financial Statements and the Interim Financial Statements.

### 10.2.1 Consolidated statement of comprehensive income

(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)
<b>Continuing operations</b>				
Revenue	2,048	2,772	10,238	12,593
Operating expenses	-1,785	-2,285	-9,845	-13,265
Depreciation, amortization and impairment charges	-923	-756	-6,571	-7,445
<b>Operating result</b>	<b>-660</b>	<b>-269</b>	<b>-6,179</b>	<b>-8,117</b>
Share of result from equity-accounted entities	-	34	-173	-72
Net financial result	-101	71	-478	-582
Result before income tax	-761	-164	-6,829	-8,770
Income tax (expense)/ income	-	19	40	9
<b>Result for the period</b>	<b>-761</b>	<b>-144</b>	<b>-6,789</b>	<b>-8,761</b>
<b>Other comprehensive income</b>				
<b>Items that may be reclassified subsequently through profit or loss</b>				
Foreign exchange translation differences	280	-715	-1,415	-1,332
<b>Total comprehensive income for the period</b>	<b>-480</b>	<b>-860</b>	<b>-8,204</b>	<b>-10,093</b>
<b>Result for the period attributable to:</b>	<b>-761</b>	<b>-144</b>	<b>-6,789</b>	<b>-8,761</b>
Equity holders of Funcom N.V.	-761	-144	-6,789	-8,761
<b>Total comprehensive income attributable to:</b>	<b>-480</b>	<b>-860</b>	<b>-8,204</b>	<b>-10,093</b>
Equity holders of Funcom N.V.	-480	-860	-8,204	-10,093
<b>Earnings per share<sup>51</sup></b>				
Basic earnings per share (USD) <sup>52</sup>	-0.01	0.00	-0.07	-0.11
Diluted earnings per share (USD) <sup>53</sup>	-0.01	0.00	-0.07	-0.11
<b>Continuing operations</b>				
Revenue	2,048	2,772	10,238	12,593
Operating expenses	-1,785	-2,285	-9,845	-13,265
Depreciation, amortization and impairment charges	-923	-756	-6,571	-7,445

<sup>51</sup> Based on result for the period.

<sup>52</sup> Actual USD amount, not thousands.

<sup>53</sup> Actual USD amount, not thousands.

Operating result	-660	-269	-6,179	-8,117
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## 10.2.2 Consolidated statement of financial position

(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)
<b>Assets</b>				
<b>Non-current assets</b>				
Intangible assets	4,855	7,766	4,394	7,380
Equipment	83	196	100	253
Investments in equity-accounted entities	-	211	-	195
Long term receivables	65	19	65	20
Total non-current assets	5,003	8,192	4,559	7,848
<b>Current assets</b>				
Trade receivables	680	1,151	1,443	1,225
Prepayments and other receivables	217	1,101	506	1,160
Income tax receivable	-	-	-	-
Cash and cash equivalents	1,015	2,452	616	3,705
Total current assets	1,912	4,704	2,565	6,090
<b>Total assets</b>	<b>6,915</b>	<b>12,896</b>	<b>7,124</b>	<b>13,938</b>
<b>Equity and liabilities</b>				
<b>Equity</b>				
Share capital	4,802	4,723	4,802	4,724
Reserves	157,474	156,764	157,105	157,199
Retained earnings (Accumulated deficit)	-172,229	-164,823	-171,468	-164,679
Total equity	-9,953	-3,336	-9,561	-2,756
<b>Non-current liabilities</b>				
Loans and borrowings	3,530	12,805	3,434	7,081
Deferred tax liabilities	1	16	25	20
Total non-current liabilities	3,531	12,821	3,459	7,101
<b>Current liabilities</b>				
Deferred income	873	1,511	1,037	1,756
Loans and borrowings	10,150	29	10,150	5,777
Other short term liabilities	2,314	1,870	2,040	2,061
Total current liabilities	13,337	3,410	13,226	9,593
Total liabilities	16,868	16,231	16,685	16,694

<b>Total equity and liabilities</b>	<b>6,915</b>	<b>12,896</b>	<b>7,124</b>	<b>13,938</b>
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### 10.2.3 Consolidated statement of cash flow

<b>(USD 1,000)</b>	<b>Q1 2016 (unaudited)</b>	<b>Q1 2015 (unaudited)</b>	<b>2015 (audited)</b>	<b>2014 (audited)</b>
<b>Cash flows from operating activities</b>				
Profit (loss) before income tax	-761	-164	-6,829	-8,770
Adjustments for:				
- Depreciation, amortization and impairment losses	923	756	6,571	7,445
- Share-based payments	88	280	814	1,228
- Share of result from equity-accounted entities	-	-34	173	72
- Effect of exchange rate fluctuations	-186	-480	442	-97
- Changes in working capital	1,196	-312	466	403
Net cash from operating activities	1,261	46	1,637	281
<b>Cash flows from investing activities</b>				
Purchase of equipment and investment in intangible assets	-1,358	-1,076	-3,412	-5,160
Investment in /loan to (from) equity-accounted entities	-	-122	11	764
Net cash used in investing activities	-1,358	-1,198	-3,401	-4,397
<b>Cash flows from financing activities</b>				
Net proceeds from issue of share capital	-	-	411	11,199
Proceeds /repayments from (of) borrowings and leases	-	-	-23	-4,667
Net cash from financing activities	-	-	388	6,532
Net increase in cash and cash equivalents	-98	1,152	-1,376	2,417
Effect of exchange rate fluctuations	496	-101	-1,714	-1,294

Cash and cash equivalents at beginning of period	616	3,705	3,705	2,582
<b>Cash and cash equivalents at end of period</b>	<b>1,014</b>	<b>2,452</b>	<b>616</b>	<b>3,705</b>

The cash balance increased from USD 2,582 thousand as of 31 December 2013 to USD 3,705 thousand 31 December 2014 mainly due to the net proceeds from the issue of share capital amounting to USD 11,199 thousand received in 2014. Despite improvements made in 2015 on the net cash from operating activities and the net cash used in investing activities, the cash balance decreased down to USD 616 thousand as of 31 December 2015 mainly due to little net proceeds from the issue of share capital compared to prior year, and unfavorable exchange rate fluctuations through 2015.

#### 10.2.4 Condensed consolidated statement of changes in equity

(USD 1,000)	Q1 2016 (unaudited)	Q1 2015 (unaudited)	2015 (audited)	2014 (audited)
Opening balance	-9,561	-2,756	-2,756	-5,561
Total comprehensive income for the period	-480	-860	-8,204	-10,092
Equity issues	-	-	411	5,064
Exercise of warrants	-	-	173	5,550
Conversion rights reserve	-	-	-	1,056
Share-based payments	88	280	814	1,228
Closing balance	-9,953	-3,336	-9,561	-2,756

### 10.3 Operating and financial review

#### 10.3.1 Review of Funcom's financial position and financial results for 2014

Funcom's revenue for 2014 was USD 12,593 thousand compared to USD 21,409 thousand in 2013. The overall decrease of USD 8,816 thousand was due to the natural decline in revenues from its ageing Live Games *Anarchy Online*, *Age of Conan* and *The Secret World*, whilst revenues of LEGO® *Minifigures Online* had not yet materialized. At the end of Q3 FY14, the Company announced that it will take longer than planned for the LEGO® *Minifigures Online* game to reach its internal target in terms of users and revenues.

The operating costs (excluding impairment) decreased by approximately 21% in comparison to 2013 as a result of the continued restructuring of the Company and other cost savings measures. In spite of this, the corresponding operating result for 2014 was USD -8,117 thousand compared to USD -4,880 thousand in 2013. Despite the positive factors stated above, the decrease in the operating result is partly due to larger impairment losses of USD 5,760 thousand reported in 2014 compared to USD 4,200 thousand in 2013. The impairment losses in 2014 resulted from the revised revenue estimates going forward which were caused by declining revenues from *The Secret World* and by the anticipation that it will take longer than anticipated for LEGO® *Minifigures Online* to reach its internal target for players and revenues. The lower contribution margin from *The Secret World* was caused primarily by a misalignment between declining revenues due to the ageing of the game and the costs of running it. Therefore the Company revised further its projections which caused the



value in use of *The Secret World*, LEGO® *Minifigures Online* and the underlying version of the *Dreamworld Technology* to be lower than their net book value and resulted in an impairment loss of USD 5,760 thousand recorded in Q3 2014. The performance of some of these games recovered in Q4 2014, however impairment losses booked were not reversed following a prudent approach and taking into account the uncertain nature of estimating future cash flows. The process of estimating future cash-flows is in accordance with the Company's internal quarterly review process. As such, the Executive Management will continue to monitor the value of Funcom's assets and inform the market of any material changes.

As a result of the above, the Company reported a net loss for 2014 of USD -8,761 thousand compared to USD -4,538 thousand for 2013. Thus the earnings per share (basic and fully diluted) decreased from USD -0.07 at the end of 2013 to USD -0.11 at the end of 2014.

The equity of the Company at year-end increased to USD -2,756 thousand compared to USD -5,561 thousand in 2013 mainly as a result of three drawdowns on the Equity Facility amounting to 7,345 thousand Shares, increasing equity by USD 4,479 thousand. The equity position was further improved by the exercise of 15 million warrants by KGJI at a price of USD 0.37 per Share, increasing equity by USD 5,550 thousand, as well as smaller gains from the exercise of options by employees.

Offsetting these gains however were operating losses of USD 8,117 thousand largely driven by USD 5,760 thousand of impairment losses booked in Q3 2014, as well as net foreign exchange losses of USD 1,331 thousand.

In Q4 2013, the Company negotiated the Working Capital Loan with KGJI in the amount of USD 5,500 thousand. The first installment of USD 3,000 thousand was received in December 2013, the second of USD 1,250 thousand in Q1 2014 and the last installment of USD 1,250 thousand was received in Q3 2014. On 26 August 2014, an amount of USD 1,550 thousand was converted from the Working Capital Loan into the Convertible Loan. The balance of the Working Capital Loan stands at USD 3,950 thousand.

The cash position of the Company at year-end is USD 3,705 thousand compared to USD 2,582 thousand at the end of 2013. In addition to the cash generated from its Live Games the Company had at its disposal installments under the Working Capital Loan (see Note 24 and 28 of the financial statements for 2014) and the Equity Facility of up to USD 22,000 thousand as an immediate source of financing. Under the Equity Facility drawdowns can be made in tranches at the Company's discretion, on average every 20 to 30 days up to the maximum amount of USD 22,000 thousand. The first draw down was successfully completed in April 2014 and the company raised USD 1,625, thousand, the second completed in May 2014 raised USD 1,977 thousand and the third completed on 16 December 2014 raised USD 898 thousand (see note 27 of the financial statements for 2014).

#### 10.3.2 Review of Funcom's financial position and financial results for 2015

Revenues in 2015 are USD 10,238 thousand compared to USD 12,593 thousand in 2014 following a gradual and expected decrease in sales from the current Live Games.

The Company continued its cost-saving efforts in 2015 and realized operating cost savings of USD 3,420 thousand in comparison to 2014. In consequence, the Earnings before Interest, Tax,

Depreciation and Amortization ("**EBITDA**")<sup>54</sup> for 2015 increased to USD 393 thousand compared to USD -672 thousand in 2014.

The revenues generated by the game LEGO® *Minifigures Online* did not meet the internal forecasts. The Company has therefore fully written-off the underlying asset and the related *Dreamworld Technology*, and recorded in 2015 an impairment charge of USD 3,156 thousand in relation to this game.

Earnings before Interest and Tax ("**EBIT**")<sup>55</sup> for 2015 were USD -6,179 thousand compared to USD -8,117 thousand in 2014, mainly due to the significant impairment charges recorded in both periods.

The loss for the period was USD -6,789 thousand compared to USD -8,761 thousand in 2014.

The cash position at the end of 2015 was USD 616 thousand compared to USD 3,705 thousand at the end of 2014.

The total equity of the Company decreased from USD 2,756 thousand at the end of 2014 to USD -9,561 thousand at the end of 2015, mainly due to the accumulated losses of USD -6,789 thousand recorded in 2015.

#### 10.4 Capitalization and indebtedness

The tables below list the Group's capitalization and indebtedness per 31 March 2016 and the changes following the Private Placement and the Debt Conversion. The figures are derived from the Company's last published financial statement (unaudited Q1 2016 report) and are presented on a consolidated basis.

Funcom N.V	31.03.2016 (unaudited)	Changes related to the Private Placement	Changes related to the Debt Conversion <sup>56</sup>	As adjusted (unaudited)
<i>In USD thousand</i>				
<b>Capitalisation</b>				
<b>Total current debt</b>				
Guaranteed	-	-	-	-
Secured	-	-	-	-
Unguaranteed/unsecured	13,337	-	-4,027	9,310
<b>Total current debt</b>	<b>13,337</b>	<b>-</b>	<b>-4,027</b>	<b>9,310</b>
<b>Total non-current debt</b>				
Guaranteed	-	-	-	-
Secured	-	-	-	-
Unguaranteed/unsecured	3,531	-	-3,478	53

<sup>54</sup> The EBITDA figure has not been audited, and corresponds to the Revenue decreased by the Operating expenses.

<sup>55</sup> The EBIT figure has not been audited, and corresponds to the EBITDA decreased by the Depreciation, amortization and impairment charges.

<sup>56</sup> This includes the Debt Conversion announced on 26 May 2016, the payment of accrued interests on outstanding debt, and the restructuring of the Working Capital Loan into the Convertible Loan formalized on 13 April 2016.

<b>Total non-current debt</b>	<b>3,531</b>	<b>-</b>	<b>-3,478</b>	<b>53</b>
<b>Total debt (a)</b>	<b>16,868</b>	<b>-</b>	<b>-7,505</b>	<b>9,363</b>
<b>Shareholder's equity</b>				
Share capital	4,802	4,276	1,906	10,984
Legal reserve	-	-	-	-
Other reserves	157,474	2,044	5,337	164,855
<b>Total shareholder's equity (b)</b>	<b>162,276</b>	<b>6,320</b>	<b>7,243</b>	<b>175,839</b>
<b>Total capitalization (a+b)</b>	<b>179,144</b>	<b>6,320</b>	<b>-262</b>	<b>185,202</b>

The table below gives an overview of the Company's net financial indebtedness at 31 March 2016 and the changes following the Private Placement.

<b>Funcom</b>	<b>31.03.2016 (unaudited)</b>	<b>Changes related to the Private Placement</b>	<b>Changes related to the Debt Conversion<sup>57</sup></b>	<b>As adjusted (unaudited)</b>
<i>In USD thousand</i>				
<b>Indebtedness</b>				
(A) Cash	1,015	6,320	-262	7,073
(B) Cash equivalents	-	-	-	-
(C) Trading securities	-	-	-	-
<b>(D) Total liquidity (A) + (B) + (C)</b>	<b>1,015</b>	<b>6,320</b>	<b>-262</b>	<b>7,073</b>
<b>(E) Current financial receivables</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
(F) Current bank debt	-	-	-	-
(G) Current portion of non-current debt	-	-	-	-
(H) Other current financial debt	10,150	-	-3,765	6,385
<b>(I) Current financial debt (F) + (G) + (H)</b>	<b>10,150</b>	<b>-</b>	<b>-3,765</b>	<b>6,385</b>
<b>(J) Net current financial indebtedness (I) – (E) – (D)</b>	<b>9,135</b>	<b>-6,320</b>	<b>-3,503</b>	<b>-688</b>
(K) Non-current bank loans	-	-	-	-
(L) Bond issued	-	-	-	-
(M) Other non-current loans	3,478	-	-3,478	-
<b>(N) Non-current financial indebtedness (K) + (L) + (M)</b>	<b>3,478</b>	<b>-</b>	<b>-3,478</b>	<b>-</b>

<sup>57</sup> This includes the Debt Conversion announced on 26 May 2016, the payment of accrued interests on outstanding debt, and the restructuring of the Working Capital Loan into the Convertible Loan formalized on 13 April 2016.

(O) Net financial indebtedness (J) + (N)	12,613	-6,320	-6,981	-688
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The significant changes to the Company's financial or trading position after 31 March 2016 include the signature on April 13, 2016 by KGJI and the Company of an agreement to combine the USD 3,950 thousand Working Capital Loan (maturity date 15 December 2016 and 8% interest rate) and the USD 4,000 thousand Convertible Loan (maturity date 27 June 2017, 5% interest rate and USD 0.86 conversion price) into a new Convertible Loan of USD 7,950 thousand with maturity date of 30 June 2019<sup>58</sup>, interest rate of 6%, and conversion price of USD 0.18 per share. The financial impact of these changes in the new Convertible loan has been taken into account in the above capitalization and indebtedness tables. Furthermore, Funcom completed the Private Placement on 26 May 2016, implying issuance of 95,970,000 New VPS Shares at a price of USD 0.07 per New VPS Share<sup>59</sup>, increasing the share capital of the Company by USD 4,276,039<sup>60</sup> and other reserves by USD 2,044,354<sup>61</sup>, yielding gross proceeds (increase in cash) to the Company of USD 6,320,393<sup>62</sup> and the completion of the Debt Conversion on 26 May 2016, implying issuance of 48,777,778 Conversion VPS Shares at a price of USD 0.18 per Conversion VPS Share, increasing the share capital of the Company by USD 1,906,007<sup>63</sup> and other reserves by USD 5,793,993 including any portion of the convertible loan that was already recognized under the equity. The financial impact of these changes in the Private Placement and in the Debt Conversion has been taken into account in the above capitalization and indebtedness tables. Finally, the Company paid to its major creditor, KGJI, the interest due on the working capital loan and convertible loan with respect to 4Q15 and 1Q16 for a total amount of USD 262,301. The financial impact of the payment of this interest due has been taken into account in the above capitalization and indebtedness tables. Apart from the above, there has not been any significant changes to the Company's financial or trading position after 31 December 2015.

As of 31 December 2014 the Group had a contingent liability related to the ØKOKRIM charge (please refer to Section 15.3 "Legal and arbitration proceedings" for further information). On 23 October 2015, the Company accepted a fine of NOK 1,500 thousands from ØKOKRIM (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime). The fine was paid on 17 December 2015. The payment of the fine has been reflected in the audited annual accounts for 2015 and is reflected in the capitalization and indebtedness tables above.

The Company agreed through an amendment agreement dated 26 October 2015 relating to the Bond Agreement that upon the occurrence of a "*sale of some, all or parts of the Issuer's subsidiaries or other assets*" prior to the maturity date of the Bond Agreement (which will be 31 December 2018,

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<sup>58</sup> This maturity date has later been amended to 31 December 2016 following the Company's entry into of an agreement with KGJI to restructure its debt obligations under the Convertible Loan and the Bonds.

<sup>59</sup> Exchanged from NOK at an exchange rate of NOK 8.35 per USD 1, which is equal to the registered midrate of the Central Bank of Norway as of 30 May 2016.

<sup>60</sup> Exchanged from EUR at an exchange rate of EUR 0.90 per USD 1, which is equal to the European Central Bank foreign exchange reference rates as of 30 May 2016.

<sup>61</sup> Exchanged from EUR at an exchange rate of EUR 0.90 per USD 1, which is equal to the European Central Bank foreign exchange reference rates as of 30 May 2016.

<sup>62</sup> Exchanged from NOK at an exchange rate of NOK 8.35 per USD 1, which is equal to the registered midrate of the Central Bank of Norway as of 30 May 2016.

<sup>63</sup> Exchanged from EUR at an exchange rate of EUR 0.90 per USD 1, which is equal to the European Central Bank foreign exchange reference rates as of 30 May 2016.

if accepted by the bondholders' meeting<sup>64</sup>) the Company has the possibility to apply any proceeds from such sales (the "Proceeds") to redeem outstanding loans as follows:

- (i) to redeem outstanding loans (firstly the Bonds and thereafter other outstanding loans) in full if the Proceeds are sufficient; or
- (ii) to apply a minimum of 80% of the Proceeds to redeem the outstanding loans.

## **10.5 Working capital statement**

The Company is of the opinion that the current working capital is sufficient for the Group's present requirements for at least the next twelve months.

The raising of additional capital in the Subsequent Offering will result in the Group further strengthening its working capital. Successful completion of the Subsequent Offering is not a condition for having sufficient current working capital for at least the next twelve months.

## **10.6 Trend information**

This section sets out information on trends and other factors which may affect the financial position of the Group.

### **10.6.1 The Funcom strategy**

Funcom has recently decided to shift its strategy. For further information, please refer to Section 7.3 "The new Funcom strategy".

### **10.6.2 Games in operation**

Overall, Funcom's large scale MMOs continue to generate a positive net contribution to the business and investment levels are constantly reviewed and aligned with expected revenue to ensure that they will continue to contribute positively to the Company in the future.

LEGO® *Minifigures Online* continued to underperform and failed to meet overall revenue expectations. Investment levels have been reduced to the minimum necessary to meet pre-established commitments

*The Park* was released for the PC platform on 27 October 2015 and on 3 May 2016 for Xbox One and PlayStation 4. It is available in multiple online sales channels, including Steam, and sales are in line with internal expectations. The project's non-revenue related goals were also met successfully:

- (i) adapting to short development cycles and small budgets to allow for quick experimentation;
- (ii) generating high amounts of press and community attention without a marketing budget;
- (iii) learning a new technology (Unreal Engine 4) and starting to adapt it to the *Dreamworld Technology* engine;

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<sup>64</sup> KGJ has sufficient votes at the bondholders' meeting to have control over such meeting.

- (iv) leverage the assets and content from *The Secret World* to speed up development of other products; and
- (v) grow the value of *The Secret World* intellectual property by creating more products connected to it.

For further details on trend information, reference is made to the financial statements for 2014, and especially to the "Report of the Management Board", to the "Report of the Supervisory Board of Directors", and to the Note 27 "Capital Management and Risk Factors".

## 10.7 Investments

### 10.7.1 General

The investments of Funcom consist mainly of cumulated capitalized expenses for the development of games and technology. This intellectual property is owned by the Company and recognized in the balance sheet if it can be proven that there are probable future economic benefits that can be attributed to the assets which are owned by the Company, and the assets' cost price can be reliably estimated. Intangible assets are initially recognized at their cost price and subsequently measured using the cost method (*i.e.* historical cost less accumulated amortization and accumulated impairment losses). A review to assess whether there are indicators of impairment is undertaken at the end of each reporting period. In addition, intangible assets not yet available for use are tested for impairment annually.

The Company amortizes investment in the development of technology and game assets on a systematic basis over their useful life which normally does not exceed five years. The Company applies the diminishing balance amortization method which reflects the pattern of consumption of the future economic benefits. If that pattern cannot be determined reliably the company uses the straight-line method.

For further details on the Company's investments, reference is made to the financial statements for 2014, and especially to the Note 11 "Intangible assets" and the Note 12 "Equipment".

The table below shows the Company's investments in intangible assets for the period from 1 January 2014 to 31 December 2015:

<i>In thousands of US dollars</i>	<b>Development costs</b>	<b>Software</b>	<b>Trademarks &amp; licenses</b>	<b>Total</b>
<b>Cost</b>				
Balance at January 1, 2014	125,851	1,359		<b>127,210</b>
Acquisitions, internally developed	5,987			<b>5,987</b>
Other acquisitions		39		<b>39</b>
Disposals				
Government grant	-61			<b>-61</b>
Translation difference		-229		<b>-229</b>
<b>Balance at December 31, 2014 (audited)</b>	<b>131,777</b>	<b>1,169</b>		<b>132,946</b>
Balance at January 1, 2015	131,777	1,169		<b>132,946</b>
Acquisitions, internally developed	3,309			<b>3,309</b>

Other acquisitions		20	173	193
Disposals				
Government grant				
Translation difference		-173		-173
<b>Balance at December 31, 2015 (audited)</b>	<b>135,086</b>	<b>1,016</b>	<b>173</b>	<b>136,275</b>
<b>Accumulated amortization and impairment losses</b>				
<b>Accumulated amortization and impairment losses</b>				
Balance at January 1, 2014	116,728	1,177		117,905
Amortization for the year	2,031	68		2,099
Impairment losses (reversal of losses)	5,760			5,760
Disposals		7		7
Translation difference		-205		-205
<b>Balance at December 31, 2014 (audited)</b>	<b>124,519</b>	<b>1,048</b>		<b>125,567</b>
<b>Accumulated amortization and impairment losses</b>				
Balance at January 1, 2015	124,519	1,048		125,567
Amortization for the year	2,786	43		2,829
Impairment losses (reversal of losses)	3,647			3,647
Disposals				
Translation difference		-162		-162
<b>Balance at December 31, 2015 (audited)</b>	<b>130,952</b>	<b>928</b>		<b>131,880</b>
<b>Carrying amount at Jan. 1, 2014 (audited)</b>	<b>9,123</b>	<b>182</b>		<b>9,305</b>
<b>Carrying amount at Dec. 31, 2014 (audited)</b>	<b>7,258</b>	<b>121</b>		<b>7,379</b>
<b>Carrying amount at Jan. 1, 2015 (audited)</b>	<b>7,258</b>	<b>121</b>		<b>7,379</b>
<b>Carrying amount at Dec. 31, 2015 (audited)</b>	<b>4,134</b>	<b>87</b>	<b>173</b>	<b>4,395</b>
Method of amortization	Straight line	Straight line		
Estimated useful lives	5 years	5 years		

The table below shows the Company's investments in tangible assets for the period from 1 January 2013 to 31 December 2015:

	Computers	Furniture	Total:
In thousands of US dollars			
<b>Cost</b>			
Balance at January 1, 2014	10,566	2,347	12,914
Acquisitions	17	12	29
Disposals	-7	-13	-20
Translation difference	-510	-217	-728

<b>Balance at December 31, 2014 (audited)</b>	<b>10,066</b>	<b>2,129</b>	<b>12,195</b>
Balance at January 1, 2015	10,066	2,129	<b>12,195</b>
Acquisitions			
Disposals			
Translation difference	-413	-336	<b>-749</b>
<b>Balance at December 31, 2015 (audited)</b>	<b>9,653</b>	<b>1,793</b>	<b>11,446</b>
<b>Accumulated depreciation and impairment losses</b>			
Balance at January 1, 2014	10,387	1,982	<b>12,370</b>
Disposals			
Impairment charges			
Depreciation for the year	147	112	<b>260</b>
Translation difference	-499	-189	<b>-688</b>
<b>Balance at December 31, 2014 (audited)</b>	<b>10,035</b>	<b>1,905</b>	<b>11,941</b>
Balance at January 1, 2015	10,035	1,905	<b>11,941</b>
Disposals			
Impairment charges			
Depreciation for the year	22	97	<b>119</b>
Translation difference	-410	-302	<b>-712</b>
<b>Balance at December 31, 2015 (audited)</b>	<b>9,647</b>	<b>1,700</b>	<b>11,347</b>
<b>Carrying amount at Jan. 1, 2013 (audited)</b>	<b>405</b>	<b>405</b>	<b>810</b>
<b>Carrying amount at Dec. 31, 2013 (audited)</b>	<b>179</b>	<b>365</b>	<b>544</b>
<b>Carrying amount at Jan. 1, 2014 (audited)</b>	<b>179</b>	<b>365</b>	<b>544</b>
<b>Carrying amount at Dec. 31, 2014 (audited)</b>	<b>31</b>	<b>224</b>	<b>254</b>
<b>Carrying amount at Jan. 1, 2015 (audited)</b>	<b>31</b>	<b>224</b>	<b>254</b>
<b>Carrying amount at Dec. 31, 2015 (audited)</b>	<b>6</b>	<b>93</b>	<b>100</b>
Method of depreciation	Straight line	Straight line	
Estimated useful lives	3 years	5 years	

There are no significant movements nor changes for the period from 1 January 2016 to the date of the Prospectus. Furthermore, there are no significant investments that are not capitalized.



### 10.7.2 Book value of investments

As of 31 December 2015, the main intangible assets of the Company were the large scale MMO's *The Secret World* (USD 1,882k, 2014: USD 1,974k) and *Age of Conan* (USD 577k, 2014: USD 344k), and the *Dreamworld Technology* (USD 1,847k, 2014: USD 2,451k).

Other large scale MMO's of the Company like *Anarchy Online* (2014: no book value) and LEGO® *Minifigures Online* (2014: USD 2,489k) have been fully written-off over prior periods, and have therefore no carrying value as of 31 December 2015.

As of 31 December 2015, other minor investments include tangible fixed assets (USD 100k, 2014: USD 253k), software (USD 88k, 2014: USD 123k), and long-term receivables (USD 65k, 2014: USD 19k).

During the year 2015, the Company disposed its investments in the associate companies MMORPG Technologies Inc. (Canada) and Stunlock Studios AB (Sweden) (2014: USD 195k).

### 10.7.3 Ongoing investments

The Company is working on switching to the new strategy while developing and operating the Live Games.

*The Park* was released for Xbox One and PlayStation 4 on 3 May 2016, to both bring additional revenue and develop internal competencies related to console development.

Prototyping and concept development for new titles will continue throughout the end of 2015 and during 2016 and will follow the goals established in the Company strategy.

The Company has announced *Conan Exiles* as a new game of the "larger" type, and intends to announce two "smaller" games later this year. This is in line with the new Funcom strategy, as described in section 7.3 "The new Funcom strategy". *Conan Exiles* is targeted to be released for the PC platform in the Steam store in Early Access on 13 September 2016, with full launch on PC and consoles at a later stage. One of the "smaller games" has, as announced in the Q1 2016 financial report, passed internal prototyping and approval, being a small multiplayer game based on "*The Secret World*" IP designed to experiment and innovate in a small niche market and build the internal competency of the North Carolina team in Unreal Engine 4. This game is preliminarily scheduled for release on PC in Q4 2016 and due to their budget limitation and experimental focus is expected to have limited revenue impact.

The investments are mainly debt-financed, due to the negative equity position of the Company (USD -9,561 as of 31 December 2015)

### 10.7.4 Planned investments

The Company will focus on investing in different types of products and production cycles, including:

- (i) developing small and innovative games, focused on trying new concepts, experimenting with new technology and platforms and utilizing our intellectual properties, while keeping the investment level low;

- (ii) developing larger games, focused on genres or game types where we can create products of higher production value than the competition, using our own or 3rd party intellectual properties and drawing from the innovation and experimentation of the smaller products to lower the overall risk;
- (iii) upgrading the *Dreamworld Technology* to integrate with third parties; and
- (iv) leveraging and growing the internal Intellectual Properties such as *Anarchy Online*, *The Longest Journey* and *The Secret World*.

The abovementioned investments will be funded by available working capital. The Company has not made any firm commitments to any future investment.

The product development and release plan for is a minimum of one small game released per year and one larger game to be in development at all times per development studio, which is in line with the new Funcom strategy. For further information on the new Funcom strategy, please refer to Section 7.3 "The new Funcom strategy".

Additionally, the company will keep developing and supporting the existing MMORPGs as they are an important source of revenue and drive the internal intellectual properties.

Both development studios are scheduled to have fully switched to the new Funcom strategy by 2Q16.

## **10.8 Financial statements and auditors**

### **10.8.1 Financial statements**

The Company's financial statements for the financial years 2014 and 2015, and the quarterly reports for Q1 2015 and Q1 2015 are incorporated by reference hereto. Please refer to Section 15 "Additional information" for further information.

### **10.8.2 Auditor**

The Company's historical financial information has since November 2014 been audited by BDO Audit & Assurance B.V., registration number 17171186, with registered business address at Dr Holtroplaan 23, Eindhoven, the Netherlands. BDO Audit & Assurance B.V is a member of the Netherlands Institute of Chartered Accountants (*Nederlandse Beroepsorganisatie van Accountants*). The annual report for 2014 was audited by BDO Audit & Assurance B.V.

In the 2014 auditor's report, the following qualification was given:

#### ***Material uncertainty related to going concern***

*We draw attention to the going concern paragraph in note 2.1 to the consolidated financial statements where it is described that the company has negative equity at the end of 2013 as well as at the end of 2014 and is depending on the ability to generate sufficient cash inflows from both sales and new financing. These conditions indicate the existence of a material uncertainty which may cast significant doubt about the company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.*

In order to remedy to this qualification, the Company has tried to improve its equity position by increasing its revenues from current and new games, by decreasing its operating costs, and by securing new financing. However, this approach revealed not being successful as the equity deteriorated from USD -2,756 thousand as of 31 December 2014 to USD -9,561 thousand as of 31 December 2015, mainly due to a loss for the period amount to USD 6,789 thousand.

In the 2015 auditor's report, the following qualification was given:

***Material uncertainty related to going concern***

*We draw attention to the going concern paragraph in the notes on page 36<sup>65</sup> of the financial statements which indicates that the performance of the Company is largely affected by its ability to generate sufficient cash inflows from both sales and new financing. The Company is depending on the positive outcome of these factors. These conditions indicate that a material uncertainty exists which may cast significant doubt on the Company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.*

In the course of 2014, the Company changed its statutory auditor from Mazars Paardekooper Hoffman Accountants N.V. to BDO Audit & Assurance B.V. in order to meet the global presence of the company, with operations in countries where Mazars Paardekooper Hoffman Accountants N.V. did not have local capabilities. BDO Audit & Assurance B.V. was already involved in the audit of the Company for numerous years through its affiliated firm in Norway, and therefore well-known with the Company's operations and processes.

## **10.9 Research and development**

Costs relating to research are recognized as an expense when incurred.

Expenses relating to development, such as labor cost, material costs and other directly attributable costs are recognized as an expense when they are incurred unless the following criteria are met:

- (i) the product or process is clearly defined and the cost elements can be identified and measured reliably;
- (ii) the technical solution for the product has been demonstrated;
- (iii) the product or process will be sold or used in the Company's operations;
- (iv) the asset will generate future economic benefits; and
- (v) sufficient technical, financial and other resources for completing the project are present.

When all the above criteria are met, subsequent costs relating to development will be capitalized. Capitalized development expenditure is stated at cost less accumulated amortization and impairment losses.

Development costs are amortized from the date that the assets are available for use, normally over 5 years. Subsequent improvements and/or additions are amortized separately over the expected useful lives, normally over 5 years, from the time these improvements and/or additions are completed and available for use.

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<sup>65</sup> Reference should in fact be made to page 37 of the annual report for 2015.

Inefficiencies are tracked on a regular basis and identified inefficiencies related to an internally generated intangible asset will be expensed when identified. In addition, an overall evaluation is performed by the end of each financial year.

For further details on research and development, reference is made to the financial statements of the Company, and especially to the "Report of the Management Board", to the Note 2 "Summary of significant accounting policies", and to the Note 11 "Intangible Assets".

In 2014 the Group expensed USD 407 thousand in research and development (2013: USD 322 thousand).

In 2015, the Group did not report research and development expenses. In 2014 the Group expensed USD 407,000 in research and development (2013: USD 322,000), mainly in relation to the Work For Hire team in Canada which was disposed to a third party on 31 December 2014.

## **10.10 Debt overview**

### **10.10.1 The Bonds**

#### **Overview**

As of the date of this Prospectus, 62 Bonds are still outstanding. These bonds have a face value of USD 100,000 (total USD 6,200,000), 5% coupon and are due on 15 December 2016. They are convertible into common Shares of Funcom at a conversion price of USD 0.24 per Share. The interest is payable at maturity or conversion in either cash or Funcom shares at the discretion of the bondholder. For further information on the Bonds, please refer to Section 11.5.1 "Convertible loans".

In a bondholders' meeting planned to be held in June or July 2016, the bondholders will be requested to resolve the following amendments to the terms of the Bond Agreement:

- the maturity date will be extended from 15 December 2016 to 31 December 2018; and
- the interest rate will be decreased to 3.5% p.a.

KGJI has, as part of the agreement to restructure the debt, agreed to vote in favor of the amendments set out above in the upcoming bondholders' meeting.

In addition, the conversion price of the Bonds will be adjusted due to the Private Placement in accordance with the customary adjustment provisions set out in the Bond Agreement. This implies that the conversion price will be adjusted as the Private Placement Subscription Price of NOK 0.55 of the 95,970,000 New VPS Shares was lower than the prevailing quoted price on the VPS Shares on the date of the Private Placement. Funcom has discussed this matter with Nordic Trustee ASA (the "**Bond Trustee**") and, based on that discussion, the new conversion price will be USD 0.1036.

As part of the agreement to restructure the Company's debt under the Bonds and the Convertible Loan, KGJI has accepted a lock-up undertaking in respect of the Bonds on the following main terms:

- (i) KGJI will not and it will procure that none of its respective subsidiaries nor any other party acting on its behalf (other than the Manager) will, without the prior written

consent<sup>66</sup> of the Manager, directly or indirectly:

- (a) offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of any Bonds, or any options or any securities convertible into or exercisable or exchangeable for the Bonds or subscription rights pursuant to the Bonds;
  - (b) (enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Bonds, whether any such transaction described in (a) or (b) above is to be settled by delivery of cash or securities; or
  - (c) convert the Convertible Loan or any Bonds under the Convertible Bond to shares in the Company.
- (ii) The lock-up undertaking in favor of the Bonds shall cease on 31 December 2016 or upon the earlier occurrence of any of the following:
- (a) A voluntary offer is launched for the shares in the Company (or similar transaction); or
  - (b) the Company enters into a merger or business combination agreement in which the ownership of the existing shareholders of the Company are diluted to less than 80% of the merged company.

## **Covenants**

The Bond Agreement contains customary restrictions and covenants, being information covenants, covenants on conduct (*i.e.* no change of nature of business of the Group) or disposal of the business of the Company or any Group company, covenants on related party transactions which are not made on arms-length terms, restrictions on dividend payments, covenant to keep the VPS Shares registered with the VPS and financial indebtedness restrictions.

More specifically, the following covenants have been agreed in the Bond Agreement:

### Information covenants:

During the term of the Bonds the Company shall comply with the following information covenants, unless the Bond Trustee (or the bondholder's meeting, as the case may be) has agreed in writing to waive any covenant, and then only to the extent of such waiver, and on the terms and conditions set out in such waiver:

- (i) immediately inform the Bond Trustee of any event of default as well as of any event or circumstance that may lead to an event of default;
- (ii) of its own accord, make annual financial statements and unaudited financial statements in the English language available on the Company's website (alternatively by sending them to the Bond Trustee for publication on [www.stamdata.no](http://www.stamdata.no)) as they are available, and not later than 150 days after the end of the financial year and not later than 60 days after the end of the relevant interim report period;

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<sup>66</sup> Such consent may be given at any time for the term of the lock-up undertaking and at the Manager's sole discretion.

- (iii) at the request of the Bond Trustee send a report outlining the balance of the Bonds;
- (iv) forward to the Bond Trustee copies of any creditor's notifications of the Company including but not limited to; mergers, demergers and reduction of shareholders' capital;
- (v) at the request of the Bond Trustee provide the documents and information necessary to enable the Bond Trustee to carry out its rights and duties pursuant to the Bond Agreement and applicable laws and regulations;
- (vi) within a reasonable time limit provide information about the Company's financial condition as the Bond Trustee may reasonably request, always subject to compliance with relevant laws and regulations regarding dealing with insider information;
- (vii) annually deliver a compliance certificate to the Bond Trustee concerning the Company's compliance with the agreed covenants. In the event of non-compliance, the reasons thereof as well as the steps which the Company has taken to and will take in order to rectify the non-compliance;
- (viii) of its own accord, inform the Bond Trustee of any event that results in an adjustment of the conversion price of the Bonds; and
- (ix) following the occurrence of a change of control event, immediately after the Company becomes aware of it, notify the Bondholders and the Bond Trustee. The notice shall specify (i) the Bondholders' entitlement to exercise their right to require redemption of the Bonds at 100 % of par plus accrued interest, (ii) the period each Bondholder may require redemption and (iii) details concerning the change of control event.

#### General covenants

During the term of the Bonds, the Company shall (unless the Bond Trustee or the Bondholders' meeting (as the case may be) in writing has agreed to otherwise) comply with the following general covenants:

- (i) not, and ensure that no material subsidiary shall:
  - (a) cease to carry on its business;
  - (b) sell or dispose of all or a substantial part of its assets or operations;
  - (c) change the nature of its business; or
  - (d) merge, demerge or in any other way restructure its business other than solvent restructuring of the Group;
 in a manner which (in the reasonable opinion of the Bond Trustee) is likely to have a material adverse effect.
- (ii) not declare or make any dividend payments or other distributions or loans to its shareholders – whether in cash or in kind – including without limitation repurchase of shares, any total return swaps or instruments with similar effect and reductions in share capital or equity; and
- (iii) not engage in, directly or indirectly, any transaction with any related party, except in the ordinary course of such member of the Group's business and upon fair and reasonable terms that are no less favorable to the member of the Group than those which might be obtained in an arm's length transaction at the time.

#### Financial indebtedness restrictions:

During the term of the Bonds, the Company shall not, and shall ensure that no member of the Group will, incur or create any financial indebtedness (whether secured or unsecured), except for:

- (i) financial indebtedness created pursuant to the terms of the Bond Agreement (meaning financial indebtedness in the form of the Bonds and the financial indebtedness described in (ii) and (iii) below);
- (ii) refinancing of the Company's USD 10,000,000 senior unsecured loan with warrants in the maximum principal amount of USD 10,000,000 (or its equivalent in other currencies), not being subject to any encumbrance or guarantee and ranking no better than pari passu with the Bonds;
- (iii) at the option of the Company, either financial indebtedness (i) in the aggregate maximum amount of USD 5,000,000 (or its equivalent in other currencies) subject to any encumbrance or guarantee or prior ranking to the Bonds, or (ii) in the aggregate maximum amount of USD 10,000,000 (or its equivalent in other currencies) subject to no encumbrances and of no better ranking than pari passu with the Bonds, of which combinations of (i) and (ii) shall be permitted in a ratio of 1:2.

#### Conversion Rights etc.

- (i) During the term of the Bonds, the Company shall ensure that all Shares issued upon exercise of conversion of the Bonds shall be registered in the VPS and listed on Oslo Børs as soon as possible; and
- (ii) During the term of the Bonds, the Company shall not take any action, and shall procure that no action is taken, that would otherwise result in a reduction of the conversion price such that the Shares issued upon conversion would fall to be issued at a discount to their par value.

#### 10.10.2 Convertible Loan

##### **Overview**

On 26 August 2014, the Company entered into a convertible loan with KGJI with a principal amount of USD 4,000,000 (the "**Convertible Loan**") after restructuring of existing debt (an interest bearing loan of USD 2,450,000 and USD 1,550,000 of the Working Capital Loan). In April 2016, the Working Capital Loan was restructured into the Convertible Loan. Simultaneously, the conversion price, maturity date and interest rate was amended. The Convertible Loan has a principal amount of USD 7,950,000.

Under the Convertible Loan, there has been agreed a prepayment option. Upon the occurrence of a prepayment option event (being a sale of some, all or parts of the Issuer's subsidiaries or other assets prior to the maturity date of the Convertible Loan (31 December 2016, cf. below), the Company has the possibility to apply any proceeds from such sales (the "Proceeds") to redeem the outstanding loans (first the Convertible Loan, then the Bond and thereafter other outstanding loans) in full if the Proceeds are sufficient as follows:

- to redeem the outstanding loans; or
- to apply a minimum of 80% of the Proceeds to redeem the outstanding loans.

Further, in May 2016 USD 7.7 million of the outstanding principal of the Convertible Loan was settled in the Debt Conversion through issuance of 42,777,778 Conversion VPS Shares at a conversion price of USD 0.18 per Conversion VPS Share and the maturity date of the Convertible Loan was changed to 31 December 2016.

The agreed conversion price in the Convertible Loan is currently USD 0.18 per Share. However, the conversion price will be adjusted due to the Private Placement in accordance with the customary adjustment provisions set out in the Convertible Loan agreement. This implies that the conversion price will be adjusted as the Private Placement Subscription Price of NOK 0.55 of the 95,970,000 New VPS Shares was lower than the prevailing quoted price on the VPS Shares on the date of the Private Placement. Funcom has discussed this matter with KGJI and based on that discussion, the new conversion price will be USD 0.1036.

The interest rate of the Convertible Loan is 6% per annum. The maturity date of the Convertible Loan is 31 December 2016.

As part of the agreement to restructure the Company's debt under the Bonds and the Convertible Loan, KGJI has accepted a lock-up undertaking in respect of the Bonds on the following main terms:

- (i) KGJI will not and it will procure that none of its respective subsidiaries nor any other party acting on its behalf (other than the Manager) will, without the prior written consent<sup>67</sup> of the Manager, directly or indirectly:
  - (a) offer, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of the Convertible Loan, or any options or any securities convertible into or exercisable or exchangeable for the Convertible Loan or subscription rights pursuant to the Convertible Loan; or
  - (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of Convertible Loan;  
  
whether any such transaction described in (a) or (b) above is to be settled by delivery of cash or securities; or
  - (c) convert the Convertible Loan to Shares in the Company.
- (ii) The lock-up undertaking in favor of the Bonds shall cease on 31 December 2016 or upon the earlier occurrence of any of the following:
  - (a) A voluntary offer is launched for the shares in the Company (or similar transaction); or
  - (b) the Company enters into a merger or business combination agreement in which the ownership of the existing shareholders of the Company are diluted to less than 80% of the merged company.

## Covenants

The loan agreement governing the Convertible Loan contains customary restrictions and covenants, being information covenants, covenants on conduct (*i.e.* no change of nature of business of the

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<sup>67</sup> Such consent may be given at any time for the term of the lock-up undertaking and at the Manager's sole discretion.



Group) or disposal of the business of the Company or any Group company, covenants on related party transactions which are not made on arms-length terms, restrictions on dividend payments, covenant to keep the VPS Shares registered with the VPS and restrictions on creation of security interests over the Company's assets.

More specifically, the following covenants have been agreed between the Company and KGJI:

Information covenants:

As long as any amount is outstanding under the loan agreement governing the Convertible Loan, the Company shall comply with the following information covenants, unless KGJI has agreed in writing to waive any covenant, and then only to the extent of such waiver, and on the terms and conditions set out in such waiver:

- (iii) immediately inform KGJI of any event of default as well as of any event or circumstance that may lead to an event of default;
- (iv) provide audited annual financial statements and unaudited financial statements in the English language to KGJI as soon as they are available, and not later than 150 days after the end of the financial year and not later than 60 days after the end of the relevant interim report period;
- (v) forward copies of notifications to the Company's creditors, for instance (but not limited to) notifications related to mergers, demergers and reductions of share capital;
- (vi) upon the reasonable request of KGJI, and within a reasonable time limit, provide information about the financial condition of the Company (however, always subject to compliance with relevant laws and regulations regarding dealing with insider information);
- (vii) inform KGJI of any event that results in an adjustment of the conversion price of the Convertible Loan; and
- (viii) upon an event implying a change of control in the Company, Funcom shall immediately inform KGJI.

General covenants

During the term of the Convertible Loan, the Company shall (unless KGJI in writing has agreed otherwise) comply with the following covenants:

- (i) not, and ensure that no material subsidiary shall:
  - (a) cease to carry on its business;
  - (b) sell or dispose of all or a substantial part of its assets or operations;
  - (c) change the nature of its business; or
  - (d) merge, demerge or in any other way restructure its business other than solvent restructuring of the Group.in a manner which (in the reasonable opinion of KGJI) is likely to have a material adverse effect.
- (ii) not declare or make any dividend payments or other distributions or loans to its shareholders – whether in cash or in kind – including without limitation repurchase of shares, any total return swaps or instruments with similar effect and reductions in

share capital or equity;

- (iii) not engage in, directly or indirectly, any transaction with any related party, except in the ordinary course of such member of the Group's business and upon fair and reasonable terms that are no less favorable to the member of the Group than those which might be obtained in an arm's length transaction at the time; and
- (iv) as long as any amount is outstanding under the Convertible Loan Agreement, the Company may not create or permit to subsist any mortgage, charge, lien, pledge, or other security interest over any of the assets of the Company without prior written consent of KGJI.

#### Conversion Rights etc.

During the term of the Convertible Loan, the Company shall ensure that all Shares issued through conversion under the Convertible Loan are registered in the VPS and listed on Oslo Børs as soon as practicable after the relevant conversion.

#### **10.11 Standby equity facility**

On 25 May 2012, Funcom announced that it had strengthened its financial flexibility through an up to USD 22 million standby equity facility (the "**Equity Facility**") with YA Global Master SPV, Ltd. ("**YA Global Master**"), a fund managed by USD based Yorkville Advisors LLC. The Equity Facility expired on 25 May 2015.

The Equity Facility gave Funcom access to additional capital by drawdowns of funds in exchange for issuing New VPS Shares to YA Global Master.

In total, Funcom utilized EUR 3,777,152 of the Equity Facility through issuance of 9,108,203 Shares.

#### **10.12 Significant changes in financial and trading position after 31 December 2015**

In January 2016, KGJI confirmed that it is willing to continue to support the Company by integrating the Working Capital Loan into the Convertible Loan, and by subsequently deferring the maturity of the Convertible Loan from 27 June 2017 to 30 June 2019. The changes to the Convertible Loan and the Working Capital Loan were formally resolved by the extraordinary General Meeting on 25 February 2016. KGJI also confirmed that it is willing to postpone the maturity of the Bonds from 15 December 2016 to 31 December 2018. These changes to the terms of the Bond Agreement are expected to be formally resolved in a bondholders' meeting to be held in June or July 2016.

On 19 April 2016, KGJI transferred USD 500 thousand to the Company as a bridge loan with 5% interest payable at maturity. The maturity date is the earlier of 1 July 2016 and two business days after the Company receives proceeds from the Private Placement. The bridge loan was repaid to KGJI prior to the date of this Prospectus.

In May 2016, the Company entered into an agreement to restructure its debt under the Convertible Loan and the Bonds, and thereby settled USD 7.7 million of the outstanding principal under the Convertible Loan through issuance of 42,777,778 Conversion VPS Shares at a conversion price of USD 0.18 per Conversion VPS Share. Further, the maturity date of the Convertible Loan was agreed to be set at 31 December 2016 and the interest rate of the Bonds shall be decreased to 3.5% p.a. (pending approval by the bondholders meeting).

These facilities will provide cash relief to Funcom in 2016, 2017 and 2018 to focus on attracting and utilizing funds for the development of new games.

The Company has completed the Private Placement and also expects to complete the Subsequent Offering within the end of August 2016.

As of the date of this Prospectus, the Group is not aware of any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the Group's operations.

Except for the abovementioned, there has been no significant change in the financial or trading position of the Group since 31 December 2015.

## **11 SHARE CAPITAL, SHAREHOLDER MATTERS AND DUTCH CORPORATE LAW**

### **11.1 General**

The following is a summary of certain information relating to the Shares and certain shareholder matters, including summaries of certain provisions of the Company's Articles of Association and applicable Dutch law in effect as of the date of this Prospectus. The summary does not purport to be complete and is qualified in its entirety by the Company's Articles of Association and Dutch law.

The majority of the Company Shares are listed on Oslo Børs as VPS Shares (8,075 Company Shares are not listed as certain shareholders never took the appropriate actions to have their Company Shares registered with the VPS and listed on Oslo Børs as VPS Shares).

It is a requirement that the shares in companies listed on the Oslo Børs are registered with the VPS or another share register with authorization to act as a securities register in accordance with section 3-1 of the Norwegian Securities Register Act. The Company Shares are registered in the VPS as the VPS Shares. In order to facilitate registration with the VPS, the Company Shares are registered in the name of DnB Bank ASA (Funcom's VPS Registrar) in the Company's shareholders' register in the Netherlands. The VPS Registrar registers beneficial interest in the Company Shares in the VPS by issuing Depositary Receipts (*Nw: depotbevis*) to the beneficial shareholders. Therefore, not the shares themselves, but the beneficial interests in the Company Shares are registered in the VPS and are listed on the Oslo Børs. For the purpose of this Prospectus, the Depositary Receipts issued by the VPS Registrar in relation to the Company Shares are referred to as the VPS Shares (unless stated otherwise or evident from the context).

### **11.2 Share capital**

#### **11.2.1 Current share capital**

As of the date of this Prospectus, the Company's registered share capital is EUR 9,238,236.48 divided into 230,955,912 Company Shares, each with a nominal value of EUR 0.04. For the avoidance of doubt, the VPS Shares have the same nominal value as the Company Shares. All of the Company Shares are authorized, issued and fully paid in compliance with the Dutch Civil Code Book 2 (*Burgerlijk Wetboek Boek 2*). The VPS Shares are registered in the VPS under ISIN NL 0000062461.

The authorized share capital is EUR 10,000,000, and the issued share capital is EUR 9,238,236.48.

The Company has no obligations over authorized but unissued capital other than the obligation to issue shares in line with an underlying agreement (for example convertible bond agreements, convertible loan agreements and/or license agreement) or following exercise of options.

#### **11.2.2 Share capital development**

The table below sets out the developments in the share capital of the Company for the period covering the historical financial information and up until the date of this Prospectus. The table also indicates the total number of Shares, share capital and par value per Share at the start and end of each year comprised by the historical financial information.

Date	Type of change in share Capital	Changes in issued share capital (EUR)	Change in number of Shares	Issue price (EUR/USD)	No of Shares following change	Nominal or par value per Share (EUR)	Share Capital following increase (EUR)	Share premium (EUR/ USD)
2014	None – start of year				66,496,918	0.04	2,659,876.88	
2014	Exercise of options	12,641.12	316,028	Variable <sup>68</sup>	66,812,946	0.04	2,672,518.00	EUR 88,930
2014	Exercise of warrants	200,000.00	5,000,000	USD 0.37	71,812,946	0.04	2,872,518.00	EUR 1,254,546
2014	Exercise of warrants	200,000.00	5,000,000	USD 0.37	76,812,946	0.04	3,072,518.00	EUR 2,388,937
2014	Drawdown under Equity Facility	88,154.00	2,203,846	EUR 0.53	79,016,792	0.04	3,160,672.00	EUR 3,453,602
2014	Exercise of options	15,143.00	378,591	Variable <sup>69</sup>	79,395,383	0.04	3,175,815.00	EUR 3,547,387
2014	Exercise of warrants	200,000.00	5,000,000	USD 0.37	84,395,383	0.04	3,375,815.00	EUR 4,692,157
2014	Exercise of options	36,336.00	908,394	Variable <sup>70</sup>	85,303,777	0.04	3,412,151.00	EUR 4,872,093
2014	Drawdown under Equity Facility	101,818.00	2,545,454	EUR 0.58	87,849,231	0.04	3,513,969.00	EUR 6,224,138
2014	Drawdown under Equity Facility	103,824.00	2,595,592	EUR 0.29	90,444,823	0.04	3,617,793.00	EUR 6,854,864
2014	None - end of year				90,444,823	0.04	3,617,793.00	
2015	None – start of year				90,444,823	0.04	3,617,793.00	
2015	Drawdown under Equity Facility	70,532.44	1,763,311	EUR 0.21	92,208,134	0.04	3,688,325.36	EUR 7,151,584
2015	None – end of year				92,208,134	0.04	3,688,325.36	
2016	None – start of year				92,208,134	0.04	3,688,325.36	
2016	Private Placement	3,838,800.00	95,970,000	NOK 0.55	188,178,134	0.04	7,527,125.36	USD 2,064 thousand
2016	Debt Conversion	1,711,111.12	42,777,778	USD 0.18	230,955,912	0.04	9,238,236.48	USD 5,794 thousand

<sup>68</sup> Dependent on the strike price for the exercised options. Please refer to <http://www.newsweb.no/newsweb/search.do?messageld=344799> for further information on the strike price.

<sup>69</sup> Dependent on the strike price for the exercised options. Please refer to <http://www.newsweb.no/newsweb/search.do?messageld=352019> for further information on the strike price.

<sup>70</sup> Dependent on the strike price for the exercised options. Please refer to <http://www.newsweb.no/newsweb/search.do?messageld=354408> for further information on the strike price.

## **11.3 Treasury Shares**

### **11.3.1 Holdings of treasury Shares**

Neither Funcom nor its (in)direct subsidiaries hold any treasury Shares.

### **11.3.2 Regulation of the Company's possibility to purchase treasury Shares under applicable law and the Articles of Association**

Pursuant to the Articles of Association, the Company may acquire, for valuable considerations, shares in its own capital if and in so far as: a) its equity less the purchase price of these shares is not less than the aggregate amount of the paid up and called up capital and the reserves which must be maintained pursuant to the law; (b) the par value of the shares in its capital which the company acquires, holds or holds in pledge, or which are held by a subsidiary company, amounts to no more than one-tenth of the issued share capital; and (c) the General Meeting has authorized the managing board to acquire such shares, which authorization may be given for no more than eighteen months on each occasion, notwithstanding the further statutory provisions.

The above conditions under (b) is more stringent than under Dutch law, which provides that the Company may acquire for valuable considerations, shares in its own capital if and in so far as (i) the par value of the shares in its capital which the company acquires, holds or holds in pledge, or which are held by a subsidiary company, amounts to no more than half of the issued share capital and (ii) the General Meeting has authorized the managing board to acquire such shares, which authorization may be given for no more than five years on each occasion.

## **11.4 Authorizations**

### **11.4.1 Authorization to increase the share capital**

The Supervisory Board has been granted the following authorizations to increase the Company's share capital:

Date granted	Purpose	Possible increase of issued share capital (EUR)	Amount utilized	Valid until
26 June 2015	To give the Supervisory Board flexibility in attracting funds in the most efficient manner and to facilitate the execution of Funcom's share incentive program.	1,200,000	1,200,000 <sup>71</sup>	Annual General Meeting 2016
25 February 2016	To enable the Supervisory Board to issue Shares via a private placement (with a subsequent offering) or through a public placement in order to attract funds for the development of new games.	2,800,000	2,800,000	Annual General Meeting 2017
25 February 2016	To enable the Supervisory Board to issue new Shares if the Bonds are converted.	800,000	0	Annual General Meeting 2017
25 February 2016	To enable the Supervisory Board to issue new Shares if the conversion rights in the Convertible Loan are utilized.	2,000,000	1,580,620.20 <sup>72</sup>	Annual General Meeting 2017

The abovementioned authorizations also include the possibility of the Supervisory Board to limit or exclude the pre-emptive rights of the Funcom shareholders.

In addition to the abovementioned authorizations, the Supervisory Board has proposed that the annual General Meeting (to be held on 30 June 2016) shall vote over granting of the following authorizations:

- An authorization to the Supervisory Board to increase the share capital with up to EUR 5,200,000 through issuance of up to 130,000,000 new Shares in order to give the Supervisory Board flexibility in attracting funds in the most efficient manner and to facilitate the execution of Funcom's share incentive program; and
- An authorization to the Supervisory Board to increase the share capital with up to EUR 400,000 through issuance of up to 10,000,000 new Shares in order to enable the Supervisory Board to issue new Shares if the interest under the Bond Agreement is converted into VPS Shares.

<sup>71</sup> Utilized for issuance of rights to acquire Shares (*rechten tot het nemen van aandelen*).

<sup>72</sup> Utilized for issuance of rights to acquire Shares (*rechten tot het nemen van aandelen*).

The abovementioned proposals also includes the possibility of the Supervisory Board to limit or exclude the pre-emptive rights of the Funcom shareholders.

#### 11.4.2 Authorization to purchase treasury shares

As of the date of this Prospectus, the Company has not authorized acquisition of treasury shares.

### 11.5 Convertible loans, options and warrants

#### 11.5.1 Convertible loans

The Company has issued both convertible bonds and entered into a convertible loan agreement, as described below.

##### **Convertible bonds:**

On 21 December 2011 Funcom issued 150 Bonds with a face value of USD 100,000 (total USD 15,000,000) and 10 % coupon due on 22 December 2014 and convertible into VPS Shares of Funcom at a price of 1.37 USD per VPS Share.

In a bondholders' meeting held on 3 April 2013, the bondholders resolved to make the following amendments to the terms of the Bond Agreement:

- The maturity date was extended from 22 December 2014 to 22 December 2015;
- The fixed rate was adjusted from 10% to 5% per annum;
- interest on the Bonds will accrue based on the amended fixed rate and become payable on the earlier of the conversion date or the extended maturity date at the option of the bondholders in either cash or VPS Shares; and
- the conversion price was adjusted from USD 1.37 to USD 0.37 per VPS Share.

In a bondholders' meeting on 26 October 2015, the bondholders resolved to make the following amendments to the terms of the Bond Agreement:

- the maturity date was extended from 22 December 2015 to 15 December 2016;
- the conversion price was adjusted from USD 0.37 to USD 0.24 per VPS Share;
- introduction of a "prepayment option", which gives Funcom (under certain conditions) the possibility to redeem (all or a part of) the loans outstanding under the Bond Agreement.

The aforementioned certain conditions are met upon the occurrence of a prepayment option event (being a sale of some, all or parts of the Issuer's subsidiaries or other assets prior to the maturity date of the Bond Agreement (which, if accepted by the bondholder's meeting that KGJI is controlling, cf. below – will be: 31 December 2018), the Company has the possibility to apply any proceeds from such sales (the "Proceeds") to redeem the outstanding loans (first the Convertible Loan, then the Bond and thereafter other outstanding loans) in full if the Proceeds are sufficient as follows:

- to redeem the outstanding loans; or
- to apply a minimum of 80% of the Proceeds to redeem the outstanding loans.



In a bondholders' meeting planned to be held in June or July 2016, the bondholders will be requested to resolve the following proposed amendments to the terms of the Bond Agreement:

- the maturity date to be extended from 15 December 2016 to 31 December 2018; and
- decrease the interest rate of the Bonds to 3.5% p.a.

KGJI has, as part of the agreement to restructure the debt, agreed to vote in favor of the amendments set out above in the upcoming bondholders' meeting.

In addition, the conversion price of the Bonds will be adjusted due to the Private Placement in accordance with the customary adjustment provisions set out in the Bond Agreement. This implies that the conversion price will be adjusted as the Private Placement Subscription Price of NOK 0.55 of the 95,970,000 New VPS Shares was lower than the prevailing quoted price on the VPS Shares on the date of the Private Placement. Funcom has discussed this matter with the Bond Trustee, and based on that discussion, the new conversion price will be USD 0.1036.

As of the date of this Prospectus, there are 62 Bonds still outstanding. The remaining 88 Bonds has been converted into VPS Shares at the following dates and at the following conversion price:

Date	Conversion price per share	New Shares issued <sup>73</sup>	Outstanding bonds after conversion	Outstanding debt after conversion (excl. accrued interest)
1 March 2012	USD 1.37	1,094,880	135	USD 13,500,000
2 March 2012	USD 1.37	72,992	134	USD 13,400,000
6 March 2012	USD 1.37	145,984	132	USD 13,200,000
7 March 2012	USD 1.37	729,920	122	USD 12,200,000
9 March 2012	USD 1.37	145,984	120	USD 12,000,000
12 March 2012	USD 1.37	72,992	119	USD 11,900,000
13 March 2012	USD 1.37	2,919,680	79	USD 7,900,000
13 March 2012	USD 1.37	437,952	73	USD 7,300,000
25 April 2012	USD 1.37	291,968	69	USD 6,900,000
30 April 2012	USD 1.37	145,984	67	USD 6,700,000
3 May 2012	USD 1.37	145,984	65	USD 6,500,000
4 May 2012	USD 1.37	145,984	64	USD 6,400,000
1 June 2012	USD 1.37	72,992	63	USD 6,300,000
13 June 2012	USD 1.37	72,992	62	USD 6,200,000

### Convertible loan

On 26 August 2014, Funcom entered into the Convertible Loan with KGJ Investments S.A. SICAV-SIF ("KGJI"). For further information on the Convertible Loan, please refer to Section 10.10.2 "Convertible Loan".

<sup>73</sup> An equal number of Company Shares and VPS Shares have been issued following conversion of the Bonds.

### 11.5.2 Options

The Group has established a share option program for its employees, members of the Management Board and members of the Supervisory Board. Under the share option program, the option holders may exercise options to purchase VPS Shares in the Company. The plan is an equity-settled, share-based compensation plan.

As of the date of this Prospectus, there are a number of 8,858,073 outstanding options granted to employees and directors in the Company. In addition, the Supervisory Board intends to grant 5 million options following the annual general meeting to be held on 30 June 2016. Please refer to Section 9 "Board of Supervisory Directors, Management, employees and related party transactions" for further information on the options held by certain members of the Company's Supervisory Board, Management Board and the Executive Management.

The exercise price of the granted options is equal to the weighted market price of the shares 5 trade days prior to and 5 trade days following the date of grant, save for the intended grant of 5,000,000 options which is expected to have an exercise price corresponding to the volume-weighted average price of the VPS Shares 5 trade days following 26 May 2016. Options are conditional on the employee remaining an employee or director of the Company on the date of exercise. The Company has no legal or constructive obligation to repurchase or settle the options in cash.

Please see the table below for further information on the options granted, exercised, terminated and expired in the period covering the historical financial information:

List of outstanding options	Number of options	Weighted average exercise price (USD)	Number of options	Weighted average exercise price (USD)
	2015	2015	2014	2014
Outstanding options on 1 January	8,098,211	0.60	6,962,413	0.46
Options granted	1,050,000	0.26	3,880,000	0.67
Options exercised	0	N/A	(1,603,012)	0.34
Options terminated	(309,170)	0.50	(957,858)	0.34
Options expired	(380,968)	0.41	(251,389)	0.45
<b>Outstanding options on 31 December</b>	<b>8,458,073</b>	<b>0.57</b>	<b>8,030,154</b>	<b>0.60</b>

### 11.5.3 Warrants

The Company has 3,130,000 outstanding warrants.

As part of an agreement with Conan Properties International LLC entered into on 17 December 2015, the Company has issued 3,130,000 warrants to subscribe for VPS Shares in the Company at a price per Share of the USD-equivalent of the closing share price on 17 December 2015, being NOK 0.86, *i.e.*: USD 0.1, using the NOK/USD exchange rate published by Bloomberg. Fifty percent of these warrants have a lock-out period of six months and the remaining warrants have a lock-out period of twelve months from the date of issue of the warrants.

## **11.6 General Meeting**

The ordinary General Meeting in the Company shall be held each year within six months after the close of the financial year. The following matters shall be discussed and treated at the ordinary General Meeting:

- (i) the written report of the Management Board on the course of business of the Company during the past financial year, and the report of the Supervisory Board;
- (ii) adoption of the annual accounts and the declaration of any dividends;
- (iii) granting of discharge to the members of Management Board for their management during the past financial year and to the members of the Supervisory Board for their supervision on such management;
- (iv) filling vacancies in the Managing Board;
- (v) filling vacancies in the Supervisory Board; and
- (vi) the proposals placed on the agenda by the Managing Board or by the Supervisory Board, together with proposals made by shareholders in accordance with the provisions of the Articles of Association.

The ordinary General Meeting can only adopt the annual accounts if the shareholders have first – amongst others – been informed about: (i) remuneration of the (former) members of the Management Board, (ii) remuneration of the (former) members of the Supervisory Board, (iii) employee benefits and (iv) the option program in the Company.

Extraordinary General Meetings shall be held as often as deemed necessary by the Supervisory Board and shall be held if one or more shareholders and other persons entitled to attend the meetings of shareholders jointly representing at least one-tenth of the issued share capital make a written request to that effect to the Managing Board or Supervisory Board, specifying in detail the business to be dealt with. If the Managing Board or Supervisory Board fail to comply with a request in such manner that the General Meeting can be held within six weeks after the request, the persons making the request may be authorized by the President of the Court (*President van de Rechtbank*) within whose jurisdiction the company is established to convene the meeting themselves.

The Company's General Meetings shall be held at its place of establishment, at Amsterdam, Haarlemmermeer (Schiphol Airport), Rotterdam, Badhoevedorp or The Hague. The notice convening a General Meeting shall be published electronically and shall be permanently and directly accessible until the General Meeting.

The notice convening the meeting shall be issued by the Managing Board, by the Supervisory Board or by those who according to the law or these articles are entitled thereto.

The notice convening a General Meeting shall contain *inter alia*:

- (i) the agenda stating the business to be transacted;
- (ii) the location and time of the General Meeting;
- (iii) the procedure for participating in the General Meeting by written proxy;
- (iv) the procedure for participating in the General Meeting and the Company's website address; and
- (v) the registration date and the manner in which persons entitled to vote and attend meetings can register and the manner in which they can exercise their rights.

The notice convening the meeting referred to in the foregoing paragraph shall be issued no later than on the forty-second day prior to the meeting. The agenda shall contain such business as may be placed thereon by the person(s) entitled to convene the meeting, and furthermore such business as has been requested of the Management Board or by one or more shareholders at least sixty days prior to the date of the meeting in accordance with the law. Resolutions shall not be passed in the meeting on business other than that on the agenda.

Under Dutch company law, all shareholders in Dutch companies are entitled to attend the General Meetings, to address the General Meeting and to vote. Shareholders in Funcom (as holders of VPS Shares) are entitled to attend and vote at the General Meeting on the basis of a proxy from the VPS Registrar. Persons entitled to vote and to attend meetings are those persons who on the twenty-eighth day prior to the meeting (the day of registration) have these rights and are registered as having these rights in a registry designated by the Management Board, regardless of who owns the shares, or is holder of VPS Shares issued with the concurrence of the Company, at the time the General Meeting is held.

Shareholders and other persons entitled to attend meetings of shareholders may be represented by proxies with written authority to be shown for admittance to a meeting. The requirement of written authorization of the proxy is met if the proxy is recorded electronically. A shareholder is allowed to notify the Company of the proxy electronically. Subject to certain exceptions provided by the Dutch Civil Code and the Articles of Association (such as, for example, in case of an amendment of the Articles of Association or liquidation of the Company, which requires a two-thirds majority of votes cast), resolutions are passed by a simple majority of votes cast. Blank and invalid votes shall not be counted. In case of an equal vote, the proposal shall be deemed to have been rejected.

## **11.7 Shareholder rights, including voting rights**

### **11.7.1 The rights of a holder of Shares**

The Company has one class of Shares and all Shares carry the same rights. All Shares confer the right to cast one vote at the General Meetings of the Company.

### **11.7.2 Pre-emptive rights**

In the event of an issue of new Shares, shareholders shall have a pre-emptive right in proportion to the number of Shares which they own, notwithstanding the provisions of the law (such as (i) Shares issued to employees of the Company or of a Group company and (ii) shares issued against a contribution in kind can be issued without pre-emptive rights to Existing Shareholders. In addition

preference shareholders<sup>74</sup> do not have a pre-emptive right unless the Articles of Association provide otherwise.

The Supervisory Board shall have the power to limit or debar the pre-emptive right accruing to shareholders, if and in so far as the Supervisory Board has also been designated by the General Meeting for this purpose as the authorized body for the period of such designation. A designation as referred to above shall only take place for a specific period of no more than the period up to and including the first ordinary General Meeting which is held after three full calendar years have elapsed since said designation and may not be extended by more than the aforementioned period on each occasion.

#### 11.7.3 Conversion provisions

There are no provisions in the Articles of Association which are more stringent than Dutch law in view of the amendment of rights of holders of shares. A change in the rights of holders of Shares will require an amendment of the Articles of Association of the Company. A resolution to amend the Articles of Association by which the rights conferred on holders of shares of a specific class as such are changed shall require the approval of the relevant class meeting with a two-thirds majority of the votes cast.

#### 11.7.4 Rights attaching to the VPS Shares

The VPS Shares rank *pari passu* in all respects with each other in relation to the Company Shares, including voting rights, entitlements to dividends, liquidation proceeds, subscription or pre-emptive rights in the event of a share issue and pre-emptive rights in the event of the issuance of equity-linked securities. Neither Funcom nor the VPS Registrar apply any restrictions or limitations on the transferability of the VPS Shares.

The holders of VPS Shares may be entitled to attend and vote at the General Meeting on the basis of a proxy from the VPS Registrar.

### 11.8 Shareholder structure

As of 2 June 2016 (prior to completion of the Subsequent Offering), the Company had 5,149 holders of VPS Shares<sup>75</sup> and 27 holders of Company Shares (including the VPS Registrar).

Below is an overview of the Company's 20 largest holders of VPS Shares<sup>76</sup> (after distribution of the New VPS Shares and the Conversion VPS Shares, but prior to distribution of any VPS Offer Shares):

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<sup>74</sup> There are currently no preference shareholders in Funcom.

<sup>75</sup> Including nominee accounts.

<sup>76</sup> Including nominee accounts.

#	Investor	Holding (VPS Shares)	% of total VPS Shares
1	SEB Private Bank S.A SEB LUX, AIF Client <sup>77</sup>	42,777,778	18.52
2	KGJ Capital AS	24,500,525	10.61
3	ABG Sundal Collier ASA	16,043,636	6.95
4	Storebrand Vekst	15,816,253	6.85
5	CMD AS	5,877,273	2.54
6	Grunnfjellet AS	4,154,545	1.80
7	Delray Trading AS	3,750,000	1.62
8	Businesspartner AS	3,433,452	1.49
9	Vitamar AS	3,090,909	1.34
10	Nordnet Livsforsikring AS	3,079,751	1.33
11	U-Turn Ventures AS	2,872,727	1.24
12	CIPi Lamp UCITS Swedbank SMB	2,863,636	1.24
13	Salto Media AS	2,736,364	1.18
14	Silvercoin Industries AS	2,454,546	1.06
15	Midelfart Invest AS	2,060,000	0.89
16	Matspecialen AS	2,049,091	0.89
17	Arne Alexander Skøien Kvale	1,915,455	0.83
18	Basic I AS	1,850,000	0.80
19	Nordnet Bank AB	1,815,493	0.79
20	Tigerstaden AS	1,800,000	0.78
<b>Top 20 holders of VPS Shares</b>		<b>144,941,434</b>	<b>62.76</b>
Other		86,014,478	37.24
<b>Total holders of VPS Shares</b>		<b>230,955,912</b>	<b>100</b>

Below is an overview of the Company's 20 largest holders of the Company Shares (following completion of the Private Placement and the Debt Conversion, but prior to the Subsequent Offering):

<sup>77</sup> The beneficial shareholder is KGJI

#	Holder	Holding (Company Shares)
1	DnB Bank ASA <sup>78</sup>	230,947,837
2	Olivia White	675
2	Padraig Crowley	675
4	Philip Plunkett	475
5	Thomas O'Neill	425
5	Amanda Ronai	425
7	Andrew McKenzie	350
8	Andrew Griffin	325
9	James Kelly	275
9	Mark Lee	275
9	Steve Reberg	275
12	Tom Tømmervåg Gjerde	225
12	Karsten Hammer Hansen	225
14	Aidan Walsh	200
14	Geir Bjarte Terum	200
14	Tanya Flood	200
14	Tore Lode	200
18	Tor Andre Wigmostad	175
18	Anders Finer	175
20	Hans Kjærnet	150
<b>Top 20 holders of the Company Shares</b>		<b>230,953,762</b>
Other		2,150
<b>Total holders of the Company Shares</b>		<b>230,955,912</b>

Before the distribution of the New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares, the following registered shareholders have holdings in excess of the statutory thresholds for disclosure requirements:

- KGJI, which holds 15,000,000 VPS Shares corresponding to 16.27% of the total issued and outstanding VPS Shares; and
- KGJ Capital AS, which holds 9,500,525 VPS Shares corresponding to 10.3% of the total issued and outstanding VPS Shares.

Following the distribution of the New VPS Shares and the Conversion VPS Shares, but prior to issuance of any VPS Offer Shares, the following registered shareholders have holdings in excess of the statutory thresholds for disclosure requirements:

- KGJI, which holds 57,777,778 VPS corresponding to 25.02% of the total issued and outstanding VPS Shares;
- KGJ Capital AS, which holds 9,500,525 VPS Shares corresponding to 4.11% of the total issued and outstanding Shares;
- Funds managed by Storebrand Asset Management AS holds 18,181,818 VPS Shares, corresponding to 7.87% of the total issued and outstanding VPS Shares; and

<sup>78</sup> In its capacity as VPS Registrar

- Funds managed by Swedbank Asset Management AS, which hold 11,454,545 VPS Shares corresponding to 4.96% of the total issued and outstanding Shares.

KGJI and KGJ Capital AS are companies controlled by Mr. Hans Peter Jebsen. Mr. Hans Peter Jebsen and companies controlled by him holds a total of 67,460,853 VPS Shares corresponding to 29.21% of the total issued and outstanding Shares. In case Mr. Hans Peter Jebsen and companies controlled by him converts both the Bonds and the remainder of the Convertible Loan (assuming no other Share issues), the total capital interest<sup>79</sup> of Mr. Hans Peter Jebsen in the Company would be 40.64% after the completion of the Private Placement and the Debt Conversion.

All Shares have equal voting rights. Thus, all major shareholders have the same voting rights relative to the number of Shares held.

The Company is not aware that the Company is controlled or owned, directly or indirectly, by any shareholder or related shareholders as of the date of this Prospectus.

### **11.9 Shareholder agreement**

To the Company's knowledge, there are no shareholder agreements regarding the Shares of the Company.

### **11.10 VPS registrar – issuer of VPS Shares**

The Company's registrar in the VPS is DnB Bank ASA, Verdipapirservice, Dronning Eufemias gate 30, 0191 Oslo, Norway (the VPS Registrar).

The VPS Registrar is the issuer of the VPS Shares, which evidence the shareholders' beneficial rights to the Company Shares. The VPS Shares are issued under the laws of Norway.

The address of the VPS Registrar is DNB Bank ASA, Verdipapirservice, Dronning Eufemias gate 30, P.O. Box 1600 Sentrum, 0021 Oslo, Norway. DNB Bank ASA was incorporated in Norway on 10 September 2002 with registered number 984 851 006 as a public limited liability company under the Norwegian Public Limited Liability Companies Act and is domiciled in Norway.

### **11.11 Dividend policy**

The principal goal of the Company's shareholder policy is to protect shareholder rights and interests by maximizing the return earned by its shareholders over time within acceptable risk parameters through effective management of the Company's assets and continued growth of the Company's operations and profitability. However, the Supervisory Board considers that any surplus cash should be retained with the Company and invested in the development of Funcom's games. Future distribution of dividends are not foreseen and will only be possible if the equity and liquidity position allow such distributions and the Bondholders and KGJI (in capacity as creditor under the Convertible Loan) has consented to such distribution (as the Bond Agreement and the Convertible Loan Agreement contains restrictions on distribution of dividends). For a description of the restrictions on distribution of dividends under the Bond Agreement, please refer to Section 10.10.1 "The Bonds".

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<sup>79</sup> Total capital interest is calculated as number of Shares owned plus potential Shares issued in the future from the Convertible Loan and the Bonds, divided by the current issued Share capital of the Company.



The Company has not paid any dividends for the period covering the historical financial information.

#### **11.12 Distribution of dividends**

The main rule under Dutch law is that the Supervisory Board, at the proposal of the Managing Board, shall determine what portion of the profit of the Company (if any) that shall be retained by way of reserve (having regard to the legal provisions relating to obligatory reserves). To the extent that the profits are not reserved, they will be at the disposal of the General Meeting either to be reserved in whole or in part or to be distributed (in cash or in kind). Distribution of profits only takes place following the adoption of the annual accounts from which it appears that such distribution is permitted.

Upon the proposal of the Supervisory Board, the General Meeting shall be entitled to resolve to make distributions charged to the share premium reserve or charged to the other reserves shown in the annual accounts not prescribed by the law. The Supervisory Board shall be entitled to resolve that distributions, the amount of which distributions has been resolved upon by the General Meeting, to shareholders may be made in full or partially in the form of the issue of shares in the share capital of the Company.

The distribution to a shareholder according to the preceding sentence shall be made to a shareholder in cash or in the form of shares in the share capital of the Company, or partially in cash and partially in the form of shares in the share capital of the Company, such, if the Supervisory Board so resolves, at the option of the shareholders.

Distributions are payable as from a date to be determined by the General Meeting. A claim for dividends lapses five years after the start of the second day on which they became due and payable. The person entitled to a distribution on registered shares shall be the person in whose name the share is registered at the date of distribution.

However, the Bond Agreement implies that dividend distributions may only be made with the consent of the Bondholders or by the trustee on behalf of the Bondholders.

Notice of distributions and of the dates and places shall at least be published in a national daily newspaper in the Netherlands and abroad in at least one daily newspaper appearing in each of those countries other than the United States, where the shares, on the application of the Company, have been admitted for official quotation, and further in such manner as the Management Board may deem desirable. In addition, any distribution of dividends will be disclosed through stock exchange notices at [www.newsweb.no](http://www.newsweb.no), the official system for disclosure of stock exchange notices for companies listed at Oslo Børs.

Any future payments of dividends on the Shares (if any) will be denominated in USD and distributed to the VPS Registrar and the holders of Company Shares. Dividends paid to the VPS Registrar will be distributed to the holders of VPS Shares by the VPS Registrar and be distributed in NOK as exchanged from the USD amount distributed to the VPS Registrar. Dividends will be credited automatically to the VPS registered shareholders' NOK accounts, or in lieu of such registered NOK account, by check, without the need for shareholders to present documentation proving their ownership of VPS Shares. Investors registered in the VPS whose address is outside Norway and who have not supplied the VPS with details of any NOK account will however receive dividends by check

in their local currency. If it is not practical in the sole opinion of the VPS Registrar to issue a check in a local currency, a check will be issued in USD. The issuing and mailing of checks will be executed in accordance with the standard procedures of DnB Bank ASA, Foreign Payments Department. The exchange rate(s) that is applied will be DnB Bank ASA's rate on the date of issuance.

### **11.13 Summary of the Company's Articles of Association**

#### **11.13.1 The object of the Company**

Pursuant to Company's Articles of Association, the objects of the Company is to develop, market and carry on business in computer games, hereunder massively multi player online games, online role playing games and related games on electronic devices of different kinds, to take and grant licenses and other industrial properly interests, assume commitments in the name of any enterprises with which it may be associated within a group of companies, to take financial interests in such enterprises and to take any other action, such as but not limited to the granting of securities or the undertaking of obligations on behalf of third parties, which in the broadest sense of the term, may be related or contribute to the aforesaid objects.

#### **11.13.2 The Management Board**

The Company is managed by the Management Board, consisting of one or more managing directors under the supervision of the Supervisory Board. The number of members of the Management Board shall be resolved by the General Meeting upon the proposal of the Supervisory Board. The members of the Management Board shall be appointed by the shareholders meeting. A managing director is appointed for the period up to and including the first ordinary General Meeting which is held after three full calendar years have elapsed since the day as per which he was appointed. A retired managing director may immediately be re-elected.

Managing directors shall be appointed and revoked by the General Meeting upon the proposal of the Supervisory Board for each vacancy to be filled. A proposal to make one or more appointments to the Management Board may be placed on the agenda of a General Meeting by the Supervisory Board.

The Company has a policy regarding the compensation of the Management Board. The policy will be adopted by the General Meeting upon the proposal of the Supervisory Board. The Supervisory Board shall determine the compensation of the individual managing directors, within the scope of the compensation policy. The Supervisory Board will submit for approval by the General Meeting a proposal regarding the compensation in the form of shares or rights to acquire shares. This proposal sets forth at least how many shares or rights to acquire shares may be awarded to the Management Board and which criteria apply to an award or a modification.

The General Meeting shall be entitled to suspend or dismiss one or more managing directors. The managing directors can be jointly or individually suspended by the Supervisory Board. After suspension a General Meeting shall be convened within three months, at which meeting it shall be decided whether the suspension shall be cancelled or maintained. The person involved shall be given the opportunity to account for his actions at that meeting.

The entire Management Board as well as each managing director may represent the Company.

The Supervisory Board shall appoint one of the managing directors as Chairman of the Management Board.

Resolutions of the Management Board shall be passed by simple majority of votes. In the event of a tie of votes the Chairman of the Management Board shall have a casting vote.

A director shall not participate in the deliberations and decision-making on any matter in respect of which his direct or indirect personal interests conflict with those of the Company and the business carried on by the Company. If no board resolution can be passed as a result of this, the Supervisory Board shall pass the board resolution.

The Management Board is supervised by the Supervisory Board. The Management Board shall provide the Supervisory Board in good time with all relevant information as well as the information the Supervisory Board requests, in connection with the exercise of its duties. At least once per year the Management Board shall inform the Supervisory Board in writing of the main features of the strategic policy, the general and financial risks and the management and control systems of the Company.

The Management Board shall then submit to the Supervisory Board for approval:

- (i) the operational and financial objectives of the Company;
- (ii) the strategy designed to achieve the objectives; and
- (iii) the parameters to be applied in relation to the strategy, *inter alia*, regarding financial ratios.

Without prejudice to provisions made elsewhere in these articles, the Management Board shall require the prior express approval:

- (i) from the Supervisory Board for decisions relating to:
  - (a) the formation of subsidiaries, acquisition or sale of any participation, and conclusion of any cooperation and participation agreement;
  - (b) all plurennial plans of the Company and the budget for the first coming year, covering the following matters:
    - (I) investment policy;
    - (II) policy regarding research and development, as well as commercial policy and objectives;
    - (III) general financial policy; and
    - (IV) policy regarding personnel;
  - (c) all acts, decisions or operations covered by the above list and constituting a significant change with respect to decisions already adopted by the Supervisory Board or not provided for in the above list and as specifically laid down by the Supervisory Board by resolution passed by it to that effect;
- (ii) from the General Meeting with respect to resolutions: regarding a significant change in the identity or nature of the Company or the enterprise, including in any event (a) transferring the enterprise or practically the entire enterprise to a third party, (b) entering into or cancelling any long-term cooperation between the Company or a subsidiary ("*dochtermaatschappij*") and any other legal person or company or as a

fully liable general partner of a limited partnership or a general partnership, provided that such cooperation or the cancellation thereof is of essential importance to the Company, and (c) the Company or a subsidiary ("*dochtermaatschappij*") acquiring or disposing of a participating interest in the capital of a company with a value of at least one-third of the Company's total assets according to the consolidated balance sheet and notes thereto in the most recently adopted annual accounts of the Company;

the absence of the approval provided for above may not be raised by or against third parties.

The Management Board shall require the approval of the General Meeting or the Supervisory Board according to the law and the provisions of the Articles of Association as well as such resolutions as are clearly defined by a resolution of the General Meeting or the Supervisory Board to that effect.

The Management Board of the Company shall make notes of the resolutions passed during the General Meeting. In respect of each resolution the Company shall note:

- (i) the number of shares in respect of which valid votes are cast;
- (ii) the percentage of issued capital represented by the number of shares referred to under (i);
- (iii) the total number of votes validly cast; and
- (iv) the number of votes cast for and against the resolution and the number of abstentions.

Each year the Management Board shall cause annual accounts to be drawn up, consisting of a balance sheet as at the close of the preceding financial year and a profit and loss account in respect of the preceding financial year with the explanatory notes thereto. The Management Board shall be bound to draw up the aforesaid annual accounts in accordance with established principles of business management.

#### 11.13.3 The Supervisory Board

The Supervisory Board shall be responsible for supervising the policy pursued by the Management Board and the general course of affairs of the Company and the business enterprise which it operates. The Supervisory Board shall assist the Management Board with advice relating to the general policy aspects connected with the activities of the Company. In fulfilling their duties, the supervisory directors shall serve the interests of the Company and the business enterprise which it operates.

The Management Board shall provide the Supervisory Board in good time with all relevant information as well as the information the Supervisory Board requests, in connection with the exercise of its duties. At least once per year the Management Board shall inform the Supervisory Board in writing of the main features of the strategic policy, the general and financial risks and the management and control systems of the Company. The Management Board shall then submit to the Supervisory Board for approval:

- (i) the operational and financial objectives of the Company;
- (ii) the strategy designed to achieve the objectives; and
- (iii) the parameters to be applied in relation to the strategy, *inter alia*, regarding financial ratios.

The Supervisory Board shall consist of one or more members, to be appointed by the General Meeting on proposal of the General Meeting. The number of supervisory directors shall be determined by the General Meeting.

A proposal to make one or more appointments to the Supervisory Board may be placed on the agenda of the General Meeting by the Supervisory Board. The General Meeting shall appoint a Chairman and a Vice-Chairman of the Supervisory Board.

The Supervisory Board may appoint one or more of its members as delegate supervisory director in charge of supervising the Management Board on a regular basis. They shall report their findings to the Supervisory Board. The offices of Chairman of the Supervisory Board and delegate supervisory director are compatible. The Supervisory Board may adopt rules regulating the division of its duties among its various supervisory directors. The Supervisory Board may decide that one or more of its members shall have access to all premises of the Company and shall be authorized to examine all books, correspondence and other records and to be fully informed of all actions which have taken place, or may decide that one or more of its supervisory directors shall be authorized to exercise a portion of such powers.

At the expense of the Company, the Supervisory Board may obtain such advice from experts as the Supervisory Board deems desirable for the proper fulfillment of its duties.

A supervisory director is appointed for the period up to and including the first ordinary General Meeting which is held after two full calendar years have elapsed since the day as per which he was appointed. A retired supervisory director may immediately be re-elected. The Supervisory Board may establish a rotation scheme.

The supervisory directors may be suspended or dismissed by the General Meeting. The Supervisory Board may make a proposal to the General Meeting for the suspension or dismissal of one or more of its supervisory directors.

The Supervisory Board may pass resolutions by simple majority of the votes of the members in office. Each supervisory director has the right to cast one vote. In case of a tie the vote of Chairman shall decide. In case of absence a supervisory director may issue a proxy, however, only to another supervisory director. A supervisory director may not take part in deliberations and the adopting of resolutions if he has a direct or indirect personal interest in them which conflicts with the interests of the Company and its business. If a resolution cannot be adopted as a result, the resolution must be adopted by the General Meeting. The Supervisory Board may pass resolutions in writing without holding a meeting provided that the proposals for such resolutions have been communicated in writing to all supervisory directors and no supervisory director is opposed to this method of passing a resolution. The managing directors shall attend meetings of the Supervisory Board at the latter's request. Meetings of the Supervisory Board shall be convened by the Chairman of the Supervisory Board, either on request of two or more supervisory directors or on request of the Management Board, or by the supervisory directors requesting the meeting to be held.

The Supervisory Board shall draw up standing orders regulating inter alia the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone as well as by video or by equivalent means or communications. If one or more supervisory directors are absent or unable to act, the remaining supervisory director or Supervisory Directors will be charged temporarily with the supervision of the Company. If all the supervisory directors are

absent or unable to act, a person to be appointed by the General Meeting for an indefinite period for this purpose will be charged temporarily with the supervision of the Company.

The General Meeting determines the compensation to the members of the Supervisory Board or to one or more of its members. The Supervisory Board members shall be reimbursed for their expenses.

General Meetings shall be presided over by the Chairman of the Supervisory Board or in his absence by the Vice-Chairman of the Supervisory Board.

The Supervisory Board shall cause the annual accounts to be examined by one or more registered accountant(s) designated for the purposes by the General Meeting or other experts designated for the purpose in accordance with section 393 of the Dutch Civil Code Book 2 (*Burgerlijk Wetboek Boek 2*), and shall report to the General Meeting on the annual accounts, notwithstanding the provisions of the law.

#### **11.14 Freely transferable Shares**

The Shares are freely transferable. The Company's Articles of Association do not contain any provisions imposing limitations on the ownership of the Shares and there are no limitations under Norwegian law on the rights of non-residents or foreign owners to hold or vote for the Shares.

#### **11.15 Provisions preventing change of control**

There are no provisions that prevent a change of control in Funcom.

#### **11.16 Corporate governance**

##### **11.16.1 Funcom's corporate governance policy**

Funcom aspires to generate value for its owners through profitable and sustainable business practices. Good corporate governance and management will ensure the greatest possible value creation at the same time as Group resources will be used in an efficient and sustainable manner. The added value will benefit shareholders, employees and the gaming community. Funcom is listed on Oslo Børs and is subject to Norwegian securities legislation and stock exchange regulations as well as Dutch legislation.

Funcom's key principles of corporate governance have been based upon the Dutch Corporate Governance Code (*De Nederlandse Corporate Governance Code*), that can be found on [www.commissiecorporategovernance.nl](http://www.commissiecorporategovernance.nl) and the Norwegian Code of Practice for Corporate Governance (*Eierstyring og Selskapsledelse*), that can be found on [www.nues.no](http://www.nues.no). Oslo Børs requires listed companies to publish an annual statement listing all corporate governance recommendations and presenting compliance with the recommendations or explaining why the Company has chosen an alternative approach to the specific recommendation.

For the Dutch Corporate Governance Code, Funcom will present the best practice clauses where it does not comply and explain the rationale for this.

This form of corporate governance, which separates the powers of management from those of supervision, is considered to offer the most balanced framework governing the exercise of power.

The Supervisory Board oversees the efficient operation of the Company and reports to the shareholders. Appointment of the managing directors is done by the General Meeting further to a proposal from the Supervisory Board. The Supervisory Board appoints one of the managing directors as Chairman of the Management Board.

#### 11.16.2 Departures from the Norwegian Code of Practice for Corporate Governance

The Company follows the Norwegian Code of Practice for Corporate Governance (the "**Norwegian Corporate Governance Code**"). The Company has the following departures from the Norwegian Corporate Governance Code.

For further information on the Company's compliance with the Norwegian Corporate Governance Code, please refer to the annual reports of the Company.

- The Company has drawn up its own Corporate Code of Ethics<sup>80</sup> and Value Platform<sup>81</sup>. Compliance with and the follow up of the Code of Ethics have been subject to internal processes. The Company has not yet established separate guidelines for corporate social responsibility as implemented in the code of practice in October 2014, but considers the ethical guidelines to cover most of the relevant topics. The Company will consider developing separate guidelines for corporate social responsibility.
- The representatives of neither the Supervisory Board nor the auditor are generally present at AGM's as this is not customary for Dutch Companies. The auditor is always on standby to attend the AGM depending on shareholder attendance.
- According to the Articles of Association, annual General Meetings in Funcom are to be chaired by the Chairman of the Supervisory Board or the Vice-Chairman of the Supervisory Board. This is a departure from the recommendation for independent chairing of meetings and will be re-evaluated in the future.
- The Company does not have a Nomination Committee, as such a committee is not deemed to be relevant given the Company's current size. However, the Company will continue to re-evaluate this policy according to its development in the future. The Supervisory Board shall carry out the duties of proposing the candidates for election to the Supervisory Board and to the corporate assembly (to the extent this exists) and the fees to be paid to members of these bodies. The Supervisory Board shall justify such recommendations.
- The Company will from time to time consider granting options to members of its Supervisory Board, see further Section 11.5.2 "Options". The Company has not set an absolute limit for its performance-related remuneration under the applicable option agreements. The Company views options as an important tool for remuneration of Supervisory Board Members, *e.g.*, to be able to have a board composition that reflects the global nature of its business.
- The allocation of options to executive personnel is determined on a case by case basis and is not made specifically dependent on the realization of certain targets that are determined in advance. This practice promotes an extremely dynamic business, in terms of both products

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<sup>80</sup> The Corporate Code of Ethics is available at <http://www.funcom.com/corporate/ethics>

<sup>81</sup> The Value Platform is an internal guidelines document.

and management responsibilities, which is appropriate for the fast changing nature of the business environment.

#### 11.16.3 Departures from the Dutch Corporate Governance Code:

Funcom's adopted code and practices are in compliance with the Dutch Corporate Governance code, with the exception of:

- (i) **Provision II.2.4:** The options become exercisable before the lapse of the three-year time period set out in the Dutch Corporate Governance Code. Funcom has an option program for the members of the Management Board where one third of the options vest each year during three years following the grant date. The options are in principle only vested if the member of the Management Board is still employed with Funcom on the date that the options vest. The allocation of options to members of the Management Board is not made specifically dependent on the realization of certain targets that are determined in advance. The allocation of options to the members of the Management Board – as part of their remuneration – is subject to the approval of the General Meeting.
- (ii) **Provision II.2.6:** The exercise price for all options is the average volume weighted price on Oslo Børs on the five trading days preceding and the five trading days following the date when the options are granted.
- (iii) **Provision II.2.10:** The allocation of options to members of the Management Board is not made specifically dependent on the realization of certain targets that are determined in advance. The Supervisory Board in principle does not have the right to make adjustments to the value of the options granted to members of the Management Board.
- (iv) **Provision II.2.11:** The Supervisory Board in principle does not have the right to cancel the options, or other variable components of the remuneration of the members of the Management Board.
- (v) **Provision II.2.12, 2.13 and 2.15:** A remuneration report is not made public on the website of Funcom. The Supervisory Board is of the opinion that the information suggested to be included can be obtained in general terms from the annual report.
- (vi) **Provision II.2.14:** Funcom has in the past not published details of the contracts concluded with the members of the Management Board. The Supervisory Board is of the opinion that most of the information contained in such contracts can be obtained in general terms from the annual report.
- (vii) **Provision III.3.6:** Funcom has not developed a retirement schedule and made it generally available, as this could be viewed as a signal of major shifts in ownership relating to key shareholders in Funcom.
- (viii) **Provision III.5.14:** Funcom has decided not to establish a Selection & Appointment Committee. The Supervisory Board has taken these tasks upon itself.
- (ix) **Provision III.7.1:** Funcom has reserved the right to grant options to members of the Supervisory Board. Funcom views options as an important tool for remuneration of the members of the Supervisory Board, *e.g.*, to enable a board composition, which reflects the global nature of its business.
- (x) **Provision IV.3.10:** The voting results of the general meeting are communicated on the



website of Oslo Børs and on the website of Funcom on the day of the general meeting. The minutes of a general meeting are posted on the website of Funcom shortly thereafter. Votes at general meetings are in principle cast through proxy holders based on voting instructions from the VPS Registrar and the outcome of voting is limited to those clear voting instructions. As a result hereof shareholders are not provided a period for commenting on draft minutes.

- (xi) **Provision IV.3.13:** Funcom will continue to evaluate the need for a policy on bilateral contracts with the shareholders.
- (xii) **Provision V.2.1:** The auditor is always on standby to attend the Annual General Meeting depending on shareholder attendance.
- (xiii) **Provision V.3:** Funcom has not assigned a specific internal auditor.

### **11.17 Redemption or reduction of share capital**

Subject to the provisions of Dutch law and the Articles of Association, the General Meeting may resolve to reduce the Company's issued share capital by: (i) cancelling Company Shares (ii) cancelling with repayment all Company Shares or (iii) reducing the nominal value of the Company Shares, to be effected by an amendment of the Articles of Association. The General Meeting can only adopt a resolution to reduce the issued capital upon a proposal by the Management Board which has been approved by the Supervisory Board. A reduction of the nominal value of the Company Shares, whether without redemption or against partial repayment on the Company Shares or upon release from the obligation to pay up Company Shares, must be made pro rata on all Company Shares of that particular class. This pro rata requirement may be waived if all shareholders concerned agree to this waiver. In addition, a resolution to reduce the share capital shall require the prior or simultaneous approval of each group of holders of a similar class (if any) whose rights are prejudiced.

A resolution of the General Meeting to reduce the issued share capital requires a majority of at least two-thirds of the votes cast, if less than half of the issued and outstanding share capital is present or represented at the General Meeting. A resolution to reduce the issued share capital shall not take effect as long as creditors have legal recourse against the resolution.

### **11.18 Liquidation**

A resolution to wind up the Company shall be valid only provided that:

- (i) the proposal to such a resolution has been proposed to the General Meeting by the Supervisory Board;
- (ii) the full proposals have been deposited for inspection by shareholders and other persons entitled to attend the General Meeting, at the office of the Company as from the day on which the notice is served until the close of that meeting;
- (iii) the proposal to such a resolution has been approved by a majority of at least two-thirds of the votes cast in a meeting.

If the Company is wound up, the liquidation shall be carried out by the Management Board or any person designated for that purpose by the General Meeting, under the supervision of the Supervisory Board. In passing a resolution to wind up the Company, the General Meeting shall upon

the proposal of the Supervisory Board set the remuneration payable to the liquidators and to those responsible for supervising the liquidation.

The liquidation shall take place with due observance of the provisions of the law. After the liquidation has ended, the books and records of the Company shall remain in the custody of the person designated for that purpose by the liquidators during a seven-year period.

What is left of the Company's assets after all creditors have been satisfied shall be divided amongst the shareholders pro rata to their respective holdings of shares. The person entitled to a liquidation-distribution on registered shares shall be the person in whose name the share is registered at the date of liquidation-distribution.

## **12 SECURITIES TRADING IN NORWAY AND CERTAIN ASPECTS OF DUTCH LAW**

### **12.1 Introduction**

Oslo Børs was established in 1819 and is the principal market in which shares, bonds and other financial instruments are traded in Norway. Oslo Børs has entered into a strategic cooperation with the London Stock Exchange Group with regards to, inter alia, trading systems for equities, fixed income and derivatives. Oslo Børs VPS Holding ASA owns and operates the two regulated markets for equities in Norway; Oslo Børs and Oslo Axess. In addition, Oslo Børs has recently opened a multilateral trading facility named Merkur Market.

### **12.2 Trading of equities and settlement**

Trading of equities on Oslo Børs is carried out in the electronic trading system Millennium Exchange. This trading system is in use by all markets operated by the London Stock Exchange as well as by the Borsa Italiana and the Johannesburg Stock Exchange.

Official trading on Oslo Børs takes place between 09:00 hours (CET) and 16:20 hours (CET) each trading day, with pre-trade session between 08:15 hours (CET) and 09:00 hours (CET), a closing auction from 16:20 hours (CET) to 16:25 hours (CET) and a post-trade period from 16:25 hours (CET) to 17:30 hours (CET).

The settlement period for trading on Oslo Børs is currently two trading days (T+2).

Six X-Clear AG has a license from the NFSA to act as a central clearing service and offers clearing and counterparty services for equity trading on Oslo Børs.

Investment services in Norway may only be provided by Norwegian brokerage houses holding a license under the Norwegian Securities Trading Act, branches of brokerage houses from an EEA member state or brokerage houses from outside the EEA that have been licensed to operate in Norway. Brokerage houses in an EEA member state may also provide cross-border investment services in Norway.

It is possible for brokerage houses to undertake market-making activities in shares listed in Norway if they have a license to this effect under the Norwegian Securities Trading Act, or in the case of brokerage houses in an EEA member state, a license to carry out market-making activities in their home jurisdiction. Such market-making activities will be governed by the regulations of the Norwegian Securities Trading Act relating to brokers' trading for their own account. However, such market-making activities do not as such require notification to the NFSA or Oslo Børs except for the general obligation on brokerage houses that are members of Oslo Børs to report all trades in stock exchange listed securities.

### **12.3 Information, control and surveillance**

Under Norwegian law, Oslo Børs is required to perform a number of surveillance and control functions. The Surveillance and Corporate Control unit of Oslo Børs monitors all market activity on a continuous basis. Market surveillance systems are largely automated, promptly warning department personnel of abnormal market developments.

Under Norwegian law, a company which is listed, or has applied for listing, on a Norwegian regulated market, must promptly release any inside information (*i.e.* precise information about financial instruments, the issuer thereof or other matters which are likely to have a significant effect on the price of the relevant financial instruments or related financial instruments, and which are not publicly available or commonly known in the market). A company may, however, delay the release of such information in order not to prejudice its legitimate interests, provided that it is able to ensure the confidentiality of the information and that the delayed release would not be likely to mislead the public. Oslo Børs may levy fines on companies violating these requirements.

#### **12.4 The VPS and transfer of VPS Shares – Beneficial interests in the Company Shares**

The VPS is the Norwegian paperless centralized securities register. It is a computerized bookkeeping system in which the ownership of, and all transactions relating to, Norwegian listed shares must be recorded. VPS and Oslo Børs are both wholly owned by Oslo Børs VPS Holding ASA.

All transactions relating to securities registered with the VPS are made through computerized book entries. No physical share certificates are, or may be, issued. The VPS confirms each entry by sending a transcript to the registered shareholder irrespective of any beneficial ownership. To give effect to such entries, the individual shareholder must establish a share account with a Norwegian account agent. Norwegian banks, Norges Bank (Norway's central bank), authorized securities brokers in Norway and Norwegian branches of credit institutions established within the EEA, or credit institutions established within the EEA operating cross-border into Norway are allowed to act as account agents.

The VPS Shares in Funcom that are listed on Oslo Børs are registered in the name of the VPS Registrar and the VPS Registrar registers beneficial interests in the Company Shares in the VPS (*Nw: depotbevis*) as VPS Shares.

In order to enable registration of the beneficial interests of the Company Shares in the VPS, the Company Shares registered in the VPS are recorded in the name of the VPS Registrar in the Company's shareholders' register. Although the VPS Registrar will hold the Company Shares in the Company's shareholders' register it will only do so as the legal owner for the beneficial holders.

The VPS Registrar will, in its capacity as registrar, operate the Company's register in the VPS which will record the beneficial owners of the Company Shares.

The technical settlement of any trading of the VPS Shares registered in the VPS will be carried out by transfer of such VPS Shares in the VPS Register. Each VPS Share will represent the beneficial ownership of one Company Share in Funcom in Funcom's Dutch shareholders' register. These arrangements are set out in the VPS Registrar Agreement, which is attached as [Appendix 2](#) to this Prospectus. The address of DNB Bank ASA, which acts as the VPS Registrar, is: DNB Bank ASA, Verdpapirservice, Dronning Eufemias gate 30, P.O. Box 1600 Sentrum, 0021 Oslo, Norway. DNB Bank ASA was incorporated in Norway on 10 September 2002 with registered number 984 851 006 as a public limited liability company under the Norwegian Public Limited Liability Companies Act and is domiciled in Norway.

The VPS Registrar will be regarded as the legal owner of the ordinary shares in Funcom registered in the VPS. In accordance with market practice in Norway and system requirements of the VPS, the

investors will be registered in the VPS as beneficial owners of the Company Shares and the instruments traded will be referred to as shares in Funcom.

A shareholder may at any time require (at the shareholder's own cost) the VPS Registrar to register such shareholders' ownership of the underlying Company Shares (as evident from the VPS Shares) in the Dutch shareholders' register. After the registration of the ownership in the Dutch share register, the relevant VPS Shares will cease to be registered with the VPS.

When the VPS Registrar receives any notice, report, accounts, financial statements, circular or other similar document relating to our affairs, including notice of a shareholders meeting, the VPS Registrar will, upon request from the Company, ensure that a copy of such document is promptly sent to the investors registered as owners in the VPS, along with any proxy form or other relevant materials.

As a matter of Norwegian law, the entry of a transaction in the VPS is prima facie evidence in determining the legal rights of parties as against the issuing company or any third party claiming an interest in the given security. A transferee or assignee of shares may not exercise the rights of a shareholder with respect to such shares unless such transferee or assignee has registered such shareholding or has reported and shown evidence of such share acquisition, and the acquisition is not prevented by law, the relevant company's articles of association or otherwise.

The VPS is liable for any loss suffered as a result of faulty registration or an amendment to, or deletion of, rights in respect of registered securities unless the error is caused by matters outside the VPS's control which the VPS could not reasonably be expected to avoid or overcome the consequences of. Damages payable by the VPS may, however, be reduced in the event of contributory negligence by the aggrieved party.

The VPS must provide information to the Norwegian Financial Supervisory Authority (the "**NFSA**") on an ongoing basis, as well as any information that the NFSA requests. Further, Norwegian tax authorities may require certain information from the VPS regarding any individual's holdings of securities, including information about dividends and interest payments.

## **12.5 Shareholders' register**

The Company Shares are in the form of an entry in the shareholders' register without issue of a share certificate. Except to the extent the Shareholders have not or will not offer their Shares to the VPS Registrar, the Company Shares are held by the VPS Registrar. The VPS Shares in Funcom that are listed on Oslo Børs are registered in the name of the VPS Registrar and the VPS Registrar registers beneficial interests in the Company Shares in the VPS (Nw: *depotbevis*) as VPS Shares.

The names and addresses of holders of Company Shares are entered in a shareholders' register maintained and kept by or on behalf of the Company. The shareholders' register will include all such further information as the Management Board deems necessary or as is required by Dutch law. At the request of a shareholder, a usufructuary or a pledgee, the Company is required to provide, free of charge, a statement including the information contained in the shareholders' register with respect to such person's rights to the Company Shares.

Part(s) of the shareholders' register may be kept outside the Netherlands if necessary to meet requirements by foreign law or a foreign exchange.

## 12.6 Disclosure obligations

Shareholders may be subject to notification obligations under the Dutch Financial Supervision Act. Shareholders are advised to seek professional advice on these obligations.

### Shareholders

Pursuant to the Dutch Financial Supervision Act, any person who, directly or indirectly, acquires or disposes of an actual or potential interest in the capital or voting rights of the Company must immediately notify the AFM by means of a standard form, if, as a result of such acquisition or disposal, the percentage of capital interest or voting rights held by such person in the Company reaches, exceeds or falls below any of the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%.

A notification requirement also applies if a person's capital interest or voting rights reaches, exceeds or falls below the abovementioned thresholds as a result of a change in the Company's total outstanding share capital or voting rights. Such notification has to be made no later than the fourth trading day after the AFM has published the Company's notification of the change in its outstanding share capital.

The Company is required to notify the AFM immediately of the changes to its total share capital or voting rights, if its issued share capital or voting rights changes by 1% or more since the Company's previous notification. The Company must furthermore notify the AFM within eight days after each quarter, in the event its share capital or voting rights changed by less than 1% in that relevant quarter since the Company's previous notification.

In addition, every holder of 3% or more of the Company's share capital or voting rights who, in relation to its previous notification, reaches, exceeds or falls below any of the abovementioned thresholds as a consequence of a different composition by means of an exchange or conversion into shares or the exercise of rights pursuant to an agreement to acquire voting rights, shall notify the AFM at the latest within four trading days.

Controlled entities, within the meaning of the Dutch Financial Supervision Act, do not have notification obligations under the Dutch Financial Supervision Act, as their direct and indirect interests are attributed to their (ultimate) parent. Any person may qualify as a parent for purposes of the Dutch Financial Supervision Act, including an individual. A person who has a 3% or larger interest in the Company's share capital or voting rights and who ceases to be a controlled entity for these purposes must immediately notify the AFM. As of that moment, all notification obligations under the Dutch Financial Supervision Act will become applicable to the former controlled entity.

For the purpose of calculating the percentage of capital interest or voting rights, the following interests must, *inter alia*, be taken into account: (i) shares and voting rights directly held (or acquired or disposed of) by any person; (ii) shares and voting rights held (or acquired or disposed of) by such person's controlled entity or by a third party for such person's account or by a third party with whom such person has concluded an oral or written voting agreement; (iii) voting rights acquired pursuant to an agreement providing for a temporary transfer of voting rights against a payment; (iv) shares which such person (directly or indirectly) or third party referred to above, may acquire pursuant to any option or other right to acquire shares; (v) shares which determine the value of certain cash settled financial instruments such as contracts for difference and total return swaps; (vi) shares that must be acquired upon exercise of a put option by a counterparty; and (vii) shares which are the subject of another contract creating an economic position similar to a direct or indirect

holding in those shares. Special attribution rules apply to shares and voting rights which are part of the property of a partnership or other community of property. A holder of a pledge or right of usufruct in respect of shares can also be subject to the reporting obligations, if such person has, or can acquire, the right to vote on the shares. The acquisition of (conditional) voting rights by a pledgee or beneficial owner may also trigger the reporting obligations as if the pledgee or beneficial owner were the legal holder of the shares.

For the purpose of the notification obligation, the following instruments qualify as "shares": (i) shares; (ii) depositary receipts for shares (or negotiable instruments similar to such receipts); (iii) negotiable instruments for acquiring the instruments under (i) or (ii) (such as convertible bonds); and (iv) options for acquiring the instruments under (i) or (ii).

Gross short positions in shares must also be notified to the AFM. For these gross short positions, the same thresholds apply as for notifying an actual or potential interest in the capital and/or voting rights of a listed company, as referred to above, and without any set-off against long positions.

In addition, pursuant to Regulation (EU) No 236/2012, each person holding a net short position attaining 0.2% of the issued share capital of the Company is required to notify such position to the AFM. Each subsequent increase of this position by 0.1% above 0.2% must also be notified. Each net short position equal to 0.5% of the issued share capital of the Company and any subsequent increase of that position by 0.1% will be made public via the AFM short selling registers. To calculate whether a natural person or legal person has a net short position, their short positions and long positions must be set-off. A short transaction in a Share can only be contracted if a reasonable case can be made that the Shares sold can actually be delivered, which requires confirmation of a third party that the Shares have been located.

#### **Notification requirements of managing directors, supervisory directors and any other person who would have managerial or co-managerial responsibilities**

Each Managing Director and Supervisory Director must notify the AFM: (a) immediately following the admission to trading and (de-)listing of the Shares of the number of Shares he/she holds and the number of votes he/she is entitled to cast in respect of the Company's issued share capital, and (b) subsequently of each change in the number of Shares he/she holds and of each change in the number of votes he/she is entitled to cast in respect of the Company's issued share capital, immediately after the relevant change.

Pursuant to the Dutch Financial Supervision Act, any Managing Director and Supervisory Director, as well as any other person who would have managerial or co-managerial responsibilities in respect of the Company or who would have the authority to make decisions affecting the Company's future developments and business prospects regularly having access to inside information relating, directly or indirectly, to the Company, must notify the AFM by means of a standard form of any transactions conducted in the Netherlands for his or her own account relating to the Shares or in financial instruments the value of which is also based on the value of the Shares.

In addition, in accordance with the Dutch Financial Supervision Act and the regulations promulgated thereunder (e.g., the Dutch Financial Supervision Act Decree on Market Abuse (*Besluit Marktmissbruik Wft*)), certain persons who are closely associated with Managing Directors, Supervisory Directors or any of the other persons as described above, are required to notify the AFM of any transactions conducted in the Netherlands for their own account relating to the Shares or in financial instruments the value of which is also based on the value of the Shares. The Dutch Financial Supervision Act and the regulations promulgated thereunder cover, *inter alia*, the following categories of persons: (i) the spouse or any partner considered by national law as equivalent to the

spouse; (ii) dependent children; (iii) other relatives who have shared the same household for at least one year at the relevant transaction date; and (iv) any legal person, trust or partnership whose, among other things, managerial responsibilities are discharged by a person referred to under (i) to (iii) above or by the relevant Managing Director, the Supervisory Director or other person with any authority in respect of the Company as described above.

The AFM must be notified of transactions effected in either the VPS Shares or financial instruments, the value of which is (in part) determined by the value of the VPS Shares, no later than the fifth business day following the transaction date by means of a standard form or by using the digital portal made available by the AFM. Notification may be postponed until the date the value of the transactions carried out on that person's own account, together with the transactions carried out by the persons associated with that person, reaches or exceeds the amount of EUR 5,000 in the calendar year in question.

If a Managing Director or Supervisory Director has notified a transaction to the AFM under the Dutch Financial Supervision Act as described above under the paragraph "Shareholders", such notification is sufficient for purposes of the Dutch Financial Supervision Act as described in this paragraph.

### **Non-compliance**

Non-compliance with the notification obligations under the Dutch Financial Supervision Act could lead to criminal fines, administrative fines, imprisonment or other sanctions. In addition, non-compliance with some of the notification obligations under the Dutch Financial Supervision Act may lead to civil sanctions, including suspension of the voting rights relating to the Company Shares held by the offender for a period of not more than three years, voiding of a resolution adopted by the General Meeting in certain circumstances and ordering the person violating the disclosure obligations to refrain, during a period of up to five years, from acquiring Shares and/or voting rights in Shares.

### **Public registry**

The AFM does not issue separate public announcements of these notifications. It does, however, keep a public register of all notifications under the Dutch Financial Supervision Act on its website ([www.afm.nl](http://www.afm.nl)). Third parties can request to be notified automatically by e-mail of changes to the public register in relation to a particular company's shares or a particular notifying party. In addition, notifications of significant shareholdings shall be published by the Company through the Oslo Børs' news system, [www.newsweb.no](http://www.newsweb.no).

### **Dutch Financial Reporting Supervision Act**

Pursuant to the Dutch Financial Reporting Supervision Act (*Wet toezicht financiële verslaggeving*) (the "**FRSA**") the AFM supervises the application of financial reporting standards of , among others, companies whose corporate seats are in the Netherlands and whose securities are listed on a regulated Dutch or foreign stock exchange. The FRSA stipulates that the AFM has an independent right to (i) request an explanation from the Company regarding its application of the applicable financial reporting standards if, based on publicly known facts or circumstances, it has reason to doubt that the Company's financial reporting meets such standards and (ii) recommend the Company to make available further explanations. The AFM may, if such a Company does not comply with the AFM's request or recommendation, request that the enterprise chamber of the court of appeal in Amsterdam (*Ondernemingskamer van het Gerechtshof te Amsterdam*) (the "**Enterprise Chamber**") issue an order to the Company to (i) provide an explanation of the way it has applies the applicable financial reporting standards to its financial reports or (ii) prepare its financial reports in accordance with the Enterprise Chamber's instructions.



## 12.7 Insider trading

Dutch law contains specific rules intended to prevent insider trading and market manipulation. The DFSA provides for specific rules intended to prevent market abuse, such as the prohibitions on insider trading, divulging inside information and tipping off, and market manipulation. The person who is in possession of inside information will be subject to the Dutch insider trading prohibition, the Dutch prohibition on divulging insider information and tipping off and the Dutch prohibition on market manipulation. The Dutch prohibition on market manipulation may mean that certain restrictions apply to the ability of the Company to buy back shares. In certain circumstances, the Company's investors may also be subject to the Dutch market abuse rules.

The Company does not qualify as an issuer (*uitgevende instelling*) within the meaning of Section 5.25i of the DFSA, therefore the insider information disclosure obligations do not apply to the Company. However, the Company is subject to insider information disclosure obligations pursuant to Norwegian law.

According to Norwegian law, subscription for, purchase, sale or exchange of financial instruments that are listed, or subject to the application for listing, on a Norwegian regulated market, or incitement to such dispositions, must not be undertaken by anyone who has inside information, as defined in the Norwegian Securities Trading Act section 3-2. The same applies to the entry into, purchase, sale or exchange of options or futures/forward contracts or equivalent rights whose value is connected to such financial instruments or incitement to such dispositions.

## 12.8 Mandatory takeover offers

The Company is partly subject to the mandatory take-over provisions as set out in the Norwegian Securities Trading act chapter 6, and partly to the provisions set out in the Dutch Act on Financial Supervision.

Pursuant to the Dutch Financial Supervision Act, the obligation to make a public takeover bid for all issued and outstanding shares or depositary receipts for shares in the share capital of the Company arises when a party, by itself or together with parties with whom it is acting in concert, directly or indirectly acquires 'predominant control' in the Company. 'Predominant control' is defined as being able to cast, alone or acting in concert, at least 30% of the votes at the general meeting of such listed company.

Under the Dutch Financial Supervision Act, "*persons with whom a party is acting in concert*" has been defined as natural persons, legal persons or companies collaborating under a contract with the aim to acquire predominant control in the listed company or, if the target company is one of the collaborators, to frustrate the success of an announced public takeover bid for that company. The following categories of natural persons, legal persons or companies are deemed in any case to act in concert: (i) legal persons or companies which together form part of a group as referred to in Section 24b of the Dutch Civil Code Book 2 (*Burgerlijk Wetboek Boek 2*); and (ii) natural persons, legal persons or companies and the undertakings controlled by these persons or companies.

No obligation to launch a public takeover bid exists if an exemption applies, including if a party has decreased its shareholding to below 30% within a period of 30 days, unless the loss of predominant control is the result of a transfer of shares to a natural person, legal person or company that may

invoke an exemption from the requirement to make a public takeover bid or if the controlling party has made use of its voting rights during that period.

Questions concerning consolidation of shareholdings in relation to the threshold at which the mandatory bid regulation are triggered are subject to Dutch law. The rules under the DFSA Act regarding mandatory public offers apply to the Company because it has its corporate seat in the Netherlands. However as the Company Shares (as VPS Shares) are admitted to Oslo Børs the Dutch Decree on public offers (*Besluit openbare biedingen Wft*) will only apply in relation to matters to information to be provided to employees and labor unions and company law matters, such as a position statement of the Company and the convocation of a General Meeting.

The bidding process, including questions concerning the compensation offered in connection with the bid, in particular the bid price, the bid procedure, information on the bidder's decision to present a bid, the content of the offer document and the publication of the bid, is subject to Norwegian law, *i.e.* the Securities Trading Act. The takeover supervisory authority with respect to these issues is the Financial Supervisory Authority of Norway, or Oslo Børs.

Where an agreement on acquisition of shares triggers the bid obligation, the shareholder shall without delay notify the takeover supervisory authority and the Company accordingly. The notification shall state whether a bid will be made to buy the remaining shares in the Company. The takeover supervisory authority shall make the notification available to the public.

The bid shall be made without undue delay and at the latest four weeks after the mandatory bid obligation was triggered, and shall encompass all the remaining Shares of the Company. The bid price must be at least as high as the highest price paid or agreed to be paid by the offeror in the six-month period prior to the date the above threshold was exceeded, but equal to the market price if the market price was clearly higher when the threshold was exceeded. In the event that the acquirer thereafter, but prior to the expiration of the bid period acquires, or agrees to acquire, additional shares at a higher price, the acquirer is obliged to restate its bid at that higher price. The bid shall state a time limit for shareholders to accept the bid, not to be shorter than four weeks or longer than six weeks.

The offeror is required to make an offer document complying with Norwegian law, and such document require approval by the takeover supervisory authority (being Oslo Børs) before the bid is made public. In the mandatory bid, all Shares of the Company must be treated equally. The mandatory bid must be made in cash or contain a cash alternative at least equal in value to any non-cash offer. A shareholder who fails to make the required offer must within four weeks dispose of sufficient shares so that the obligation ceases to apply. Otherwise, the authorities may cause the shares exceeding the threshold to be sold. Until the mandatory bid is made the shareholder may, under Norwegian law, not vote for shares exceeding the threshold, unless a majority of the remaining shareholders approve. The shareholder can, however, exercise the right to dividends and pre-emption rights in the event of a share capital increase. The authorities may impose a daily fine upon a shareholder who fails to make the required offer.

## **12.9 Squeeze-out proceedings**

The squeeze-out rules are subject to Dutch corporate legislation.

Pursuant to Section 92a of the Dutch Civil Code Book 2 (*Burgerlijk Wetboek Boek 2*), a shareholder who for his or her own account contributes at least 95% of a Dutch company's issued share capital may institute proceedings against such company's minority shareholders jointly for the transfer of their shares to him or her. The proceedings are held before the Enterprise Chamber and can be instituted by means of a writ of summons served upon each of the minority shareholders in accordance with the provisions of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*). The Enterprise Chamber may grant the claim for squeeze-out in relation to all minority shareholders and will determine the price to be paid for the shares, if necessary after appointment of one or three experts who will offer an opinion to the Enterprise Chamber on the value to be paid for the shares of the minority shareholders. Once the order to transfer becomes final before the Enterprise Chamber, the person acquiring the shares shall give written notice of the date and place of payment and the price to the holders of the shares to be acquired whose addresses are known to him. Unless the addresses of all of them are known to him, he is required to publish the same in a daily newspaper with nationwide circulation.

The offeror under a public takeover bid is also entitled to start squeeze-out proceedings if, following the public takeover bid, the offeror contributes at least 95% of the outstanding share capital and represents at least 95% of the total voting rights. The claim of a takeover squeeze-out needs to be filed with the Enterprise Chamber within three months following the expiry of the acceptance period of the offer. The Enterprise Chamber may grant the claim for squeeze-out in relation to all minority shareholders and will determine the price to be paid for the shares, if necessary after appointment of one or three experts who will offer an opinion to the Enterprise Chamber on the value to be paid for the shares of the minority shareholders. In principle, the offer price is considered reasonable if the offer was a mandatory offer or if at least 90% of the shares to which the offer related were received by way of voluntary offer.

The Dutch takeover provisions of the Dutch Financial Supervision Act also entitle those minority shareholders that have not previously tendered their shares under an offer to transfer their shares to the offeror, provided that the offeror has acquired at least 95% of the outstanding share capital and represents at least 95% of the total voting rights. In regard to price, the same procedure as for takeover squeeze-out proceedings initiated by an offeror applies. The claim also needs to be filed with the Enterprise Chamber within three months following the expiry of the acceptance period of the offer.

#### **12.10 Foreign exchange controls**

There are currently no foreign exchange control restrictions in Norway, other than in certain extreme macroeconomic conditions, that would potentially restrict the payment of dividends to a shareholder outside Norway, and there are currently no restrictions that would affect the right of shareholders of a Dutch company who are not residents in Norway to dispose of their shares and receive the proceeds from a disposal outside Norway. There is no maximum transferable amount either to or from Norway, although transferring banks are required to submit reports on foreign currency exchange transactions into and out of Norway into a central data register maintained by the Norwegian customs and excise authorities. The Norwegian police, tax authorities, customs and excise authorities, the National Insurance Administration and the NFSA have electronic access to the data in this register.

## 13 TAX AND LEGAL MATTERS

### 13.1 Taxation of Norwegian shareholders

*Set out below is a summary of certain Norwegian tax matters related to investments in the Company. The summary is based on Norwegian laws, rules and regulations applicable as of the date of this Prospectus, which may be subject to any changes in law occurring after such date. Such changes could possibly be made on a retroactive basis. The summary does not address foreign tax laws.*

*The summary is of a general nature and does not purport to be a comprehensive description of all the Norwegian tax considerations that may be relevant for a decision to acquire, own or dispose of shares. Shareholders who wish to clarify their own tax situation should consult with and rely upon their own tax advisors. Shareholders resident in jurisdictions other than Norway and shareholders who cease to be resident in Norway for tax purposes (due to domestic tax law or tax treaty) should consult with and rely upon their own tax advisors with respect to the tax position in their country of residence and the tax consequences related to ceasing to be resident in Norway for tax purposes.*

*Please note that for the purpose of the summary below, a reference to a Norwegian or foreign shareholder refers to the tax residency rather than the nationality of the shareholder.*

#### 13.1.1 Taxation of dividends

##### **Norwegian Personal Shareholders**

Dividends received by shareholders who are individuals resident in Norway for tax purposes ("**Norwegian Personal Shareholders**") are taxable as ordinary income in Norway for such shareholders at an effective tax rate of 28.75%. This effective tax rate is a result of dividends being, for the purposes of calculating taxable income, grossed up by a factor of 1.15 before the ordinary income tax rate of 25% is applied. Dividends are only taxable to the extent the dividend exceeds a tax-free allowance.

The allowance is calculated on a share-by-share basis. The allowance for each share is equal to the cost price of the share multiplied by a determined risk-free interest rate based on the effective rate after tax of interest on treasury bills (Norwegian: "**statskasseveksler**") with three months' maturity. The allowance is calculated for each calendar year, and is allocated solely to Norwegian Personal Shareholders holding shares at the expiration of the relevant calendar year. Norwegian Personal Shareholders who transfer shares will thus not be entitled to deduct any calculated allowance related to the year of transfer. Any part of the calculated allowance one year exceeding the dividend distributed on the share ("**excess allowance**") may be carried forward and set off against future dividends received on, or gains upon realization, of the same share. Any excess allowance will also be included in the basis for calculating the allowance on the same share the following years.

##### **Norwegian Corporate Shareholders**

The Shares will qualify for the Norwegian exemption method to the extent the Netherlands is not considered a low tax jurisdiction, or provided that the Netherlands is considered a low tax jurisdiction, if the Company is considered genuinely established in the Netherlands (the "substance test"). The tax consequences of Funcom meeting the conditions under the Norwegian exemption method are further described below. If the Shares do not qualify for the Norwegian exemption method, dividends and gains are taxable at 25%, while losses are deductible at the same rate.

Dividends received by shareholders who are limited liability companies (and certain similar entities) resident in Norway for tax purposes ("**Norwegian Corporate Shareholders**") are included in the calculation of the shareholders' net income from shares qualifying for participation exemption, including dividends received from the Company. Only 3% of net income from shares qualifying for participation exemption shall be included in the calculation of ordinary income. Ordinary income is subject to tax at a flat rate of 25%, implying that net income from shares is effectively taxed at a rate of 0.75%.

#### Capital Gains Tax on realization of Shares

##### **Norwegian Personal Shareholders**

Sale, redemption or other disposal of shares is considered a realization for Norwegian tax purposes. A capital gain or loss generated by a Norwegian Personal Shareholder through a realization of shares is taxable or tax deductible in Norway. Such capital gain or loss is included in or deducted from the shareholder's ordinary income in the year of disposal. Ordinary income is taxable at a rate of 25%. The gain is subject to tax and the loss is tax-deductible irrespective of the duration of the ownership and the number of shares disposed of.

The taxable gain/deductible loss is calculated per share, as the difference between the consideration for the share and the Norwegian Personal Shareholder's cost price of the share, including any costs incurred in relation to the acquisition or realization of the share. From a possible capital gain, Norwegian Personal Shareholders are entitled to deduct a calculated allowance, provided that such allowance has not already been used to reduce taxable dividend income. See Section 13.1.1 "Taxation of dividends" above for a description of the calculation of the allowance. The allowance may only be deducted in order to reduce a taxable gain, and cannot increase or produce a deductible loss, *i.e.* any unused allowance exceeding the capital gain upon the realization of a share will be annulled.

If the Norwegian Personal Shareholder owns shares acquired at different points in time, the shares that were acquired first will be regarded as the first to be disposed of, on a first-in, first-out basis.

##### **Norwegian Corporate Shareholders**

Capital gains derived from the realization of shares qualifying from the participation exemption method are exempted from taxation, *i.e.* capital gains on such shares will be fully exempt from Norwegian taxation. Losses incurred upon realization of such shares are not deductible.

#### 13.1.2 Net wealth tax

The value of shares is included in the basis for the computation of wealth tax imposed on Norwegian Personal Shareholders. Currently, the marginal wealth tax rate varies from 0.0% to 0.7% of the value assessed. The value for assessment purposes for shares listed on Oslo Børs is the listed value as of 1 January in the year of assessment.

Norwegian Corporate Shareholders are not subject to wealth tax.

## **13.2 Taxation in the Netherlands**

*This section describes solely the material Dutch tax consequences of the acquisition, ownership and disposal of the Shares. This section does not consider every aspect of Dutch taxation that may be*

*relevant to a particular holder of Shares in special circumstances or who is subject to special treatment under applicable law. Shareholders and any potential investor should therefore consult their own tax advisors regarding the Dutch tax consequences of acquiring, owning and disposing of Shares in their particular circumstances.*

*Where in this section the terms "the Netherlands" and "Dutch" are used, these refer solely to the European part of the Kingdom of the Netherlands. Where in this section English terms and expressions are used to refer to Dutch concepts, the meaning to be attributed to such terms and expressions shall be the meaning to be attributed to the equivalent Dutch concepts under Dutch tax law.*

*This section also assumes that the Company is organized, and that the business will be conducted, in the manner outlined in this Prospectus. Any change to the organizational structure or to the manner in which the Company will conduct its business may invalidate the contents of this section, which will not be updated to reflect any such change.*

*This section is based on the tax law of the Netherlands (whereby unpublished case law is not included) as it stands at the date of this Prospectus. The law upon which this section is based is subject to change, perhaps with retroactive effect. Any such change may invalidate the contents of this description, which will not be updated to reflect such change.*

*Where in this Dutch taxation discussion reference is made to "a holder of Shares", that concept includes, without limitation:*

- (i) an owner of one or more Shares who in addition to the title to such Shares, has an economic interest in such Shares;*
- (ii) a person who or an entity that holds the entire economic interest in one or more Shares;*
- (iii) a person who or an entity that holds an interest in an entity, such as a partnership or a mutual fund, that is transparent for Dutch tax purposes, the assets of which comprise one or more Common Shares, within the meaning of 1. or 2. above; or*
- (iv) a person who is deemed to hold an interest in Shares, as referred to under 1. to 3., pursuant to the attribution rules of article 2.14a, of the Dutch Income Tax Act 2001 (Wet inkomstenbelasting 2001), with respect to property that has been segregated, for instance in a trust or a foundation, Company has been advised that under Dutch tax law the following treatment will apply to the Shares.*

### 13.2.2 Withholding tax

Dividends distributed by the Company to a holder of Shares are generally subject to withholding tax imposed by the Netherlands at a rate of 15 per cent. The Company assumes the responsibility for the withholding of withholding tax imposed by the Netherlands. Dividends distributed by the Company include, but are not limited to:

- (i) distributions of profits in cash or in kind, whatever they be named or in whatever form;*
- (ii) proceeds from the liquidation of the Company, or, as a rule, proceeds from the repurchase of its shares by the Company, in excess of the average paid-in capital*

recognized for Dutch dividend withholding tax purposes;

- (iii) the par value of Shares issued to a holder of Shares or an increase in the par value of Shares, to the extent that no contribution, recognized for Dutch dividend withholding tax purposes, has been made or will be made; and
- (iv) partial repayment of paid-in capital, that is recognized for Dutch dividend withholding tax purposes, to the extent that the Company has net profits (*zuivere winst*), unless
  - (a) the General Meeting of the Company has resolved in advance to make such repayment, and
  - (b) the par value of the shares concerned has been reduced with an equal amount by way of an amendment to the Articles of Association of the Company.

Notwithstanding the above, no withholding is required in the event of a repurchase of shares, if certain conditions are fulfilled.

If a holder of Shares is resident or deemed to be resident of the Netherlands or has opted to be treated as a resident of the Netherlands, such holder of Shares is generally entitled to a full credit against his (corporate) income tax liability and otherwise to a refund of any excess.

If a holder of Shares is resident in a country other than the Netherlands and if a treaty for avoidance of double taxation is in effect between the Netherlands and such country, such holder of Shares may, depending on the terms of such treaty, be eligible for a full or partial exemption from, or refund of, Dutch dividend withholding tax.

According to Dutch domestic anti-dividend stripping rules, no exemption from, reduction in or refund of, Dutch dividend withholding tax will be granted if the recipient of the dividend paid by the Company is not considered to be the beneficial owner (*uiteindelijk gerechtigde*) of such dividends as meant in these rules exemption from Dutch dividend withholding tax is not available if (i) a holder is resident in a country other than the Netherlands and (ii) pursuant to a provision for the prevention of fraud or abuse included in a double tax treaty between the Netherlands and such holder's country of residence, such holder would not be entitled to the reduction of tax on dividends provided for by such treaty. Furthermore, the exemption from Dutch dividend withholding tax will only be available to a holder if such holder is the beneficial owner of dividends distributed by the Company, as described above. If a holder of Shares is resident in a country other than the Netherlands and such holder is resident in a Member State of the European Union with which the Netherlands has concluded a double tax treaty that provides for a reduction of tax on dividends based on the ownership of the number of voting rights.

### 13.2.3 Credit

If a holder of Shares who is resident in a country other than the Netherlands is subject to Dutch income tax or Dutch corporation tax in respect of any benefits derived or deemed to be derived from such holder's Shares, including any capital gain realized on the disposal thereof, such holder can generally credit Dutch dividend withholding tax against Dutch income tax or Dutch corporation tax liability, as applicable, and such holder is generally entitled to a refund pursuant to a negative tax assessment if and to the extent the Dutch dividend withholding tax, together with any other creditable domestic and/or foreign taxes, exceeds such holder's aggregate Dutch income tax or aggregate Dutch corporation tax liability, respectively.

#### 13.2.4 Taxes on income and capital gains

*This section does not purport to describe the possible Dutch tax considerations or consequences that may be relevant to a holder of Shares who has a (fictitious) substantial interest in the Company.*

Generally, a holder of Shares has a substantial interest if such holder, alone or together with his partner, has, or if certain relatives of the holder of Shares or his partner have, directly or indirectly:

- (i) the ownership of, or certain rights over, shares representing five percent or more of the total issued and outstanding capital of the Company, or of the issued and outstanding capital of any class of shares of the Company; or
- (ii) the rights to acquire shares, whether or not already issued, representing five percent or more of the total issued and outstanding capital of the Company, or of the issued and outstanding capital of any class of shares of the Company; or
- (iii) certain profit participating certificates that relate to five percent or more of the annual profit of the Company or to five percent or more of the liquidation proceeds of the Company.

Generally, a holder of Shares has a fictitious substantial interest if (a) he has disposed of, or is deemed to have disposed of, all or part of a substantial interest or (b) he is an individual and has transferred an enterprise in exchange for shares, on a non-recognition basis.

#### 13.2.5 Residents of the Netherlands

The description of certain Dutch tax consequences in this paragraph is only intended for the following holders of Shares:

- (i) individuals who are resident or deemed to be resident in the Netherlands;
- (ii) individuals who opt to be treated as a resident in the Netherlands for purposes of Dutch taxation ((i) and (ii) jointly "**Dutch Individuals**"); and
- (iii) entities that are subject to the Dutch Corporate Income Tax Act 1969 ("**CITA**") and are resident or deemed to be resident of the Netherlands for the purposes of the CITA ("**Dutch Corporate Entities**"), excluding:
  - (a) pension funds (*pensioenfondsen*) and other entities, that are exempt from Dutch corporate income tax; and
  - (b) entities which are entitled to the participation exemption (*deelnemingsvrijstelling*) with respect to the Shares; and
  - (c) investment institutions (*beleggingsinstellingen*) as defined in article 28, CITA.

#### **Dutch Individuals not engaged or deemed to be engaged in an enterprise or receiving benefits from miscellaneous activities**

Generally, a Dutch Individual who holds Shares that are not attributable to an enterprise from which he derives profits as an entrepreneur (*ondernemer*) or pursuant to a co-entitlement to the net worth of such enterprise other than as an entrepreneur or a shareholder, or to miscellaneous activities (*overige werkzaamheden*), will be subject annually to an income tax imposed on a fictitious yield on such shares. The shares held by such Dutch Individual will be taxed under the regime for savings and investments (*inkomen uit sparen en beleggen*). Irrespective of the actual income or capital gains realized, the annual taxable benefit of all the assets and liabilities of a Dutch Individual that are



taxed under this regime, including the Shares, is set at a fixed amount. The fixed amount equals 4 percent of the average net fair market value of these assets and liabilities measured, in general, at the beginning and end of every calendar year. The current tax rate under the regime for savings and investments is a flat rate of 30 percent.

#### **Dutch Individuals engaged or deemed to be engaged in an enterprise or receiving benefits from miscellaneous activities**

Any benefits derived or deemed to be derived from Shares (including any capital gains realized on the disposal thereof) that are either attributable to an enterprise from which a Dutch Individual derives profits, whether as an entrepreneur or pursuant to a co-entitlement to the net worth of such enterprise (other than as an entrepreneur or a shareholder), or attributable to miscellaneous activities (*overige werkzaamheden*) are generally subject to income tax in the Dutch Individual's hands at statutory progressive rates with a maximum of 52 per cent.

#### **Dutch Corporate Entities**

Any benefits derived or deemed to be derived from Shares (including any capital gains realized on the disposal thereof) that are held by a Dutch Corporate Entity are generally subject to corporate income tax at statutory rates.

### **13.3 Taxation of foreign shareholders**

#### **13.3.1 Non-residents of the Netherlands**

A holder of Shares other than a Dutch Individual or Dutch Corporate Entity will not be subject to any Dutch taxes on income or capital gains in respect of the ownership and disposal of the Shares, other than withholding tax as described above, except if:

- (i) the holder of Shares derives profits from an enterprise, whether as entrepreneur (*ondernemer*) or pursuant to a co-entitlement to the net worth of such enterprise other than as an entrepreneur or a shareholder, which enterprise is, in whole or in part, carried on through a permanent establishment (*vaste inrichting*) or a permanent representative (*vaste vertegenwoordiger*) in the Netherlands, to which Shares are attributable; or
- (ii) the holder of Shares is an individual and derives benefits from miscellaneous activities (*resultaat uit overige werkzaamheden*) carried out in the Netherlands in respect of Shares, including, without limitation, activities which are beyond the scope of active portfolio investment activities.

#### **13.3.2 Attribution rule**

Benefits derived or deemed to be derived from certain miscellaneous activities by, and yield basis for benefits from savings and investments of, a child or a foster child who is under eighteen years of age are attributed to the parent who exercises, or to the parents who exercise, authority over the child, irrespective of the country of residence of the child.

#### **13.3.3 Gift Tax and Inheritance Tax**

No Dutch gift tax or inheritance tax is due in respect of any gift of Shares by, or inheritance of Shares on the death of, a holder of Shares, except if:

- (i) the holder of Shares is a resident or is deemed to be a resident of the Netherlands;
- (ii) at the time of the gift or the death of the holder of Shares, such holder of Shares has an enterprise (or an interest in an enterprise) which is, in whole or in part, carried on through a permanent establishment or permanent representative in the Netherlands to which the Shares are attributable; or
- (iii) the Shares are acquired by way of a gift from a holder of Shares who passes away within 180 days after the date of the gift and who is not and is not deemed to be at the time of the gift, but is, or is deemed to be at the time of his death, a resident of the Netherlands.

For purposes of the above, a gift of Shares made under a condition precedent is deemed to be made at the time the condition precedent is satisfied. For example, and without being exhaustive, an individual who has the Dutch nationality is deemed to be resident in the Netherlands at the time of his death or the making of the gift, if he resided in the Netherlands at any time during a period of ten years preceding the time of his death or the time of the gift. In addition, as a further example, and without being exhaustive, any individual who has been resident in the Netherlands and who has made a gift within a period of one year after he has taken up his residence outside the Netherlands, is deemed to be resident in the Netherlands at the time of the gift.

#### 13.3.4 Other taxes and duties

Save for capital tax which will be payable by the Company, no capital duty, turnover tax, or any other tax or duty (including stamp duty) is due by or on behalf of a holder of Shares in respect of or in connection with the sale and transfer of the Shares.

#### 13.3.5 Value added tax

No Dutch value added tax will arise in respect of any payment in consideration for the acquisition, ownership and/or disposal of Shares.

#### 13.3.6 Registration taxes and duties

No Dutch registration tax, transfer tax, stamp duty or any other similar documentary tax or duty, other than court fees, is payable in the Netherlands by a holder in respect of or in connection with (i) the subscription, issue, placement or allotment of Shares, (ii) the enforcement by way of legal proceedings (including the enforcement of any foreign judgment in the courts of the Netherlands) of the documents relating to the subscription, issue, placement or allotment of Shares or the performance by the Company of the Company's obligations under such documents, or (iii) the transfer of Shares.

#### 13.3.7 Residency

Subject to the exceptions mentioned above, a holder of Shares will not become a resident, or a deemed resident, of the Netherlands for tax purposes, or become subject to Dutch taxes, by reason only of the Company's performance, or the acquisition by a holder of Shares (by way of issue or transfer to it), holding and/or disposal of the Shares.

## **14 SELLING AND TRANSFER RESTRICTIONS**

### **14.1 General**

As a consequence of the following restrictions, prospective investors are advised to consult legal counsel prior to making any offer, resale, pledge or other transfer of the Shares, the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares offered hereby.

The Company is not taking any action to register the Shares, the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares in any jurisdiction other than the Netherlands and Norway. Receipt of this Prospectus will not constitute an offer in those jurisdictions in which it would be illegal to make an offer and, in those circumstances, this Prospectus is for information purposes only and should not be copied or redistributed. Except as otherwise disclosed in this Prospectus, if an investor receives a copy of this Prospectus in any jurisdiction other than Norway, the investor may not treat this Prospectus as constituting an invitation or offer to it, nor should the investor in any event deal in the Shares, unless, in the relevant jurisdiction, such an invitation or offer could lawfully be made to that investor, or the Shares could lawfully be dealt in without contravention of any unfulfilled registration or other legal requirements. Accordingly, if an investor receives a copy of this Prospectus, the investor should not distribute or send the same, or transfer Shares, to any person or in or into any jurisdiction where to do so would or might contravene local securities laws or regulations.

### **14.2 United States**

The Shares, the New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares have not been, and will not be, registered under the U.S. Securities Act, or with any securities regulatory authority of any state or other jurisdiction in the United States and are being offered and sold under an exemption from registration under the U.S. Securities Act. Neither the New VPS Shares, the Conversion VPS Shares, the VPS Offer Shares nor the underlying Company Shares may be subscribed by U.S. persons except, under certain circumstances, by U.S. persons that are QIBs as defined under Rule 144A under the U.S. Securities Act and major US institutional investors under SEC rule 15a-6 to the US Exchange Act. The New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares are being offered to non U.S. persons under Regulation S under the U.S. Securities Act. Any Shares, New VPS Shares, Conversion VPS Shares or VPS Offer Shares acquired by existing U.S. shareholders will be "restricted securities" within the meaning of Rule 144 (a) (3) under the U.S. Securities Act. Restricted securities may not be offered, sold, pledged or otherwise transferred, directly or indirectly, except as permitted below under "Investor representation and restriction on resale in the United States".

The foregoing discussion is only a general overview of certain requirements of the U.S. Securities Act that are applicable to the Shares, the New VPS Shares, the Conversion VPS Shares and the VPS Offer Shares. All shareholders who receive such securities are urged to consult with counsel to ensure that the subscription of any New VPS Shares, Conversion VPS Shares or VPS Offer Shares complies with applicable United States securities laws.

The Company will provide the information required by Rule 144A (d) (4) under the U.S. Securities Act to holders and prospective purchasers, as applicable, for as long as the Shares, the New VPS Shares, the Conversion VPS and the VPS Offer Shares remain outstanding.

### **Investor Representations and Restrictions on Resale in the United States:**

Each Subscriber, by subscribing for New VPS Shares, Conversion VPS Shares or VPS Offer Shares, will be deemed to have represented and agreed as follows:

- 1 it is acquiring the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares for its own account or for an account with respect to which it exercises sole investment discretion, and that it or such account, as the case may be, (a) is a QIB as defined under Rule 144A, and is aware that the sale to it is being made in reliance on an exemption from registration under the U.S. Securities Act, or (b) is a major US institutional investor under SEC rule 15a-6 to the US Exchange Act, or (c) is not a "U.S. Person" and is acquiring the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares in an offshore transaction, pursuant to Regulation S under the U.S. Securities Act;
- 2 it acknowledges that neither the Shares, the New VPS Shares, the Conversion VPS Shares or the VPS Offer Shares have been registered under the U.S. Securities Act and may not be sold except as permitted below;
- 3 it understands and agrees that such New VPS Shares, Conversion VPS Shares and/or VPS Offer Shares are being offered only in a transaction not involving any public offering in the U.S. within the meaning of the U.S. Securities Act, and that (a) if in the future it decides to resell, pledge or otherwise transfer the such New VPS Shares, Conversion VPS Shares or VPS Offer Shares on which the legend set forth below is deemed to appear, such New VPS Shares, Conversion VPS Shares or VPS Offer Shares issued pursuant to the Private Placement, Debt Conversion or the Subsequent Offering may be resold, pledged or transferred only (i) to the Company, (ii) in a transaction entitled to an exemption from registration provided by Rule 144 under the U.S. Securities Act, (iii) so long as such security is eligible for resale pursuant to Rule 144A, to a person whom the seller reasonably believes is a QIB that purchases for its own account or for the account of a QIB to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A, (iv) in an offshore transaction in accordance with Rule 903 or 904 of Regulation S under the U.S. Securities Act, (v) in accordance with another applicable exemption from the registration requirements of the U.S. Securities Act (and based upon an opinion of counsel acceptable to us), or (vi) pursuant to an effective registration statement under the U.S. Securities Act and, in each case, in accordance with any applicable securities laws of any state of the United States. The purchaser of the restricted New VPS Shares, Conversion VPS Shares and/or VPS Offer Shares will, and each subsequent holder is required to, notify any purchaser of New VPS Shares, Conversion VPS Shares and/or VPS Offer Shares from it of the resale restrictions referred to in (a) above, if then applicable;
- 4 it understands that the Shares, New VPS Shares, Conversion VPS Shares and/or VPS Offer Shares issued to U.S. persons pursuant to an exemption from registration under the U.S. Securities Act shall be deemed to include the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE US SECURITIES ACT) OR ANY STATE SECURITIES LAW. NO TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE SHALL BE VALID OR EFFECTIVE UNLESS (A) SUCH TRANSFER IS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE US SECURITIES ACT OR (B) THE HOLDER SHALL DELIVER TO THE COMPANY AN OPINION OF ITS COUNSEL, IN FORM AND SUBSTANCE REASONABLY ACCEPTABLE TO THE COMPANY AND REASONABLY CONCURRED IN BY THE COMPANY'S COUNSEL, THAT SUCH PROPOSED TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE US SECURITIES ACT.
- 5 it has received a copy of this Prospectus and:

- (a) has been afforded an opportunity to ask questions of and to request information from the Company, and has received all additional information it considers necessary in connection with its decision to purchase any of the Shares, the New VPS Shares, the Conversion VPS Shares or VPS Offer Shares and to verify the accuracy and completeness of the information contained or incorporated by reference herein;
  - (b) is relying on the information contained or incorporated by reference in this Prospectus or on display in making its investment decision with respect to the Shares, the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares and has not relied on any other person in connection with investigating the accuracy of such information or its investment decision;
  - (c) the Company nor any person representing or affiliated with the Company has made any representation to you with respect to the Company, the Private Placement, the Debt Conversion and the Subsequent Offering, other than the representations of the Company contained in this Prospectus; and
  - (d) has read and agreed to the matters set forth in this section of the Prospectus;
- 6 it (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Shares, the New VPS Shares, the Conversion VPS Shares or the VPS Offer Shares, (ii) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment, and (iii) may be required to bear the financial risks of this investment for an indefinite period of time; and
- 7 it understands that the Company and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and agrees that if any of the acknowledgements, representations and agreements deemed to have been made by it by its purchase of the Shares, the New VPS Shares, the Conversion VPS Shares and/or the VPS Offer Shares are no longer accurate, it shall promptly notify the Company in writing. If it is acquiring the New VPS Shares, the Conversion VPS Shares or the VPS Offer Shares as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing acknowledgements, representations and agreements on behalf of such account.

### 14.3 United Kingdom

This Prospectus and any other material in relation to the securities described herein is only being distributed to and is only directed at persons in the United Kingdom that are (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "**Order**") or (ii) high net worth entities, and other persons to whom the Prospectus may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "**Relevant Persons**"). This communication must not be acted on or relied on by persons who are not Relevant Persons. Any investment or investment activity to which this communication relates is available only to Relevant Persons and will be engaged in only with Relevant Persons. Persons distributing this communication must satisfy themselves that it is lawful to do so.

#### 14.4 European Economic Area

The Prospectus has been prepared on the basis that all offers of Shares (other than the offer contemplated in this Prospectus in Norway and the Netherlands, once this Prospectus has been approved by the Netherlands Authority for the Financial Markets (the "**AFM**") and passported into Norway and published in accordance with the Prospectus Directive as implemented in the Netherlands and Norway) will be made pursuant to an exemption under the Prospectus Directive, as implemented in member states of the European Economic Area ("**EEA**"), from the requirement to produce a prospectus for offer of Shares. Accordingly, any person making or intending to make any offer within the EEA of Shares which are the subject of the Private Placement and/or the Subsequent Offering should only do so in circumstances in which no obligation arises for the Company or any of the Managers to produce a prospectus under the Prospectus Directive for such offer. Neither the Company nor the Managers have authorized, nor do they authorize, the making of any offer of Shares through any financial intermediary, other than offers made by Managers which constitute the final placement of Shares contemplated in this Prospectus.

In relation to each member state of the EEA, which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), an offer to the public of any Shares which are the subject of the Private Placement, the Debt Conversion and/or the Subsequent Offering may not be made in that Relevant Member State (other than the offers contemplated in the Prospectus in the Netherlands and Norway once the Prospectus has been approved by the AFM, passported to Norway and published in accordance with the Prospectus Directive as implemented in the Netherlands, except that an offer to the public in that Relevant Member State of any of the Shares may be made at any time under the following exemptions from the Prospectus Directive, if they have been implemented in that Relevant Member State:

- (a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- (c) to fewer than 100, or if the Relevant Member State has implemented the relevant provisions of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the Manager for any such offer; or
- (d) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of the Shares shall result in a requirement for the publication by the Company or any Manager of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "**offer to the public**" in relation to any of the Shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Shares to be offered so as to enable an investor to decide to purchase any of the Shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, and the expression

**"Prospectus Directive"** means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

## **15 ADDITIONAL INFORMATION**

### **15.1 Name, incorporation and registered office**

Funcom N.V. is a Dutch public limited liability company registered in The Netherlands. The Company was incorporated on 29 November 1996 in Katwijk, The Netherlands with registration number 28073705. The Company's head office is in Keplerstraat 34, Badhoevedorp 1171 CD, The Netherlands. The Company's e-mail for investor enquiries is [investor@funcom.com](mailto:investor@funcom.com). The Company's web site is: [www.funcom.com](http://www.funcom.com).

### **15.2 Significant contracts**

Neither the Company nor any of the Group companies has entered into any significant contracts outside the ordinary course of business during the last two years, save for the agreement to restructure the debt owed to KGJI under the Convertible Loan and the Bonds (for further information about this agreement, please refer to sections 10.10 "Debt overview" and 11.5.1 "Convertible loans").

### **15.3 Legal and arbitration proceedings**

In January 2014, Økokrim (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) charged Funcom based on suspicion of infringement of the Norwegian Securities Trading Act Section 3-8 (concerning market manipulation) with regards to the financial information given to the market regarding *The Secret World* from August 2011 until the launch of the game in July 2012 and for two months following the launch. Økokrim also suspected that Funcom had not maintained a list of persons with access to inside information regarding the above, cf. Section 3-5 of the Norwegian Securities Trading Act.

In October 2015, Funcom accepted a fine of NOK 1,500,000 from Økokrim linked to infringement of the Norwegian Securities Trading Act Section 3-8 (Market Manipulation) and Section 3-5 (List of persons who have access to inside information). The acceptance and payment of the fine ended Funcom's involvement in this matter.

Apart from the above, the Company is not, or have not been during period covering at least the previous 12 months, involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened) which may have, or have had, in the recent past significant effects on the Company's and/or the Group's financial position or profitability.

### **15.4 Auditor and advisors**

The Company's auditor since year November 2014 has been BDO Audit & Assurance B.V. The address of the auditor is Dr. Holtropaan 23, Eindhoven, the Netherlands.

ABG Sundal Collier ASA is acting as Manager in relation to the Private Placement and the Subsequent Offering.

Advokatfirmaet CLP DA is acting as the Company's legal adviser on Norwegian law matters in relation to the Private Placement and the Subsequent Offering. Weidema van Tol (Netherlands) B.V.



is acting as the Company's legal adviser on Dutch law matters in relation to the Private Placement and the Subsequent Offering.

### 15.5 Statement regarding expert opinions

This Prospectus does not refer to any expert opinions.

### 15.6 Documents incorporated by reference

The information incorporated by reference to this Prospectus should be read in conjunction with the cross reference list as set out below. The following documents have been incorporated by reference:

Section in Prospectus	Incorporated by reference	Reference document and link
10	Consolidated annual report, accounting principles, notes and auditor's report for the financial year 2015	<a href="http://www.newsweb.no/newsweb/search.do?messageId=399959">http://www.newsweb.no/newsweb/search.do?messageId=399959</a> or <a href="http://cdn.funcom.com/investor/2016/FUNCOM_NV_Annual_Report_2015.pdf">http://cdn.funcom.com/investor/2016/FUNCOM_NV_Annual_Report_2015.pdf</a>
10	Consolidated annual report, accounting principles, notes and auditor's report for the financial year 2014	<a href="http://www.newsweb.no/newsweb/search.do?messageId=351901">http://www.newsweb.no/newsweb/search.do?messageId=351901</a> or <a href="http://www.funcom.com/investors/funcom.n.v.publishes.its.2013.annual.financial.statements">http://www.funcom.com/investors/funcom.n.v.publishes.its.2013.annual.financial.statements</a>
10	Unaudited Q1 2015 report	<a href="http://cdn.funcom.com/investor/2015/Funcom_1Q15_Report.pdf">http://cdn.funcom.com/investor/2015/Funcom_1Q15_Report.pdf</a>
10	Unaudited Q1 2016 report	<a href="http://cdn.funcom.com/investor/2016/Funcom_1Q16_Report.pdf">http://cdn.funcom.com/investor/2016/Funcom_1Q16_Report.pdf</a>

### 15.7 Documents on display

For the life of the Prospectus, the following documents (or copies thereof) will be available for inspection at the Company's offices at Keplerstraat 34, Badhoevedorp, 1171 CD The Netherlands, and with a copy available at Bestumstubbën 11, 0281 Oslo, Norway, telephone: +47 22 73 06 30, or at [www.funcom.com](http://www.funcom.com):

- (i) the memorandum and articles of association of the Company;
- (ii) the historical financial information of the Company and its subsidiary undertakings for each of the two financial years preceding the publication of this Prospectus.

## 16 DEFINITIONS AND GLOSSARY OF TERMS

Definitions denoting the singular number shall include the plural and vice versa.

Term	Definition
<b>2010 PD Amending Directive</b>	Directive 2010/73/EU
<b>AFM</b>	The Netherlands Authority for the Financial Markets ( <i>De Stichting Autoriteit Financiële Markten</i> )
<b>Anti-Money Laundering Legislation</b>	The Norwegian Money Laundering Act No. 11 of 6 March 2009 and the Norwegian Money Laundering Regulations No. 302 of 13 March 2009.
<b>Articles of Association</b>	The Company's articles of association.
<b>Bond Agreement</b>	The loan agreement governing the terms and conditions for the Bonds.
<b>Bonds and Bond</b>	The convertible bonds issued under the Bond Agreement, each with a par value of USD 100,000. Each of these bonds are referred to as a Bond.
<b>Bond Trustee</b>	Nordic Trustee ASA
<b>CAD</b>	The currency of Canada.
<b>CAGR</b>	Compound annual growth rate.
<b>CITA</b>	The Dutch Corporate Income Tax Act 1969.
<b>Company Shares</b>	Means the ordinary shares of Funcom with a nominal value of EUR 0.04 per share as registered in the Company's Dutch shareholders' register.
<b>Convertible Loan</b>	A convertible loan of initial amount of USD 4,000,000 issued on 26 August 2014, later combined with the Working Capital Loan and partly converted through the Debt Conversion.
<b>Conversion VPS Shares</b>	The 42,777,778 new VPS Shares in Funcom issued as Depositary Receipts over the new Company Shares issued in connection with the Debt Conversion.
<b>Company</b>	Funcom N.V.
<b>Cut-Off Date</b>	30 June 2016.
<b>Debt Conversion</b>	Means the conversion of USD 7.7 million of the outstanding principal under the Convertible Loan.
<b>Depositary Receipts</b>	Means beneficial interests in shares registered in the VPS. For example, the VPS Shares are Depositary Receipts over the Company Shares.,
<b>Dutch Corporate Entities</b>	Entities that are subject to the CITA and are resident or deemed to be resident of the Netherlands for the purposes of the CITA.
<b>Dutch Financial Supervision Act or DFSA</b>	Dutch Act on financial supervision ( <i>Wet op het financieel toezicht</i> )
<b><i>Dreamworld Technology</i></b>	Funcom's proprietary and trademarked technology for development of computer games.
<b>Dutch Individuals</b>	Individuals who are resident or deemed to be tax resident in the Netherlands and individuals who opt to be treated as a resident in the Netherlands for purposes of Dutch taxation.
<b>Early Access</b>	Early Access is a funding model in the video game industry by which consumers can pay for a game in the early stages of development and obtain access to playable, but unfinished versions of the game, while the developer is able to use the funds to continue work on the game. Those that pay to participate typically help to debug the game, provide

	feedback and suggestions, and may have access to special materials upon release of the game.
<b>EBIT</b>	Earnings before Interest and Tax.
<b>EBITDA</b>	Earnings before Interest, Tax, Depreciation and Amortization.
<b>EEA</b>	The European Economic Area.
<b>Eligible Shareholders</b>	Holders of the Company's Shares (save for the VPS Registrar in its capacity as VPS Registrar) as of 30 June 2016, as registered in the VPS and the Company's shareholders' register in the Netherlands as of 4 July 2016 who are not resident in a jurisdiction where such offering would be unlawful, or would (in jurisdictions other than the Netherlands and Norway) require any prospectus filing, registration or similar action.
<b>Enterprise Chamber</b>	The Enterprise Chamber in Amsterdam, the Netherlands ( <i>Ondernemingskamer van het Gerechtshof te Amsterdam</i> ).
<b>Equity Facility</b>	The USD 22 million standby equity facility agreed between the Company and YA Global Master, under which the Company may draw down funds in exchange for issuing New VPS Shares to YA Global Master.
<b>EU</b>	The European Union.
<b>EUR</b>	Euro, the lawful common currency of the EU member states who have adopted the Euro as their sole national currency.
<b>Executive Management</b>	The executive management of the Company.
<b>Existing Shareholders</b>	Holders of the VPS Shares as of 30 June 2016, as registered in the VPS or the minority holders of the Shares that are not registered in the VPS, as of 4 July 2016.
<b>EU</b>	The European Union.
<b>EUR</b>	Euro, the lawful common currency of the EU member states who have adopted the Euro as their sole national currency.
<b>Forward Looking Statements</b>	Means statements relating to the Company's business and the sectors in which it operates. Forward Looking Statements include all statements that are not historical facts, and can be identified by words such as (what follows are examples without excluding words having the same meaning) "anticipates", "believes", "expects", intends, "may", "projects", "should", or the negatives of these terms or similar expressions. Please refer to Section 4.2 "Forward looking statements" for further information.
<b>FRSA</b>	The Dutch Financial Supervision Reporting Act.
<b>Funcom</b>	Funcom N.V. a limited liability company ( <i>naamloze vennootschap</i> ) registered with the Commercial Register of the Chamber of Commerce ( <i>Handelsregister van de Kamer van Koophandel</i> ) under registration number 28073705. Also referred to as the " <b>Company</b> ".
<b>General Meeting</b>	The general meeting of the shareholders of Funcom.
<b>Group</b>	The Company and its consolidated subsidiaries.
<b>IAS</b>	International Accounting Standard.
<b>IASB</b>	International Accounting Standards Board.
<b>IFRIC</b>	The IFRS Interpretations Committee.
<b>IFRS</b>	International Financial Reporting Standards.

<b>Ineligible Shareholders</b>	Eligible Shareholders resident in jurisdictions where the Prospectus may not be distributed and/or with legislation that, according to the Company's assessment, prohibits or otherwise restricts subscription for VPS Offer Shares or Shares, including from the United States, Canada, Japan and Australia.
<b>ISIN</b>	International Securities Identification Number
<b>KGJI</b>	KGJ Investments S.A, SICAV-SIF, the main shareholder of the Company
<b>Listing</b>	The listing of the New VPS Shares and the Conversion VPS Shares on Oslo Børs.
<b>Live Games</b>	Revenue generating games which are maintained and supported by the Company.
<b>Management Board</b>	The management board of directors of the Company.
<b>Manager</b>	ABG Sundal Collier ASA
<b>MMO</b>	Massively multiplayer online game.
<b>MMORPG</b>	Massively multiplayer online role-playing game.
<b>New VPS Shares</b>	The 95,970,000 new VPS Shares in Funcom issued as Depositary Receipts over the new Company Shares issued in the Private Placement.
<b>NFSA</b>	The Norwegian Financial Supervisory Authority.
<b>NOK</b>	Norwegian Kroner, the lawful currency of the Kingdom of Norway.
<b>Norwegian Corporate Governance Code</b>	The Norwegian Code of Practice for Corporate Governance, as amended from time to time.
<b>Norwegian Corporate Shareholders</b>	Shareholders who are limited liability companies (and certain similar entities) resident in Norway for tax purposes.
<b>Norwegian Personal Shareholders</b>	Shareholders who are individuals resident in Norway for tax purposes.
<b>Norwegian Securities Trading Act</b>	The Norwegian Securities Trading Act of 29 June 2007 no. 75 (Nw: <i>Verdipapirhandelloven</i> ).
<b>Offeror</b>	Funcom N.V.
<b>Oslo Børs</b>	The Oslo Stock Exchange, operated by Oslo Børs ASA. Funcom is listed on the main list of Oslo Børs.
<b>Payment Date</b>	12 August 2016
<b>Private Placement</b>	The private placement of New VPS Shares announced on 26 May 2016.
<b>Private Placement Subscription Price</b>	The price paid per New VPS Share in the Private Placement, being NOK 0.55.
<b>Prospectus</b>	This prospectus dated 10 June 2016, and its appendices.
<b>Prospectus Directive</b>	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003.
<b>Prospectus Regulation</b>	Commission Regulation (EC) no. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC.
<b>Record Date</b>	4 July 2016.
<b>Registrar Agreement</b>	The agreement for registrar services in the VPS which the Company has entered into with the VPS Registrar.
<b>Rule 144A</b>	Rule 144A under the US Securities Act.
<b>Shares</b>	Means both the Company Shares and the VPS Shares. This term is used when the distinction between the Company Shares and the VPS Shares is not of importance.
<b>Subscription Form</b>	The form for subscription of VPS Offer Shares.

<b>Subscription Period</b>	The period during which the VPS Offer Shares can be subscribed for, beginning on 5 July 2016.
<b>Subscription Rights</b>	Tradable rights granted to each Eligible Shareholder which gives a preferential right to subscribe for and be allocated VPS Offer Shares in the Subsequent Offering.
<b>Subsequent Offering</b>	The offering of up to 15,000,000 VPS Offer Shares directed towards Eligible Shareholders.
<b>Subsequent Offering Subscription Price</b>	The price to be paid per VPS Offer Share in the Subsequent Offering, being NOK 0.55.
<b>Supervisory Board</b>	The supervisory board of directors of the Company.
<b>Trading Period</b>	The period in which the Subscription Rights may be traded at Oslo Børs, commencing on 5 July 2016 and ending on 4 August 2016.
<b>USD</b>	United States Dollar, the lawful currency of the United States of America.
<b>U.S. Securities Act</b>	The U.S. Securities Act of 1933.
<b>VPS</b>	The Norwegian Central Securities Depository ( <i>Nw: Verdipapirsentralen</i> )
<b>VPS Offer Shares</b>	The 15,000,000 VPS Shares offered in the Subsequent Offering. The VPS Offer Shares will be issued as Depositary Receipts over new Company Shares issued in the Subsequent Offering.
<b>VPS Registrar</b>	DnB Bank ASA, Verdipapirservice, Dronning Eufemias gate 30, 0191 Oslo, Norway.
<b>VPS Shares</b>	Means the Depositary Receipts over Company Shares, <i>i.e.</i> the beneficial interests over the Company Shares registered in the VPS. Each VPS Share has a nominal value of EUR 0.04.
<b>Working Capital Loan</b>	A working capital loan provided by KGJI in November 2013.
<b>YA Global Master</b>	YA Global Master SPV, Ltd., a fund managed by Yorkville Advisors LLC.
<b>YOY</b>	Year over year.

## Funcom N.V. SUBSEQUENT OFFERING

## SUBSCRIPTION FORM Securities no. ISIN NL0000062461

**General information:** For use in accepting the Subsequent Offer (the "Subsequent Offer") by Funcom N.V. (the "Company") to subscribe for VPS Offer Shares (*i.e.* Depositary Receipts) over underlying shares in Funcom N.V. on the terms and conditions set forth in the prospectus dated [●] 2016 (the "Prospectus"). Capitalized terms used in this Subscription Form shall have the same meaning as set out in, and be deemed to be construed in accordance with, the Prospectus. The terms of the Subsequent Offer are set forth in the Prospectus, see Section 6 "The Subsequent Offering". All announcements referred to in this Subscription Form will be made through Oslo Børs' information system under the Company's ticker "FUNCOM".

**Subscription period:** The subscription period is from 09:00 hours (CET) on 5 July 2016 to 16:30 hours (CET) on 8 August 2016 (the "Subscription Period").

**Subscription procedure:** Correctly completed Subscription Forms must be received by the Manager before the end of the Subscription Period at the following address and as further provided in the Prospectus:

<p style="text-align: center;"><b>ABG Sundal Collier ASA</b> P.O. Box 1444 Vika 0115 Oslo Telephone: + 47 22 01 60 00 E-mail: subscriptions@abgsc.no Facsimile: +47 22 01 60 62</p> <p><b>Residents of Norway with a Norwegian personal identification number can subscribe for VPS Offer Shares through the VPS online subscription system available at: <a href="http://www.abgsc.com">www.abgsc.com</a></b></p>
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**Subscription Price:** The Subscription Price in the Subsequent Offering is NOK 0.55 per VPS Offer Share.

**Subscription Rights:** Registered holders of the Company's shares as appearing in the VPS as of 4 July 2016 (the "Record Date") (each such shareholder an Eligible Shareholder, and collectively, Eligible Shareholders) will be granted Subscription Rights giving a preferential right to subscribe for, and be allocated, the VPS Offer Shares. Each Eligible Shareholder will be granted 0.0649 Subscription Right per existing Share registered with the respective Eligible Shareholder on the Record Date. One Subscription Right will, subject to applicable securities laws, give the right to subscribe for and be allocated one VPS Offer Share in the Subsequent Offering. Over-subscription and subscription without Subscription Rights is permitted. The Subscription Rights will be tradable on the Oslo Stock Exchange during the period commencing at 09:00 CET on 5 July 2016 and ending at 16:30 CET on 4 August 2016. The Subscription Rights will trade on the Oslo Stock Exchange under the trading symbol Funcom T. Subscription Rights not sold prior to 16:30 CET on 4 August 2016 or used to subscribe for VPS Offer Shares prior to 16:30 CET on 8 August 2016 will lapse without compensation to the holder, and, consequently, will be of no value.


**Allocation of VPS Offer Shares:** The VPS Offer Shares will be allocated to the subscribers based on the allocation criteria set out in the Prospectus.

**Payment for subscribers who have a Norwegian bank account:** In completing this Subscription Form, or registering a subscription through the VPS online subscription system, subscribers authorise ABG Sundal Collier ASA to debit the subscriber's Norwegian bank account for the total subscription amount payable for the VPS Offer Shares allocated to the subscriber. Accounts will be debited on or about 12 August 2016 (the "Payment Date"), and there must be sufficient funds in the stated bank account from and including the date falling 2 banking days prior to the Payment Date. ABG Sundal Collier ASA is only authorized to debit each account once, but reserves the right (but has no obligation) to make up to three debit up to seven working days after the Payment Date if there are insufficient funds on the account on the Payment Date. Should any subscriber have insufficient funds in his or her account, should payment be delayed for any reason, if it is not possible to debit the account or if payments for any other reasons are not made when due, overdue interest will accrue and other terms will apply as set out in the Prospectus.

**Payment for subscribers who do not have a Norwegian bank account:** Subscribers who do not have a Norwegian bank account must ensure that payment for the allocated VPS Offer Shares is made on or before the Payment Date. Details and instructions can be obtained by contacting ABG Sundal Collier ASA, telephone:

+ 47 22 01 60 00.

### DETAILS OF THE SUBSCRIPTION

Subscriber's VPS account	Number of Subscription Rights (one Subscription Right gives right to subscribe for one VPS Offer Share)	Total number of VPS Offer Shares subscribed (incl. over-subscription, if any)	(For broker: Consecutive no.)
<b>SUBSCRIPTION RIGHT'S SECURITIES NUMBER:</b> 0011896980			<b>Subscription Price per VPS Offer Share</b> NOK 0.55
			<b>Subscription amount to be paid</b> NOK

### IRREVOCABLE AUTHORIZATION TO DEBIT ACCOUNT (MUST BE COMPLETED BY SUBSCRIBERS WITH A NORWEGIAN BANK ACCOUNT)

Norwegian bank account to be debited for the payment for VPS Offer Shares allocated (number of VPS Offer Shares allocated x NOK 0.55).	<b>(Norwegian bank account no. 11 digits)</b>
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I/we hereby irrevocably (i) subscribe for the number of VPS Offer Shares specified above subject to the terms and conditions set out in this Subscription Form and in the Prospectus, (ii) authorize and instruct the Manager (or someone appointed by it acting jointly or severally to take all actions required to subscribe and transfer such VPS Offer Shares allocated to me/us to the VPS Registrar and ensure delivery of the beneficial interests to such VPS Offer Shares to me/us in the VPS, on my/our behalf, (iii) authorize ABG Sundal Collier ASA to debit my/our bank account as set out in this Subscription Form for the amount payable for the VPS Offer Shares allotted to me/us, and (iv) confirm and warrant to have read the Prospectus and that I/we are eligible to subscribe for VPS Offer Shares under the terms set forth therein.

\_\_\_\_\_  
**Place and date**  
Must be dated in the Subscription Period

\_\_\_\_\_  
**Binding Signature**  
The subscriber must have legal capacity. When signed on behalf of a company or pursuant to an authorization, documentation in the form of a company certificate or power of attorney must be enclosed.

**INFORMATION ON THE SUBSCRIBER**

VPS Account number	
First name	
Surname/company	
Street address	
Post code/district/country	
Personal ID number/organization number	
Norwegian bank account for dividends	
Nationality	
Daytime telephone number	

**Selling Restrictions:**

The attention of persons who wish to subscribe for VPS Offer Shares is drawn to section 14 "Selling and Transfer Restrictions" of the Prospectus. The making or acceptance of the Subsequent Offering to or by persons who have registered addresses outside the Netherlands or Norway or who are resident in, or citizens of, countries outside the Netherlands or Norway, may be affected by the laws of the relevant jurisdiction. Those persons should consult their professional advisers as to whether they require any governmental or other consents or need to observe any other formalities to enable them to subscribe for VPS Offer Shares. It is the responsibility of any person outside the Netherlands or Norway wishing to subscribe for VPS Offer Shares under the Subsequent Offering to satisfy himself/ herself as to the full observance of the laws of any relevant jurisdiction in connection therewith, including obtaining any governmental or other consent which may be required, the compliance with other necessary formalities and the payment of any issue, transfer or other taxes due in such territories. The Subscription Rights and VPS Offer Shares have not been registered and will not be registered under the United States Securities Act of 1933, as amended (the "U.S Securities Act") or under securities law of any state or other jurisdiction of the United States and may not be offered, sold, taken up, exercised, resold, delivered or transferred, directly or indirectly within the United States. The Subscription Rights and VPS Offer Shares have not been and will not be registered under the applicable securities laws of Canada, Japan or Australia and may not be offered, sold, resold or delivered, in or into Canada, Japan or Australia except pursuant to an applicable exemption from applicable securities laws. This Subscription Form does not constitute an offer to sell or a solicitation of an offer to buy VPS Offer Shares or Shares in any jurisdiction in which such offer or solicitation is unlawful. Subject to certain exceptions, the Prospectus will not be distributed in the United States, Canada, Japan or Australia. Except as otherwise provided in the Prospectus, the Subscription Rights, the VPS Offer Shares and the Shares may not be transferred, sold or delivered in the United States, Canada, Japan or Australia. Exercise of Subscription Rights and subscription of VPS Offer Shares in contravention of the above restrictions and those set out in the Prospectus may be deemed to be invalid.

**Conditions for completion of the Subsequent Offering:**

The completion of the Subsequent Offering is conditional upon the following condition being satisfied prior to issuance of any Company Shares or VPS Offer Shares in connection with the Subsequent Offering:

- (i) all necessary corporate resolutions being validly made, including the General Meeting granting the Supervisory Board an authorisation to issue up to 130 million new Shares.

# REGISTRAR AGREEMENT

RELATED TO REGISTRATION IN  
THE NORWEGIAN CENTRAL SECURITIES DEPOSITORY

BETWEEN

*Funcom N.V.*

AND

*DnB NOR Bank ASA*  
*Registrars Department*



This agreement (the "Agreement") is entered into this 23 day of November 2005 by and between:

**Funcom N.V.**, a company under the laws of the Netherlands, with corporate seat in Katwijk, the Netherlands, and address at: Steinackerstrasse 9, 8700 Küsnacht, Switzerland, number N.V. 575611 (hereinafter the "Company")

and

**DnB NOR Bank ASA**, as represented by the Registrar's Department ("Verdipapirservice"), a company under the laws of the Kingdom of Norway with registered address at Stranden 21, 0250 OSLO, (postal address 0021 Oslo), Norway (hereinafter the "Registrar").

WHEREAS the Company is existing and operating under the laws of the Netherlands;

WHEREAS the Company's Shareholders Register in accordance with its Articles of Association and Netherlands law will be kept in the Netherlands, maintained by the Company;

WHEREAS the Company is applying for listing of the VPS Shares at the Oslo Stock Exchange;

WHEREAS the Registrar is willing to:

- (i) act as registrar on behalf of the Company in all matters relating to the VPS and thereby as the connecting link between the VPS, the Company's Shareholders Register and the Company; and
- (ii) act as nominee under the name of: DnB NOR Bank ASA, Registrar Dept., Stranden 21, 0250 Oslo (postal address 0021 Oslo), Norway, in the Company's Shareholders Register on behalf of the VPS-Shareholders who from time to time are registered in the VPS Register as owners of VPS Shares.

NOW, THEREFORE, the parties have entered into the following AGREEMENT:

## 1. DEFINITIONS

Shares	The shares of the Company as issued from time to time by the Company and registered in its shareholder register
Company's Shareholders Register	the register of shareholders of the Company maintained by the Company in accordance with the Company's Articles of Association.
VPS	The Norwegian Central Securities Depository ("Verdipapirsentralen"), a Norwegian computerised, book-entry based system, in which ownership and transactions related to securities are recorded.

VPS Register	The register of Shareholders maintained in the VPS.
VPS Shares	The VPS registered interest of the VPS Shareholders in the Share, each VPS Share representing beneficial ownership of one Share.
VPS-Shareholder	Person or legal entity registered in the VPS Register as owner of a VPS Share.
Security	Any share, debenture, security or other right, asset or benefit (other than cash dividend).
Oslo Stock Exchange	Oslo Børs ASA.

## **2. UNDERTAKINGS BY THE REGISTRAR**

- 2.1 The Registrar undertakes to hold as nominee on behalf of the VPS-Shareholders, all of the issued Shares in the Company (to the extent VPS Shares have not been exchanged into Shares in accordance with clause 8.2) and to provide for the registration in the VPS Register of each VPS-Shareholder's its VPS Shares, representing the VPS-Shareholder's beneficial ownership in an equal number of Shares in the Company in which that VPS-Shareholder has acquired a beneficial ownership.

If any Securities are issued, transferred or otherwise accrue to the Registrar as nominee under this Agreement, including, but not limited to, as a result of any change in nominal or par value, or any split-up, cancellation, consolidation or reclassification, of the Shares, or any recapitalization, reorganization, merger, consolidation or sale of assets affecting the Company or to which the Company is a party, the Registrar undertakes and will ensure that the legal or registered title to such Securities is held by it solely on behalf of and for the benefit of each VPS-Shareholder pro rata to the number of VPS Shares in which that VPS-Shareholder is recorded in the VPS Register as having an ownership.

At the request of the Company, the Registrar will, to the extent legally permitted and practically and reasonably possible within the VPS system, distribute such Securities to each VPS-Shareholder pro rata to the number of VPS Shares in which each VPS-Shareholder is recorded in the VPS Register as having an ownership, as in the case of the distribution of a non-cash asset, in accordance with Clause 2.4.

The Company shall issue all its Shares to the Registrar who shall hold legal title to the Shares on behalf of and for the benefit of the VPS-Shareholders.

- 2.2 The Registrar undertakes to keep records of the VPS Register with regard to the following:
- (a) the name and address of each VPS-Shareholder;
  - (b) the number of VPS Shares held by each VPS-Shareholder;
  - (c) the date each VPS-Shareholder was registered in the VPS Register as a VPS-Shareholder;

- (d) the date any person ceased to be a VPS-Shareholder;
- (e) any other information which Norwegian law, rules or regulations from time to time prescribes that the VPS Register shall include.

Information concerning (c) and (d) above will be retained for 10 years following the date referred to in (d). Additional information might be retained in order to comply with any applicable Norwegian legislation in force from time to time.

2.3 The Registrar undertakes to distribute all dividends or other cash amounts declared and paid to it by the Company to the VPS-Shareholders pro rata to the number of VPS Shares held by each VPS-Shareholder. Any dividends to be paid through the VPS must be available in a bank account held with the Registrar a minimum of two banking days prior to date of payment to the VPS-Shareholders. To VPS-Shareholders who maintain a Norwegian address and/or have supplied the VPS with details of their Norwegian kroner account such dividend will be paid in Norwegian kroner. VPS-Shareholders whose address registered with the VPS is outside Norway and who have not supplied the VPS with details of any Norwegian kroner account, will receive dividends by cheque in their local currency. If it is not practical in the Registrar's sole opinion to issue a cheque in a local currency, a cheque will be issued in U.S dollars. The issuing and mailing of cheques will be executed in accordance with the standard procedures of DnB NOR Bank ASA, Foreign Payments Department. The exchange rate(s) that is (are) applied will be DnB NOR Bank ASA's exchange rate on the date of issuance.

2.4 If the Company intends to distribute assets other than cash, the Company shall notify the Registrar at least 20 days in advance, and the Registrar will in its reasonable discretion determine whether the distribution of such assets to the VPS-Shareholders is lawful and reasonably practicable.

If the Registrar determines that it is lawful and reasonably practicable to distribute the assets to VPS-Shareholders, the Registrar shall distribute the assets to the VPS-Shareholders in a manner it deems practicable.

The Registrar will not distribute the assets to VPS-Shareholders or any class of VPS-Shareholders and will sell the assets to the extent that the Registrar determines that the distribution to VPS-Shareholders or such class of VPS-Shareholders is not lawful and/or reasonably practicable.

The Registrar shall distribute the proceeds of the sale to the VPS-Shareholders to whom the assets were not distributed as in the case of a cash distribution, in accordance with Clause 2.3.

2.5 The Registrar undertakes to ensure that whenever it receives notice that the Company calls for a general meeting of shareholders, it shall promptly (and in any event within the period required for notice by the Company's Articles of Association) dispatch to each VPS-Shareholder without undue delay (via air mail to VPS-Shareholders with non-Norwegian address) at his registered address in the VPS Register, a copy of the notice of the meeting along with any proxy card and other materials accompanying such notice.

The Registrar agrees not to attend or vote at such meeting other than in accordance with instructions (if any) of the VPS-Shareholders. If requested by a VPS-Shareholder to attend the Registrar such VPS-Shareholder shall cover the Registrar's reasonable costs and expenses. If requested to do so by a VPS-Shareholder, the Registrar agrees to issue in favour of the VPS-Shareholder (or any person nominated by the VPS-Shareholder) an instrument of proxy to allow that the VPS-Shareholder to attend and vote at a general meeting of the Company as if he was a direct shareholder in the Company in respect of the number of VPS Shares of which he is registered in the VPS Register as the owner.

- 2.6 The Registrar shall ensure that whenever the Company sends to the Register any notice, report, accounts, financial statements, circular or similar document (each a "Document") relating to the affairs of the Company, it shall despatch or procure the despatch of a copy of such Document to each VPS-Shareholder at his registered address in the VPS Register.
- 2.7 In the event of any change or alteration of the share capital of the Company, the Registrar undertakes to make all necessary amendments in the VPS without undue delay. For the purpose of this clause, any instructions from the Company shall be accompanied by relevant documentation specifying the new share capital of the Company or any other alterations hereto.
- 2.8 The Registrar undertakes, to the extent that it is within the Registrar's reasonable powers, to confer upon all VPS-Shareholders the rights and obligations to which the VPS-Shareholders would be entitled if they were direct shareholders of the Company including, without limitation the right of VPS-Shareholders who, in aggregate, hold at least ten per cent of the total number of VPS Shares on issue to require the Registrar to request the directors of the Company to convene a general meeting of the Company, and the right of VPS-Shareholders who in aggregate hold at least 1 % of VPS Shares or VPS Shares with a market value of fifty million Euro (Euro 50,000,000.-) to file agenda items for the next general meeting of shareholders of the Company if this request is received in writing not later than 60 days in advance of such meeting.
- 2.9 The Registrar undertakes to provide services to the Oslo Stock Exchange, investment firms, the supervisory board and the management board of the Company and the VPS-Shareholders in matters related to this Agreement and the VPS.
- 2.10 The Registrar undertakes to assist the Company in discharging all obligations towards the Oslo Stock Exchange under the listing agreement between Oslo Stock Exchange and the Company to the extent the information requested is available in the VPS system.
- 2.11 In addition to the undertakings stated above, the Registrar can, subject to a separate agreement between the Company and the Registrar, provide advice and technical assistance in connection with:
  - Preparing, organising and assisting the Company when a shareholder meeting and/or an annual or extraordinary general meeting of the Company is called for.
  - Maintaining and updating a record of the names of the persons that the Company considers to be insiders according to relevant legislation.
  - Issues with and without pre-emptive rights for former/existing VPS-Shareholders.

- Issues directed towards employees, and/or special groups, both in Norway and abroad.
- Bonus issues, with and without payment for excess holdings of shares.
- Write-downs of the nominal value of the Company's share capital.
- Share splits.
- Merger(s) and/or demerger(s).
- Sales of shares to employees or purchases of shares in the market.
- Subscriptions of convertible bonds, with or without pre-emptive rights for the Company's existing/former shareholders, which may be converted to Shares at a future date.
- Acquisitions.
- Special assignments.

2.12 However, notwithstanding the above, the Registrar does not undertake any obligation to render any tax reporting services to any tax authorities or to collect any tax on behalf of any tax authorities.

2.13 The Registrar may demand up front payment before commencing any such services as stated in this chapter 2.

### **3. UNDERTAKINGS BY THE COMPANY**

The Company undertakes to:

- a) Inform the Registrar of any decision made by the Company that is relevant for the continued registration of the Company and its VPS-Shareholders in the VPS Register, in order to enable the Registrar to comply with this Agreement.
- b) Inform the Registrar in advance of all details of any proposed dividend before any payment is made to the Registrar on behalf of the VPS-Shareholders, so that the Registrar may meet any requirements from the VPS related to processing the dividend payments to the VPS-Shareholders.
- c) Provide the Registrar with a copy of its Deed of Incorporation, and its Articles of Association as they are in force, and an extract of the Companies' file with the Trade Register, or any similar documents, and immediately inform, and send copies to, the Registrar of any amendment to such documents, and provide the Registrar with its view regarding such changes to the extent relevant for the registration with the Registrar.
- d) When a general meeting is called for, to give the Registrar ample time to distribute notices of such meeting to the VPS-Shareholders, to collect and to report the proxy voting totals to the Company within the given time limit for such reporting enabling the Registrar to comply with the provisions of this Agreement.

#### **4. INFORMATION FROM THE VPS REGISTER**

- 4.1 Each year the Registrar shall produce and send to the Company an updated list of the VPS-Shareholders registered in the VPS Register as at year's end.
- 4.2 At the request of the Company, the Registrar shall order from VPS and send to the Company a printout or printouts of the VPS Register, address labels or statistics from the VPS.
- 4.3 At the request of the Company, the Registrar shall facilitate the transfer of information generated in the VPS to the Company in line with such information packages etc. which from time to time are offered by the Registrar or VPS to issuers of VPS-registered securities.
- 4.4 If anyone other than the Company requests address labels for the VPS-Shareholders from the VPS, the Registrar shall request permission from the Company prior to releasing such address labels.
- 4.5 If investment firms, financial newspapers or other persons request a transcript of the Company's 20 largest VPS-Shareholders, the Registrar is authorised by the Company to release such transcripts to the requesting party.
- 4.6 Any statistics of the VPS-Shareholders of the Company may be released to any requesting party subject to a separate agreement between the Company and the Registrar, or the Company's general consent to release such statistics.

#### **5. PAYMENTS**

- 5.1 The Company agrees to pay the Registrar for the latter's services at the Registrar's standard rates as they apply from time to time, which may include reasonable internal and external fees, costs and expenses including internal and external legal fees. The Registrar shall send monthly invoices to the Company detailing the fees, costs and expenses payable including out-of-pocket expenses and costs incurred by the Registrar. In addition, the Company shall pay all expenses (including internal and external legal fees) incurred by Registrar in its capacity as Registrar.
- 5.2 The Company agrees to pay the account operator fee in advance in 3 instalments per year to the Registrar. The total amount of the account operator fee for the previous year will be calculated by the VPS and charged to the Company by the Registrar during the first quarter the following year.
- 5.3 The Registrar shall charge any fees, costs and expenses as described in clause 5.1 and 5.2 shall be to the Company's account No. 11 7099 04 47002 with DnB NOR Bank ASA. Such settlement of charges shall take place monthly in arrears.

## 6. CONFIDENTIALITY

Any information regarding the Company or otherwise relating to its affairs, which may be obtained by the Registrar in connection with the performance of its duties as Registrar in accordance with this Agreement, will be treated as private and confidential and will not be disclosed to any third person unless required by applicable law.

## 7. LIABILITY

### 7.1 VPS' liability

In accordance with article 9-1 of the Norwegian Act Concerning the Registration of Financial Instruments ("The Securities Registry Act") (Office translation):

"The Central Securities Depository is liable for financial loss inflicted on anyone as a result of errors that occur in connection with securities registration operations. This does not apply in the event that the Depository proves that the error is due to circumstances outside the Depository's control, the consequences of which the Depository could not reasonably be expected to avoid or surmount.

The Securities Depository is liable for other financial losses in the event that such loss is due to negligence on the part of the Depository or another entity for which the Depository is answerable.

The liability for damages as specified in the first sub-article above only applies to direct losses and such liability is in any event limited to a maximum of NOK 500million for any individual error".

As regards liability for other losses, in its business terms and conditions VPS has confined this to only apply to direct losses ensuing from events within VPS' control and limited to a maximum of NOK 2.5 million per wrongful act or omission. In addition, VPS operates with a deductible of NOK 10,000 per damage event.

The Company may have the Registrar, as Registrar for the Company, present any claims the Company has against VPS. The Registrar may only be held liable for such errors committed by VPS on the terms in clause 7.4.

In the event that the Registrar does not receive full settlement from VPS due to the deductible, the Registrar may demand payment of the corresponding amount from the Company.

- 7.2 Each party is liable for any direct losses suffered by the other party as a result of breach of this Agreement by the first party. The parties are not liable for indirect damage or indirect loss of any nature.
- 7.3 A party cannot under any circumstances be held liable for any loss attributable to circumstances beyond that party's control, including:
- a) errors committed by others, including errors attributable to sub-suppliers, incorrect or incomplete information from VPS, the other party, VPS-Shareholders, VPS-Shareholders' registrars or investment firms, or

- b) power failures, errors in or outages of electronic data processing systems, telecommunication networks etc., fire, water damage, strike, changes in legislation, orders or injunctions issued by the authorities or the suspension or cessation of monetary or securities settlements.

7.4 The Registrar cannot under any circumstances be held liable for errors committed by VPS or losses incurred as a result of VPS' conduct, unless and only to the extent that the Registrar may hold VPS liable for the same losses.

## **8. TAX LIABILITY**

8.1 The Registrar does not undertake any liability for taxes or duties to any authorities, whether Norwegian or foreign, in its capacity acting as Registrar in accordance with this Agreement. Further, the Registrar does not undertake any obligation to render any tax reporting to any tax authorities, or to collect any tax on behalf of any tax authorities.

8.2. The Company will indemnify the Registrar in respect of any claim for taxes or duties or other liability that may occur as a result of the Registrar either receiving, delivering or holding Company shares in connection with the Company being registered in the VPS or the Company's shares being so registered, or the Registrar issuing or cancelling Company shares in or out of the VPS system in accordance with Company instructions, or by the Registrar performing its duties in accordance with this Agreement.

## **9. THE RIGHTS OF THE VPS-SHAREHOLDERS**

9.1 This Agreement gives any VPS-Shareholder a third party right, to enforce the provisions in clauses 2.1 to 2.8 (inclusive) and 9.2 and 9.3 directly against the Registrar, and the Registrar may be held liable towards the VPS-Shareholders on the same terms as set out in clause 7.

9.2 A VPS-Shareholder may at any time request that the Registrar arrange for that VPS-Shareholder to be registered in the Company's Shareholders Register (in place of the Registrar as nominee) as the legal owner of a number of Shares equal to the number of VPS Shares in the Company of which that VPS-Shareholder is recorded in the VPS Register. Promptly upon receipt of such request, the Registrar shall, at the expense of that VPS-Shareholder sign all documents and do all such things as are reasonably necessary to have that VPS-Shareholder registered in the Company's Shareholders Register as the legal owner of such Shares. In order to enable the Registrar to terminate the VPS Shares, such VPS Shares must be transferred to a VPS account as determined by the Registrar. The VPS Shares must be transferred to the Registrar prior to the Registrar taking any actions as described in this clause.

9.3 A shareholder registered directly as legal owner of Shares in the Company's Register of Members may at any time request that, at the expense of that shareholder, the Registrar arrange for that shareholder to be registered in the VPS-Register as owner of VPS Shares against the Registrar being registered in the Company's Shareholders Register as legal owner (as nominee) of that number of Shares. Promptly upon receipt of such request, the Registrar



shall sign all documents and do all such things as are reasonably necessary to have that shareholder registered in the VPS- Register as the owner of such VPS Shares. In order to enable the Registrar to issue VPS Shares, the Shares must be transferred into the name of the Registrar, and the shareholder must directly or indirectly hold or open a VPS account in the VPS system, and advise such VPS account number to the Registrar.

## **10. TERMINATION**

- 10.1 This Agreement may be terminated by either party with a minimum of three months prior written notice.
- 10.2 Either of the parties may terminate this Agreement immediately on giving written notice to the other party in the event of the non-performance of payment obligations or any other material breach of the Agreement. In respect of the Company's payment obligations under clause 5, payment failure shall only give grounds for termination if such failure is not remedied on or before the 10th business day after the Registrar gives the Company notice of that failure. The Registrar may terminate this Agreement immediately in the event that the Company becomes unable to pay its debts.

## **11. NOTICES**

Any notice or other communication to be given under this agreement shall be sent to: -

### **In case of the Company:**

Funcom N.V.  
Steinackerstrasse 9,  
8700 Küsnacht,  
Switzerland

Fax no: + 41 1912 2715

Attn: Jan Inge Torgersen

### **In case of the Registrar:**

DnB NOR Bank ASA  
Stranden 21  
0021 OSLO

Fax no: 22 94 90 20

Attn: Kjetil Giil Berg

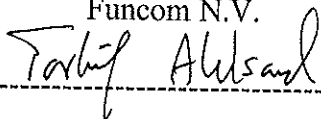
## 12. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Kingdom of Norway. The Company and the Registrar submit to the exclusive jurisdiction of the Norwegian court with respect to any dispute arising out of or in connection with this Agreement, venue to be Oslo Municipal Court.

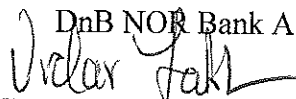
This Agreement is issued in two originals, one for each of the parties.

Oslo, 23 day November of 2005

Funcom N.V.

  
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DnB NOR Bank ASA

  
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RR/GE/542086594/STATUTENWIJZIGING

Heden, zesentwintig april tweeduizend dertien, verscheen voor mij, -----  
Mr John Roozeboom, notaris te Rijswijk: -----  
de heer Mr Rutger Paul Revoort, kandidaat-notaris, werkzaam ten kantore van  
Caminada Notarissen aan de Haagweg 175 te 2281 AJ Rijswijk, geboren te ----  
Gorinchem op vijftien september negentienhonderd negenenzeventig.-----  
De verschenen persoon verklaarde:-----  
- dat de algemene vergadering van aandeelhouders van **FUNCOM N.V.**, een -  
naamloze vennootschap, statutair gevestigd te Katwijk, kantoorhoudende -----  
Keplerstraat 34 te 1171 CD Badhoevedorp, ingeschreven in het handelsregister  
onder nummer 28073705, welke vennootschap werd opgericht bij akte op ----  
negenentwintig november negentienhonderd zesennegentig verleden voor Mr -  
C.E.M. van Steenderen, destijds notaris te Rijswijk, en welker statuten -----  
laatstelijk werden gewijzigd bij akte op achttien mei tweeduizend twaalf -----  
verleden voor een waarnemer van Mr A.M.C. van Steenderen, notaris te -----  
Rijswijk, heeft besloten tot wijziging van haar statuten;-----  
- dat de verschenen persoon bij dat besluit werd gemachtigd de akte van -----  
statutenwijziging te doen verlijden en te tekenen;-----  
./ - dat van gemeld besluit tot statutenwijziging en gemelde machtiging blijkt uit -  
een aan deze akte te hechten geschrift.-----  
De verschenen persoon verklaarde vervolgens de statuten van genoemde -----  
vennootschap te wijzigen als volgt: -----  
I      Aan artikel 13 wordt een nieuw lid 3 toegevoegd, dat komt te luiden:--  
13.3.    Een directeur neemt niet deel aan de beraadslaging en besluitvorming  
als hij daarbij een direct of indirect persoonlijk belang heeft dat -----  
strijdig is met het belang van de vennootschap en de met haar -----  
verbonden onderneming. Wanneer hierdoor geen directiebesluit kan -  
worden genomen, wordt het directiebesluit genomen door de raad ---  
van commissarissen.-----

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II.      Artikel 17 lid 1 komt te luiden:-----

17.1.    De raad van commissarissen bestaat uit een of meer leden, te -----  
           benoemen door de algemene vergadering van aandeelhouders op ----  
           voorstel van de raad van commissarissen. Het aantal commissarissen  
           wordt door de algemene vergadering van aandeelhouders vastgesteld.

III      Artikel 20 lid 1 komt te luiden:-----

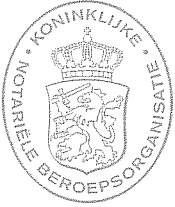
20.1.    De raad van commissarissen kan besluiten nemen met een gewone --  
           meerderheid van de stemmen van de in functie zijnde -----  
           commissarissen. -----  
           Iedere commissaris heeft recht op het uitbrengen van één stem. Bij --  
           staken van stemmen heeft de voorzitter de beslissende stem. Bij -----  
           afwezigheid kan een commissaris een volmacht verlenen, echter -----  
           slechts aan een andere commissaris.-----  
           Een commissaris neemt niet deel aan de beraadslaging en -----  
           besluitvorming als hij daarbij een direct of indirect persoonlijk belang  
           heeft dat tegenstrijdig is met het belang van de vennootschap en de --  
           met haar verbonden onderneming. Wanneer hierdoor geen besluit ---  
           kan worden genomen, wordt het besluit genomen door de algemene  
           vergadering.-----  
           De raad van commissarissen kan schriftelijk besluiten zonder een ----  
           vergadering te houden, mits de voorstellen voor dergelijke besluiten -  
           schriftelijk aan alle commissarissen zijn medegedeeld en geen -----  
           commissaris zich tegen deze wijze van besluitvorming heeft verzet.---

IV      Aan artikel 20 wordt een nieuw lid 5 toegevoegd, dat komt te luiden: -----

20.5.    Bij belet of ontstentenis van een of meer commissarissen zijn de -----  
           overige commissarissen, of is de enige overgebleven commissaris, ---  
           tijdelijk met het toezicht belast. -----  
           Bij belet of ontstentenis van alle commissarissen is een door de -----  
           algemene vergadering daartoe voor onbepaalde tijd aan te wijzen ----  
           persoon tijdelijk met het toezicht belast. -----

Tenslotte werd verklaard dat de statuten van de vennootschap na voormelde -  
wijziging luiden als volgt: -----

**Naam en zetel.**-----



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**Artikel 1.**-----

1.1. De vennootschap is genaamd: **FUNCOM N.V.**-----

1.2. Zij is gevestigd te Katwijk. -----

**Doel.**-----

**Artikel 2.**-----

De vennootschap heeft ten doel het ontwikkelen, marketen en handelen in ---  
computerspellen, daaronder begrepen grote, online spellen van meerdere -----  
spelers, daarmee verbonden spellen en verschillende soorten elektronische -----  
apparatuur, het nemen en verlenen van licenties en andere industriële -----  
eigendomsrechten, het nemen van verplichtingen voor ondernemingen -----  
waarmee zij in een groep is verbonden, het nemen van een financieel belang in  
die ondernemingen, zomede al hetgeen in de ruimste zin van het woord met ---  
het vorenstaande verband houdt of daartoe bevorderlijk kan zijn, waaronder --  
begrepen doch niet beperkt tot het op enigerlei wijze stellen van zekerheid of -  
het zich verbinden voor verplichtingen van derden. -----

**Kapitaal.**-----

**Artikel 3.**-----

Het maatschappelijk kapitaal van de vennootschap bedraagt tienmiljoen euro --  
(EUR 10.000.000,00), verdeeld in tweehonderdvijftigmiljoen (250.000.000) ----  
aandelen, elk nominaal groot vier cent (EUR 0,04). -----

**Uitgifte van aandelen.**-----

**Artikel 4.**-----

4.1. De raad van commissarissen is bevoegd tot uitgifte van aandelen en --  
tot het vaststellen van de koers en de verdere voorwaarden van de ----  
uitgifte indien en voor zover de raad van commissarissen door de ----  
algemene vergadering van aandeelhouders daartoe is aangewezen als -  
bevoegd orgaan. Een aanwijzing als hierboven bedoeld kan slechts ---  
geschieden voor een bepaalde duur van ten hoogste de periode tot en  
met de eerstvolgende algemene vergadering van aandeelhouders -----  
welke wordt gehouden nadat drie volledige kalenderjaren zijn -----  
verstreken sinds de dag van vorenbedoelde aanwijzing (de "Periode")  
en zal telkens met niet meer dan een Periode kunnen worden -----  
verlengd. -----

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- 4.2. Indien een aanwijzing als bedoeld in het eerste lid niet van kracht is, is de algemene vergadering van aandeelhouders bevoegd op voorstel --- van en op de voorwaarden en condities vastgesteld door de raad van commissarissen te besluiten tot uitgifte van aandelen.-----
- 4.3. In geval van uitgifte van aandelen genieten aandeelhouders een recht van voorkeur in verhouding tot het aantal aandelen dat zij bezitten, -- behoudens het in de wet bepaalde. Bij uitgifte van aandelen bestaat -- geen voorkeursrecht op aandelen uit te geven aan werknemers van de vennootschap of van een groepsmaatschappij. -----  
De raad van commissarissen is bevoegd tot het beperken of uitsluiten van het aan aandeelhouders toekomende voorkeursrecht, indien en -- voor zover de raad van commissarissen ook daartoe door de ----- algemene vergadering van aandeelhouders is aangewezen als het voor de duur van de aanwijzing bevoegde orgaan. Het bepaalde in de ----- tweede volzin van het eerste lid is van overeenkomstige toepassing.---
- 4.4. Indien een aanwijzing als bedoeld in het derde lid niet van kracht is, is de algemene vergadering van aandeelhouders bevoegd op voorstel --- van de raad van commissarissen het aan aandeelhouders toekomende voorkeursrecht te beperken of uit te sluiten.-----
- 4.5. Voor een besluit van de algemene vergadering tot beperking of ----- uitsluiting van het voorkeursrecht of tot aanwijzing van de raad van - commissarissen als het orgaan dat bevoegd is te besluiten omtrent -- beperking of uitsluiting van het voorkeursrecht is een meerderheid -- van ten minste twee derden van de uitgebrachte stemmen vereist.----
- 4.6. Onverminderd het bepaalde in artikel 80, lid 2, Boek 2, Burgerlijk ---- Wetboek, worden aandelen uitgegeven a pari.-----
- 4.7. Gewone aandelen worden slechts tegen volstorting uitgegeven.-----
- 4.8. Storting moet in geld geschieden voor zover niet een andere inbreng is overeengekomen. Storting in geld kan in vreemd geld geschieden -- indien de vennootschap daarin toestemt. Met storting in vreemd geld wordt aan de stortingsplicht voldaan voor het bedrag waartegen het - gestorte bedrag vrijelijk in Nederlands geld kan worden omgewisseld. Bepalend is de wisselkoers op de dag van storting, dan wel na -----



toepassing van de volgende zin op de daarbedoelde dag. De -----  
vennootschap kan storting verlangen tegen de wisselkoers op een ----  
bepaalde dag binnen twee maanden voor de laatste dag waarop moet -  
worden gestort mits de aandelen of certificaten daarvan onverwijld --  
na de uitgifte zullen worden opgenomen in de prijscourant van een ---  
beurs buiten Nederland. -----

- 4.9. Dit artikel is van overeenkomstige toepassing op het verlenen van ----  
rechten tot het nemen van aandelen, doch is niet van toepassing op --  
het uitgeven van aandelen aan iemand die op een voordien reeds -----  
verkregen recht tot het nemen van aandelen uitoefent. -----

**Inkoop van aandelen.** -----

**Artikel 5.** -----

- 5.1. De vennootschap kan onder bezwarende titel eigen aandelen -----  
verwerven indien en voor zover: -----
- a. haar eigen vermogen verminderd met de verkrijgingsprijs niet ----  
kleiner is dan het geplaatste en opgevraagde kapitaal vermeerderd  
met de reserves die krachtens de wet moeten worden -----  
aangehouden; -----
  - b. het nominale bedrag van de aandelen in haar kapitaal die de -----  
vennootschap verkrijgt, houdt of in pand houdt, of die worden --  
gehouden door een dochtermaatschappij, niet meer belooft dan -  
een/tiende van het geplaatste kapitaal; en -----
  - c. de algemene vergadering van aandeelhouders aan de directie ----  
machtiging heeft verleend tot het verkrijgen van zodanige -----  
aandelen, welke machtiging telkens voor ten hoogste achttien ---  
maanden kan worden verleend, onverminderd het overigens in --  
de wet te dier zake bepaalde. -----
- 5.2. De vennootschap kan zonder daartoe door de algemene vergadering -  
van aandeelhouders te zijn gemachtigd en onverminderd het -----  
overigens in lid 1 onder a en b bepaalde eigen aandelen verwerven ----  
om, krachtens een voor hen geldende regeling, deze aandelen over te  
dragen aan arbeiders in dienst van de vennootschap of van een -----  
groepsmaatschappij. -----

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- 5.3. Aldus verworven aandelen kunnen weer vervreemd worden. De -----  
vennootschap is tot verwerving van eigen aandelen als in lid 1 -----  
bedoeld – indien een machtiging als daar bedoeld van kracht is – of --  
als in lid 2 bedoeld niet bevoegd dan met goedkeuring van de raad ---  
van commissarissen. Tot vervreemding van eigen aandelen – met ---  
uitzondering van eigen aandelen verworven onder toepassing van het  
bepaalde in lid 2 – is de vennootschap evenmin bevoegd dan met ---  
goedkeuring van de raad van commissarissen.-----  
Indien certificaten van aandelen in de vennootschap zijn uitgegeven,  
worden voor de toepassing van dit lid en het vorige lid zodanige -----  
certificaten met aandelen gelijkgesteld. -----
- 5.4. Voor een aandeel dat toebehoort aan de vennootschap of aan een ---  
dochtermaatschappij daarvan kan in de algemene vergadering van ---  
aandeelhouders geen stem worden uitgebracht; evenmin kan stem ---  
worden uitgebracht voor een aandeel waarvan de vennootschap of ---  
een dochtermaatschappij de certificaten houdt. -----  
Bij de vaststelling in hoeverre de aandeelhouders stemmen, aanwezig  
of vertegenwoordigd zijn, of in hoeverre het aandelenkapitaal wordt -  
verschafft of vertegenwoordigd is, wordt geen rekening gehouden met  
aandelen waarvan de wet of de statuten bepaalt dat daarvoor geen ---  
stem kan worden uitgebracht.-----
- 5.5. Op voorstel van de raad van commissarissen, is de algemene -----  
vergadering van aandeelhouders bevoegd te besluiten tot intrekking -  
van door de vennootschap verworven eigen aandelen.-----

**Aandelen, aandeelbewijzen en aandeelhoudersregister.** -----

**Artikel 6.** -----

De aandelen luiden op naam in de vorm van een inschrijving in het -----  
aandelenregister zonder afgifte van een aandeelbewijs.-----

**Artikel 7.** -----

- 7.1. Met inachtneming van het in de wet bepaalde wordt door of namens  
de vennootschap met betrekking tot de aandelen op naam een register  
gehouden, dat regelmatig wordt bijgehouden en dat, geheel of -----  
gedeeltelijk, uit meerdere exemplaren kan bestaan en op meerdere ---





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plaatsen kan berusten, een en ander zoals de directie zal beslissen. ----  
Een deel van het register kan in het buitenland worden gehouden om  
te voldoen aan buitenlandse wettelijke vereisten of aan de vereisten ---  
gesteld door een buitenlandse effecten beurs. -----

- 7.2. In het register wordt ten aanzien van iedere aandeelhouder -----  
aangetekend zijn naam, zijn adres, alsmede zodanige verdere gegevens  
als de directie, al dan niet op verzoek van een aandeelhouder, -----  
wenselijk oordeelt. -----
- 7.3. De directie bepaalt de vorm en de inhoud van het aandelenregister ---  
met inachtneming van het in de eerste twee leden van dit artikel -----  
bepaalde. De directie kan beslissen dat het register verschillend zal ---  
zijn van vorm en inhoud al naargelang het betrekking heeft op -----  
aandelen volgens model I, of op aandelen volgens model II. -----

**Artikel 8.** -----

- 8.1. Op zijn verzoek wordt aan een aandeelhouder om niet een verklaring  
verstrekkt van hetgeen het register vermeldt omtrent te zijnen name ---  
ingeschreven aandelen, welke verklaring kan worden ondertekend ---  
door een der daartoe door de directie aan te wijzen bijzondere -----  
gemachtigden. -----
- 8.2. Het in de artikelen 7 en 8 bepaalde is van overeenkomstige toepassing  
ten aanzien van hen die een recht van vruchtgebruik of een pandrecht  
hebben op een of meer aandelen op naam, op voorwaarde dat de ----  
overige door de wet vereiste gegevens in het register dienen te worden  
vermeld. -----

**Levering van aandelen.** -----

**Artikel 9.** -----

- 9.1. De levering van een aandeel op naam geschiedt hetzij door de -----  
betekening van de akte van levering aan de vennootschap, hetzij door  
de schriftelijke erkenning der levering door de vennootschap, -----  
onverminderd echter het in de volgende leden van dit artikel -----  
bepaalde. -----
- 9.2. Het in het voorgaande lid van dit artikel bepaalde vindt -----  
overeenkomstige toepassing ten aanzien van de toebedeling van -----

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aandelen op naam bij scheiding en deling van enige vorm van -----  
gemeenschap, de levering van een aandeel op naam als gevolg van ---  
executie en het vestigen van beperkte zakelijke rechten op een aandeel  
op naam.-----

**Directie.**-----

**Artikel 10.**-----

- 10.1. De vennootschap wordt bestuurd door een directie, bestaande uit een  
of meer directeuren onder toezicht van een raad van commissarissen.  
Het aantal directeuren zal op voorstel van de raad van -----  
commissarissen worden vastgesteld door de algemene vergadering ---  
van aandeelhouders. De directeuren zullen worden benoemd door de  
algemene vergadering van aandeelhouders. -----  
Een directeur wordt benoemd voor de periode tot en met de -----  
eerstvolgende algemene vergadering van aandeelhouders welke wordt  
gehouden nadat drie volledige kalenderjaren zijn verstreken sinds de -  
dag met ingang waarvan hij is benoemd. -----  
Een aftredende directeur is onmiddellijk herbenoembaar.-----
- 10.2. De benoeming en ontslag van de directeuren geschiedt door de -----  
algemene vergadering van aandeelhouders, voor iedere te vervullen --  
plaats, op voorstel van de raad van commissarissen. -----
- 10.3. Een voorstel tot benoeming van een of meer directeuren kan door de  
raad van commissarissen op de agenda van een algemene vergadering  
van aandeelhouders worden geplaatst, een en ander onverminderd het  
bepaalde in artikel 25, lid 2.-----
- 10.4. De vennootschap heeft een beleid op het terrein van bezoldiging van  
de directie. Het beleid wordt vastgesteld door de algemene -----  
vergadering van aandeelhouders op voorstel van de raad van -----  
commissarissen. -----
- 10.5. De bezoldiging van de directeuren wordt met inachtneming van het -  
beleid, bedoeld in het vorige lid, vastgesteld door de raad van -----  
commissarissen. De raad van commissarissen legt ter goedkeuring aan  
de algemene vergadering van aandeelhouders voor een voorstel ten --  
aanzien van regelingen van bezoldigingen in de vorm van aandelen of



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rechten tot het nemen van aandelen. Dit voorstel bepaalt ten minste -  
hoeveel aandelen of rechten tot het nemen van aandelen aan de -----  
directie mogen worden toegekend en welke criteria gelden voor -----  
toekenning of wijziging. -----

**Artikel 11.** -----

11.1. De algemene vergadering van aandeelhouders is bevoegd één of meer  
directeuren te schorsen of te ontslaan. -----

11.2. De leden van de directie kunnen, gezamenlijk of afzonderlijk, door de  
raad van commissarissen worden geschorst. Na schorsing wordt -----  
binnen drie maanden een algemene vergadering van aandeelhouders -  
gehouden, die beslist of de schorsing zal worden opgeheven of -----  
gehandhaafd. -----

De betrokkene heeft het recht zich in die vergadering te -----  
verantwoorden. -----

**Artikel 12.** -----

12.1. De directie zomede iedere directeur afzonderlijk is bevoegd de -----  
vennootschap te vertegenwoordigen. -----

12.2. De directie is bevoegd rechtshandelingen aan te gaan als genoemd in -  
artikel 94, lid 1, Boek 2, Burgerlijk Wetboek, voor zover deze -----  
bevoegdheid niet bij enige bepaling dezer statuten dan wel bij enig ---  
besluit van de raad van commissarissen uitdrukkelijk mocht zijn -----  
uitgesloten of beperkt. -----

**Artikel 13.** -----

13.1. De raad van commissarissen benoemt een van de directeuren tot ----  
voorzitter van de directie. -----

13.2. Besluiten worden genomen bij volstreekte meerderheid van stemmen.  
Bij staking van stemmen heeft de voorzitter van de directie een -----  
beslissende stem. -----

13.3. Een directeur neemt niet deel aan de beraadslaging en besluitvorming  
als hij daarbij een direct of indirect persoonlijk belang heeft dat -----  
strijdig is met het belang van de vennootschap en de met haar -----  
verbonden onderneming. Wanneer hierdoor geen directiebesluit kan -  
worden genomen, wordt het directiebesluit genomen door de raad ---

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van commissarissen. -----

**Artikel 14.**-----

14.1. Onverminderd het elders in deze statuten bepaalde, behoeft de -----  
directie voor de navolgende besluiten:-----

(i) de voorafgaande uitdrukkelijke goedkeuring van de raad van -----  
commissarissen:-----

1. de besluiten tot het oprichten van alle soorten -----  
vennootschappen, en tot het verkrijgen dan wel het -----  
verkoop van een deelneming en tot het aangaan van enige -  
samenwerking of participatie overeenkomst; -----

2. alle meerjaren plannen van de vennootschap en het budget -  
voor het komende jaar, waarin de volgende onderwerpen ---  
worden behandeld:-----

-het investeringsbeleid;-----

-het beleid betreffende onderzoek en ontwikkeling alsmede  
het commerciële beleid en de doelstellingen; -----

-het algemene financiële beleid;-----

-het personeelsbeleid; -----

3. alle handelingen, besluiten of transacties die onder de -----  
hierboven genoemde lijst vallen en die substantieel afwijken  
van de reeds door de raad van commissarissen aangenomen  
besluiten of alle handelingen, besluiten of transacties die niet  
onder de hierboven genoemde lijst vallen en die in een -----  
daartoe strekkend besluit door de raad van commissarissen -  
specifiek omschreven zijn vastgelegd;-----

(ii) de voorafgaande uitdrukkelijke goedkeuring van de algemene ----  
vergadering van aandeelhouders: besluiten omtrent een -----  
belangrijke verandering van de identiteit of het karakter van de --  
vennootschap of de onderneming, waaronder in ieder geval (a) --  
overdracht van de onderneming van de vennootschap of vrijwel  
de gehele onderneming van de vennootschap aan een derde, (b)  
het aangaan of verbreken van duurzame samenwerking van de --  
vennootschap of een dochtermaatschappij met een andere -----



rechtspersoon of vennootschap dan wel als volledig -----  
aansprakelijke vennote in een commanditaire vennootschap of ---  
vennootschap onder firma, indien deze samenwerking of -----  
verbreking van ingrijpende betekenis is voor de vennootschap, en  
(c) het nemen of afstoten van een deelneming in het kapitaal van  
een vennootschap ter waarde van tenminste één/derde van het --  
bedrag van de activa volgens de geconsolideerde balans met -----  
toelichting volgens de laatst vastgestelde jaarrekening van de ----  
vennootschap, door haar of een dochtermaatschappij;-----

het ontbreken van de hierboven vermelde goedkeuring kan niet door  
of aan derden worden tegengeworpen.-----

- 14.2. De directie heeft de goedkeuring nodig van de algemene vergadering -  
van aandeelhouders of de raad van commissarissen overeenkomstig --  
het in de wet en deze statuten bepaalde alsmede voor zodanig -----  
directiebesluiten als door de algemene vergadering van -----  
aandeelhouders of de raad van commissarissen in haar daartoe -----  
strekking besluit nader zijn omschreven.-----

**Artikel 15.**-----

In geval van ontstentenis of belet van één of meer directeuren zullen de -----  
overige directeuren, respectievelijk zal de overblijvende directeur, tijdelijk met -  
het gehele bestuur zijn belast. Bij ontstentenis of belet van alle directeuren ----  
zullen een of meer personen, daartoe aangewezen door de raad van -----  
commissarissen tijdelijk met het bestuur zijn belast.-----

**Raad van commissarissen.**-----

**Artikel 16.**-----

- 16.1. De raad van commissarissen is belast met het houden van toezicht op  
het beleid van de directie, op de algemene gang van zaken in de -----  
vennootschap en de onderneming die door haar wordt uitgeoefend.---  
De raad van commissarissen staat de directie met raad betreffende de  
algemene aspecten van het beleid samenhangende met de activiteiten  
van de vennootschap terzijde. Bij de vervulling van hun taak richten -  
de commissarissen zich op de belangen van de vennootschap en van -  
haar onderneming.-----

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- 16.2 De directie verschaft de raad van commissarissen tijdig de voor de ---  
uitoefening van diens taak noodzakelijke gegevens alsmede de -----  
gegevens waarom de raad van commissarissen de directie heeft -----  
verzocht. -----
- 16.3 De directie stelt ten minste één keer per jaar de raad van -----  
commissarissen schriftelijk op de hoogte van de hoofdlijnen van het -  
strategisch beleid, de algemene en financiële risico's en het beheers- -  
en controlesysteem van de vennootschap. -----  
De directie zal alsdan ter goedkeuring voorleggen aan de raad van ---  
commissarissen: -----
- a. de operationele en financiële doelstellingen van de vennootschap;
  - b. de strategie die moet leiden tot het realiseren van de -----  
doelstellingen; en -----
  - c. de randvoorwaarden die bij voormelde strategie worden -----  
gehanteerd, onder meer ten aanzien van de financiële ratio's. ----

**Artikel 17.**-----

- 17.1. De raad van commissarissen bestaat uit een of meer leden, te -----  
benoemen door de algemene vergadering van aandeelhouders op ----  
voorstel van de raad van commissarissen. Het aantal commissarissen  
wordt door de algemene vergadering van aandeelhouders vastgesteld.
- 17.2. Een voorstel tot benoeming van een of meer commissarissen kan ----  
door de raad van commissarissen op de agenda van een algemene ----  
vergadering van aandeelhouders worden geplaatst, een en ander -----  
onverminderd het bepaalde in artikel 25, lid 2. -----
- 17.3. De algemene vergadering van aandeelhouders benoemt een voorzitter  
en een vice-voorzitter van de raad van commissarissen. -----

**Artikel 18.**-----

- 18.1. De raad van commissarissen kan uit zijn midden een of meer -----  
gedelegeerde commissarissen benoemen die belast zijn met het -----  
onderhouden van een meer regelmatig toezicht op de directie. Zij ----  
brengen van hun bevindingen aan de raad van commissarissen verslag  
uit. De functies van voorzitter van de raad van commissarissen en ---  
gedelegeerd commissaris zijn verenigbaar. -----



- 18.2. De raad van commissarissen kan met inachtneming van deze statuten een reglement opstellen, waarin de verdeling van zijn taak over de --- verschillende commissarissen wordt geregeld. -----
- 18.3. De raad van commissarissen kan bepalen, dat één of meer van zijn --- leden toegang zullen hebben tot alle bedrijfsruimten van de ----- vennootschap en bevoegd zullen zijn inzage te nemen van alle ----- boeken, correspondentie en andere bescheiden en kennis te nemen --- van alle handelingen die plaats hebben gehad, dan wel een of meer --- van zijn leden een gedeelte van deze bevoegdheden zullen kunnen --- uitoefenen.-----
- 18.4. De raad van commissarissen kan op kosten van de vennootschap ---- adviezen inwinnen die de raad van commissarissen voor een juiste ---- uitoefening van zijn taak wenselijk acht. -----

**Artikel 19.** -----

- 19.1. Een commissaris wordt benoemd voor de periode tot en met de ---- eerstvolgende algemene vergadering van aandeelhouders welke wordt gehouden nadat twee volledige kalenderjaren zijn verstreken sinds de dag met ingang waarvan hij is benoemd.-----  
Een aftredende commissaris is onmiddellijk herbenoembaar. -----
- 19.2. De raad van commissarissen kan een rooster van aftreden vaststellen.-
- 19.3. De commissarissen kunnen worden geschorst of ontslagen door de -- algemene vergadering van aandeelhouders. De raad van ----- commissarissen kan aan de algemene vergadering van aandeelhouders voorstellen om tot schorsing of ontslag van een of meer ----- commissarissen over te gaan. -----

**Artikel 20.** -----

- 20.1. De raad van commissarissen kan besluiten nemen met een gewone --- meerderheid van de stemmen van de in functie zijnde ----- commissarissen.-----  
Iedere commissaris heeft recht op het uitbrengen van één stem. Bij --- staken van stemmen heeft de voorzitter de beslissende stem. Bij ----- afwezigheid kan een commissaris een volmacht verlenen, echter ----- slechts aan een andere commissaris. -----

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Een commissaris neemt niet deel aan de beraadslaging en -----  
besluitvorming als hij daarbij een direct of indirect persoonlijk belang  
heeft dat tegenstrijdig is met het belang van de vennootschap en de --  
met haar verbonden onderneming. Wanneer hierdoor geen besluit ---  
kan worden genomen, wordt het besluit genomen door de algemene  
vergadering. -----

De raad van commissarissen kan schriftelijk besluiten zonder een ----  
vergadering te houden, mits de voorstellen voor dergelijke besluiten -  
schriftelijk aan alle commissarissen zijn medegedeeld en geen -----  
commissaris zich tegen deze wijze van besluitvorming heeft verzet.---

20.2. De leden van de directie wonen, op verzoek van de raad van -----  
commissarissen, de vergaderingen van deze raad bij. -----

20.3. Vergaderingen van de raad van commissarissen worden -----  
bijeengeroepen door de voorzitter van die raad van commissarissen, -  
hetzij op verzoek van twee of meer commissarissen, hetzij op verzoek  
van de directie, dan wel door de commissarissen die verzocht hebben  
de vergadering te houden. -----

20.4. De raad van commissarissen stelt een reglement vast inhoudende ----  
onder meer regelen betreffende de wijze van oproeping tot zijn -----  
vergaderingen en de interne orde in die vergaderingen. Deze -----  
vergaderingen kunnen zowel telefonisch als per video of gelijksoortige  
communicatiemiddelen worden gehouden. -----

20.5. Bij belet of ontstentenis van een of meer commissarissen zijn de ----  
overige commissarissen, of is de enige overgebleven commissaris, ---  
tijdelijk met het toezicht belast. -----

Bij belet of ontstentenis van alle commissarissen is een door de -----  
algemene vergadering daartoe voor onbepaalde tijd aan te wijzen ----  
persoon tijdelijk met het toezicht belast. -----

#### **Artikel 21.**-----

De algemene vergadering van aandeelhouders stelt de vergoeding voor de ----  
leden van de raad van commissarissen of voor een of meer van haar leden vast.  
Kosten worden aan de commissarissen vergoed.-----

#### **Algemene vergadering van aandeelhouders.**-----





**Artikel 22.**-----

- 22.1. De gewone algemene vergadering van aandeelhouders wordt -----  
telkenjare binnen zes maanden na afloop van het boekjaar gehouden. -
- 22.2. In deze algemene vergadering wordt (worden) aan de orde gesteld: ----
- a. het door de directie schriftelijk uitgebrachte verslag omtrent de --  
gang van zaken van de vennootschap gedurende het afgelopen --  
boekjaar en het door de raad van commissarissen uitgebrachte ---  
verslag;-----
  - b. de vaststelling van de jaarrekening en de bepaling van het -----  
dividend op de in artikel 33 omschreven wijze;-----
  - c. het verlenen van décharge aan de directeuren voor hun bestuur --  
over het afgelopen boekjaar en aan de commissarissen voor hun  
toezicht daarop; -----
  - d. voorziening in vacatures in de directie; -----
  - e. voorziening in vacatures in de raad van commissarissen; -----
  - f. de voorstellen van de directie of van de raad van commissarissen,  
zomede voorstellen van aandeelhouders die overeenkomstig de --  
bepalingen dezer statuten zijn ingediend.-----

**Artikel 23.**-----

- 23.1. Buitengewone algemene vergaderingen van aandeelhouders worden --  
gehouden zo dikwijls de raad van commissarissen dat nodig acht en --  
moeten worden gehouden, indien een of meer aandeelhouders en ----  
overige vergadergerechtigden, die ten minste een/tiende gedeelte van  
het geplaatste kapitaal vertegenwoordigen, dit schriftelijk onder -----  
nauwkeurige opgave der te behandelen onderwerpen aan de directie --  
verzoeken. -----
- 23.2. Indien de directie of raad van commissarissen in gebreke blijven aan -  
een verzoek als bedoeld in het hierboven genoemde lid 1 gevolg te ---  
geven, zodanig dat de algemene vergadering van aandeelhouders -----  
binnen zes weken na het verzoek kan worden gehouden, kunnen de --  
verzoekers door de President van de Arrondissementsrechtbank -----  
binnen welker rechtsgebied de vennootschap is gevestigd, worden ----  
gemachtigd zelf de oproeping te doen.-----

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**Artikel 24.** -----

- 24.1. De algemene vergaderingen van aandeelhouders worden gehouden in de plaats van statutaire vestiging, Amsterdam, Haarlemmermeer ----- (Schiphol Airport), Rotterdam, Badhoevedorp of te 's-Gravenhage.---
- 24.2. De oproeping tot een algemene vergadering van aandeelhouders ----- geschiedt door een langs elektronische weg openbaar gemaakte ----- aankondiging, welke tot aan de algemene vergadering van ----- aandeelhouders rechtstreeks en permanent toegankelijk is.-----
- 24.3. De oproeping gaat uit van de directie of raad van commissarissen of - van diegenen, die daartoe krachtens de wet of deze statuten de ----- bevoegdheid bezitten. -----
- 24.4. Bij de oproeping tot een algemene vergadering van aandeelhouders -- worden, inter alia, vermeld:-----
- a. de agenda waarop de te behandelen onderwerpen zijn vermeld; --
  - b. de plaats en het tijdstip van de algemene vergadering van ----- aandeelhouders;-----
  - c. de procedure voor deelname aan de algemene vergadering bij --- schriftelijk gevolmachtigde; -----
  - d. de procedure voor deelname aan de algemene vergadering van -- aandeelhouders en het adres van de website van de ----- vennootschap;-----
  - e. de dag van registratie als bedoeld in artikel 27 lid 2, alsmede de -- wijze waarop de stem- en vergadergerechtigden zich kunnen ---- laten registreren en de wijze waarop zij hun rechten kunnen ---- uitoefenen.-----

**Artikel 25.** -----

- 25.1 De oproeping als bedoeld in het vorige artikel geschiedt niet later dan op de tweeënveertigste dag vóór die der vergadering. -----
- 25.2. De agenda vermeldt de onderwerpen, welke daarop zijn geplaatst ---- door degene die gerechtigd is de vergadering bijeen te roepen en ---- voorts de onderwerpen welke plaatsing op de agenda ten minste ---- zestig dagen vóór de dag der vergadering overeenkomstig de wet aan de directie is verzocht door een of meer houders van aandelen of met



medewerking van de vennootschap uitgegeven certificaten. -----  
Over andere onderwerpen dan die, welke op de agenda voorkomen,  
wordt in de vergadering geen besluit genomen. -----

**Artikel 26.** -----

- 26.1. De algemene vergaderingen van aandeelhouders worden geleid door -  
de voorzitter van de raad van commissarissen of bij zijn afwezigheid -  
door de vice-voorzitter van de raad van commissarissen. Bij -----  
afwezigheid van zowel de voorzitter als de vice-voorzitter van de raad  
van commissarissen zal de vergadering worden voorgezeten door een  
andere door de raad van commissarissen aan te wijzen persoon. -----
- 26.2. Van het verhandelde in een algemene vergadering van aandeelhouders  
worden notulen gehouden, die door de voorzitter en een dadelijk na -  
het openen der vergadering door hem aan te wijzen persoon worden -  
vastgesteld en getekend. -----

**Artikel 27.** -----

1. Alle houders van aandelen of met medewerking van de vennootschap ----  
uitgegeven certificaten en overige vergadergerechtigden zijn gerechtigd de  
algemene vergadering van aandeelhouders bij te wonen, het woord te -----  
voeren en stem uit te brengen. -----  
Voor zover een reglement niet van toepassing is, kan de voorzitter de ----  
spreektijd rantsoeneren indien hij zulks met het oog op een goed verloop -  
van de vergadering gewenst acht. -----
2. Als stem- en vergadergerechtigde hebben te gelden zij die op de -----  
achtentwintigste dag vóór die der vergadering (de dag van registratie) die --  
rechten hebben en als zodanig zijn ingeschreven in een door het bestuur --  
aangewezen register, ongeacht wie ten tijde van de algemene vergadering -  
van aandeelhouders de rechthebbenden op de aandelen zijn of met -----  
medewerking van de vennootschap uitgegeven certificaten. -----

**Artikel 28.** -----

- 28.1. Aandeelhouders en overige vergadergerechtigden kunnen zich doen --  
vertegenwoordigen via een schriftelijke volmacht, welke volmacht ----  
dient te worden getoond om toegelaten te worden. -----  
Aan de eis van schriftelijkheid van de volmacht wordt voldaan indien

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de volmacht elektronisch is vastgelegd. Het is een aandeelhouder ----  
toegestaan de vennootschap langs elektronische weg van de volmacht  
in kennis te stellen.-----

- 28.2. Omtrent alle zaken betreffende de toelating tot de algemene -----  
vergadering, het uitoefenen van stemrecht, en het resultaat van een --  
stemming alsmede alle andere zaken de algemene vergadering -----  
betreffende, besluit de voorzitter van de vergadering, met -----  
inachtneming van het bepaalde in artikel 13 Boek 2, Burgerlijk -----  
Wetboek. -----

**Artikel 29.** -----

- 29.1. Voor zover bij deze statuten niet anders is bepaald, worden besluiten  
genomen met gewone meerderheid van de door de stemgerechtigde -  
aandeelhouders uitgebrachte stemmen. Blanco stemmen en stemmen  
die van onwaarde zijn worden niet meegeteld. De voorzitter bepaalt -  
de wijze van stemming. -----
- 29.2. Staking van stemmen geldt als verwerping van het desbetreffende ----  
voorstel. -----
- 29.3 Het bestuur van de vennootschap houdt van de genomen besluiten --  
aantekening. De vennootschap stelt voor elk genomen besluit vast: --  
a. het aantal aandelen waarvoor geldige stemmen zijn uitgebracht;--  
b. het percentage dat het aantal onder a bedoelde aandelen -----  
vertegenwoordigd in het geplaatste kapitaal; -----  
c. het totale aantal geldig uitgebrachte stemmen; -----  
d. het aantal stemmen dat voor en tegen het besluit is uitgebracht, -  
alsmede het aantal onthoudingen.-----

**Artikel 30.** -----

In de algemene vergadering van aandeelhouders geeft ieder aandeel recht op --  
het uitbrengen van één stem.-----

**Jaarrekening, jaarverslag en uitkeringen.** -----

**Artikel 31.**-----

- 31.1. Het boekjaar loopt van één januari tot en met eenendertig december.-  
31.2. De directie doet jaarlijks een jaarrekening opmaken, bestaande uit een  
balans per het einde van het voorafgaande boekjaar en een winst- en



verliesrekening over het voorafgaande boekjaar met de toelichting op deze stukken. -----

- 31.3. De directie is verplicht voornoemde jaarrekening volgens -----  
bedrijfseconomische grondslagen op te maken.-----

**Artikel 32.** -----

- 32.1. De raad van commissarissen doet de jaarrekening onderzoeken door -  
een of meer daartoe door de algemene vergadering van -----  
aandeelhouders aan te wijzen registeraccountant(s) of andere daartoe -  
overeenkomstig artikel 393, Boek 2, Burgerlijk Wetboek aangewezen -  
deskundigen en brengt aan de algemene vergadering van -----  
aandeelhouders omtrent de jaarrekening verslag uit, onverminderd het  
in de wet bepaalde. -----

- 32.2. Afschriften van de opgemaakte jaarrekening, van het verslag van de --  
raad van commissarissen, het verslag van de directie en van de -----  
krachtens de wet toe te voegen gegevens worden vanaf de dag van de  
oproeping tot de algemene vergadering van aandeelhouders, bestemd  
voor hun behandeling tot na afloop van die vergadering ten kantore --  
van de vennootschap voor aandeelhouders en overige -----  
vergadergerechtigden ter inzage gelegd. -----

**Artikel 33.** -----

- 33.1. Uitkering van winst ingevolge het in dit artikel bepaalde geschiedt na -  
vaststelling van de jaarrekening waaruit blijkt dat zij volgens de wet ---  
geoorloofd is.-----
- 33.2. De raad van commissarissen bepaalt op voorstel van de directie, welk  
gedeelte van de winst – het positieve saldo van de winst- en -----  
verliesrekening – bij wijze van reserve zal worden ingehouden, zulks -  
met inachtneming van de wettelijke bepalingen met betrekking tot ---  
verplichte reserves. -----
- 33.3. Het gedeelte van de winst dat overblijft na toepassing van lid 2 staat --  
ter vrije beschikking van de algemene vergadering van -----  
aandeelhouders. -----
- 33.4. De algemene vergadering van aandeelhouders is bevoegd tot uitkering  
van de winst in geld of in natura dan wel om genoemd gedeelte van --

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de winst geheel of gedeeltelijk niet uit te keren. -----

**Artikel 34.** -----

34.1. Op voorstel van de raad van commissarissen, is de algemene -----  
vergadering van aandeelhouders met inachtneming van het in lid 2 ---  
bepaalde, bevoegd te besluiten tot het doen van uitkeringen ten laste  
van de agioreserve dan wel ten laste van de in de jaarrekening -----  
opgenomen “overige reserves” die niet door de wet zijn -----  
voorgeschreven.-----

34.2. De raad van commissarissen is bevoegd te besluiten dat uitkeringen -  
aan aandeelhouders waarvan de hoogte is vastgesteld door de -----  
algemene vergadering van aandeelhouders, geheel of gedeeltelijk ----  
plaatsvinden in de vorm van uitgifte van aandelen in de -----  
vennootschap. De uitkering aan een aandeelhouder overeenkomstig -  
de vorige zin zullen geschieden in geld of in de vorm van aandelen in  
het kapitaal van de vennootschap, of gedeeltelijk in geld en -----  
gedeeltelijk in de vorm van aandelen in het kapitaal van de -----  
vennootschap, zulks, indien de raad van commissarissen dat bepaalt,  
ter keuze van de aandeelhouders.-----

**Artikel 35.** -----

De directie kan indien zij zulks wenselijk acht en met inachtneming van artikel  
105, lid 4, Boek 2, Burgerlijk Wetboek, reeds voor de goedkeuring en -----  
vaststelling van de jaarrekening over enig boekjaar één of meer interim-----  
uitkeringen doen op de aandelen.-----

**Artikel 36.** -----

36.1. Uitkeringen zullen betaalbaar zijn op een door de algemene -----  
vergadering van aandeelhouders te bepalen datum.-----

36.2. Tot een uitkering op aandelen op naam is diegene gerechtigd, te wiens  
name het aandeel is gesteld op de datum van uitkering.-----

36.3. Kennisgevingen betreffende uitkeringen, alsmede betreffende data en  
plaatsen als bedoeld in de voorgaande leden van dit artikel, worden in  
Nederland gepubliceerd tenminste in een landelijk verspreid dagblad  
en in het buitenland ten minste in een dagblad in elk van die landen, -  
daaronder niet begrepen de Verenigde Staten van Amerika, waar de -



aandelen op verzoek van de vennootschap tot een officiële notering --  
zijn toegelaten, en daarnevens nog op zodanig wijze als de directie ----  
wenselijk acht.-----

- 36.4. In geval van een uitkering in de vorm van aandelen in de -----  
vennootschap op grond van artikel 34, lid 2 zullen de aandelen welke  
niet zijn opgevraagd binnen een door de raad van commissarissen te -  
bepalen termijn worden verkocht voor rekening van de -----  
rechthebbers, die de aandelen niet hebben opgevraagd. De periode  
en wijze van verkoop, vast te stellen door de raad van commissarissen  
zoals bedoeld in de vorige zin zal overeenkomstig lid 3 worden -----  
medegedeeld. De netto-opbrengst van een zodanige verkoop blijft ----  
daarna, in verhouding tot ieders recht, ter beschikking van de -----  
rechthebbers; het recht op de opbrengst vervalt aan de -----  
vennootschap echter, indien en voor zover de opbrengst niet vijf ----  
jaren na de datum waarop de uitkering in de vorm van aandelen -----  
betaalbaar is geworden, is opgevorderd.-----

**Statutenwijziging, ontbinding, liquidatie.**-----

**Artikel 37.**-----

- 37.1. Een besluit tot wijziging der statuten of tot ontbinding der -----  
vennootschap is slechts geldig indien:-----
- a. het voorstel voor een zodanig besluit door de raad van -----  
commissarissen aan de algemene vergadering van aandeelhouders  
is voorgesteld;-----
  - b. de volledige voorstellen van de dag der oproeping tot de -----  
algemene vergadering van aandeelhouders tot na afloop dier ----  
vergadering ten kantore der vennootschap voor de -----  
aandeelhouders en overige vergadergerechtigden ter inzage -----  
hebben gelegen;-----
  - c. het voorstel is aangenomen met een meerderheid van twee -----  
derden van de ter vergadering uitgebrachte stemmen.-----
- 37.2. Een besluit tot wijziging van de statuten waarbij verandering wordt ---  
gebracht in de rechten die aan houders van aandelen van een bepaalde  
soort als zodanig toekomen, behoeft de goedkeuring van de -----

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vergadering van houders van aandelen van die bepaalde soort. -----

**Artikel 38.** -----

38.1. Bij ontbinding van de vennootschap geschiedt de vereffening door de directie of een daartoe door de algemene vergadering van -----  
aandeelhouders aangewezen persoon, onder toezicht van de raad van commissarissen. -----

38.2. Bij het besluit tot ontbinding zal de algemene vergadering van -----  
aandeelhouders op voorstel van de raad van commissarissen de aan --  
de vereffenaars, en aan degenen die met het toezicht op de -----  
vereffening belast zijn, toe te kennen beloning vaststellen. -----

38.3. De vereffening geschiedt met inachtneming van de wettelijke -----  
bepalingen. -----

38.4. Na afloop der vereffening blijven de boeken en bescheiden van de ---  
vennootschap gedurende zeven jaar berusten onder degene die -----  
daartoe door de vereffenaars is aangewezen. -----

**Artikel 39.** -----

Hetgeen na voldoening van alle schulden overblijft wordt verdeeld tussen de --  
aandeelhouders naar verhouding van het nominale bedrag van hun bezit aan --  
aandelen. -----

**Slot akte** -----

Deze akte is in minuut opgemaakt en verleden te 's-Gravenhage op de datum -  
in de aanhef van deze akte vermeld.-----

Nadat de inhoud van deze akte zakelijk aan de verschenen persoon is -----  
opgegeven en toegelicht, heeft deze verklaard van de inhoud van deze akte ---  
kennis te hebben genomen en op volledige voorlezing daarvan geen prijs te ---  
stellen. -----

Vervolgens is deze akte, na beperkte voorlezing overeenkomstig de wet, door -  
de verschenen persoon, die mij, notaris, bekend is, en mij, notaris, -----  
ondertekend.-----





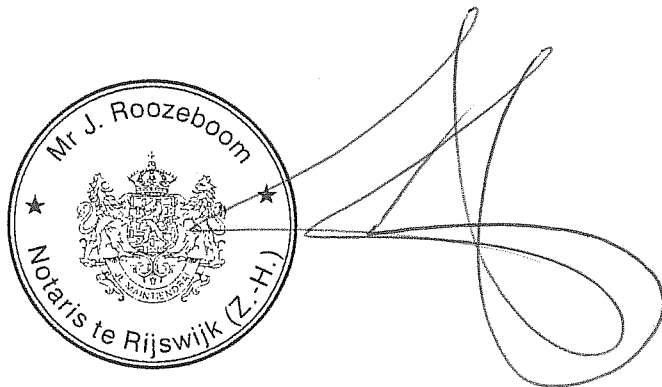
C A M I N A D A   N O T A R I S S E N



(Volgt ondertekening)

*K* - 23 -

Uitgegeven voor afschrift



RR/GE/542086594/ALTERATION OF ARTICLES OF  
ASSOCIATION

(unofficial translation)

This day, the twenty-sixth of April two thousand and thirteen, before me, John Roozeboom, Civil Law Notary in the city of Rijswijk, personally appeared: Rutger Paul Revoort, Candidate Civil Law Notary, for the purposes hereof residing at 2281 AJ Rijswijk, Haagweg 175, born at Gorinchem on the fifteenth of September nineteen hundred and seventy-nine.

The appearer declared:

- that the general meeting of shareholders of the public company **FUNCOM N.V.**, registered offices at Katwijk, place of business at Keplerstraat 34, 1171 CD Badhoevedorp, registered with the commercial trade register under number 28073705, which company was incorporated by deed executed on the twenty-ninth day of November nineteen hundred and ninety-six before C.E.M. van Steenderen, at that time Civil Law Notary in the city of Rijswijk and the Articles of Association of which company have been altered most recently by deed executed on the eighteenth day of May two thousand and twelve before a deputy of A.M.C. van Steenderen, Civil Law Notary in the city of Rijswijk, has resolved to alter its Articles of Association;
- that the appearer by that resolution has been authorized to have the deed of amendment of the Articles of Association executed and signed;
- ./.
- that said resolution on the alteration of the Articles of Association and said authorization are apparent from a writing to be attached to this deed.

The appearer, acting as aforementioned, declared to amend the Articles of Association of said company as follows:

I. To Article 13 a new paragraph 3 shall be added, which shall read:

- 13.3.     A director shall not participate in the deliberations and decision-making on any matter in respect of which his direct or indirect personal interests conflict with those of the company and the business carried on by the company. If no board resolution can be

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passed as a result of this, the supervisory board shall pass the board resolution.

II. Article 17 paragraph 1 shall read:

- 17.1. The supervisory board shall consist of one or more members, to be appointed by the general meeting of shareholders on proposal of the of shareholders. The number of supervisory directors shall be determined by the general meeting of shareholders.

III. Article 20 paragraph 1 shall read:

- 20.1. The supervisory board may pass resolutions by simple majority of the votes of the members in office.

Each supervisory director has the right to cast one vote. In case of a tie the vote of chairman shall decide. In case of absence a supervisory director may issue a proxy, however, only to another supervisory director.

A supervisory director may not take part in deliberations and the adopting of resolutions if he has a direct or indirect personal interest in them which conflicts with the interests of the company and its business. If a resolution cannot be adopted as a result, the resolution must be adopted by the general meeting of shareholders.

The supervisory board may pass resolutions in writing without holding a meeting provided that the proposals for such resolutions have been communicated in writing to all supervisory directors and no supervisory director is opposed to this method of passing a resolution.

IV. To Article 20 a new paragraph 5 shall be added, which shall read:

- 20.5. If one or more supervisory directors are absent or unable to act, the remaining supervisory director or supervisory directors will be charged temporarily with the supervision of the company. If all the supervisory directors are absent or unable to act, a person to be appointed by the general meeting of shareholders for an indefinite period for this purpose will be charged temporarily with the supervision of the company.

Finally it was declared that after said amendment the articles of association of

the Company read as follows:

**Name and seat.**

**Article 1.**

- 1.1        The name of the company is: **FUNCOM N.V.**
- 1.2        The company is established at Katwijk.

**Objects.**

**Article 2.**

The objects of the company shall be to develop, market and carry on business in computer games, hereunder massively multi player online games, online role playing games and related games on electronic devices of different kinds, to take and grant licenses and other industrial properly interests, assume commitments in the name of any enterprises with which it may be associated within a group of companies, to take financial interests in such enterprises and to take any other action, such as but not limited to the granting of securities or the undertaking of obligations on behalf of third parties, which in the broadest sense of the term, may be related or contribute to the aforesaid objects.

**Share capital.**

**Article 3.**

The authorised capital of the Company is ten million euro (EUR 10,000,000), divided into two hundred fifty million (250,000,000) shares of a nominal value of four cents (EUR 0.04) each.

**Issue of shares.**

**Article 4.**

- 4.1        The supervisory board shall have the power to issue shares and to determine the terms and conditions of such issue if and in so far as the supervisory board has been designated by the general meeting of shareholders as the authorized body for this purpose. A designation as referred to above shall only take place for a specific period of no more than the period up to and including the first ordinary general meeting of shareholders which is held after three full calendar years have elapsed since said designation (the "Period") and may not be extended by more than the Period on each occasion.
- 4.2        If a designation as referred to in the first paragraph is not in force, the

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general meeting of shareholders shall have the power, upon the proposal of and on the terms and conditions set by the supervisory board to resolve to issue shares.

- 4.3 In the event of an issue of shares, shareholders shall have a pre-emptive right in proportion to the number of shares which they own, notwithstanding the provisions of the law. In respect of the issue of shares there shall be no pre-emptive right to shares issued to employees of the company or of a group company. The supervisory board shall have the power to limit or debar the pre-emptive right accruing to shareholders, if and in so far as the supervisory board has also been designated by the general meeting of shareholders for this purpose as the authorized body for the period of such designation. The provisions in the second sentence of the first paragraph shall equally apply.
- 4.4 If a designation as referred to in the third paragraph is not in force, the general meeting of shareholders shall have the power, upon the proposal of the supervisory board to limit or debar the pre-emptive right accruing to shareholders.
- 4.5 A resolution of the general meeting of shareholders to limit or exclude pre-emptive rights or to designate the supervisory board as authorized to resolve upon limiting or excluding of pre-emptive rights requires a majority of at least two-thirds of the votes.
- 4.6 Without prejudice to what has been provided in section 80, paragraph 2, Civil Code:2, shares shall at no time be issued below par.
- 4.7 Shares shall be issued only against payment in full.
- 4.8 Payment must be made in cash to the extent that no other contribution has been agreed upon. If the company so allows, payment in cash can be made in a foreign currency.  
In the event of payment in a foreign currency the obligation to pay is for the amount which can be freely exchanged into Dutch currency. The decisive factor is the rate of exchange on the day of payment, or as the case may be after application of the next sentence, on the day mentioned therein.

The company can require payment at the rate of exchange on a certain day within two months prior to the last day when payment shall have to be made, provided the shares or depositary receipts for shares after having been issued shall immediately be incorporated in the price list of an exchange abroad.

- 4.9. This article shall equally apply to the granting of rights to take shares, but shall not apply to the issue of shares to someone who exercises a previously acquired right to take shares.

**Repurchase of shares.**

**Article 5.**

- 5.1. The company may acquire, for valuable considerations, shares in its own share capital if and in so far as:
- a. its equity less the purchase price of these shares is not less than the aggregate amount of the paid up and called up capital and the reserves which must be maintained pursuant to the law;
  - b. the par value of the shares in its capital which the company acquires, holds or holds in pledge, or which are held by a subsidiary company, amounts to no more than one-tenth of the issued share capital; and
  - c. the general meeting of shareholders has authorized the managing board to acquire such shares, which authorization may be given for no more than eighteen months on each occasion, notwithstanding the further statutory provisions.
- 5.2. The company may, without being authorized thereto by the general meeting of shareholders and notwithstanding to what is provided in paragraph 1 under a and b, acquire shares in its own share capital in order to transfer those shares to the employees of the company or a group company under a scheme applicable to such employees.
- 5.3. Shares thus acquired may again be disposed of. The company shall not acquire shares in its own share capital as referred to in paragraph 1 – if an authorization as referred to in such paragraph is in force – or as referred to in paragraph 2 without the prior approval of the supervisory board. The company shall also not dispose of shares in its

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own share capital – with the exception of shares in the company's own share capital acquired pursuant to paragraph 2 – without the prior approval of the supervisory board.

If depositary receipts for shares in the company have been issued, such depositary receipts shall for the application of the provisions of this paragraph and the preceding paragraph be treated as shares.

- 5.4. In the general meeting no votes may be cast in respect of (a) share(s) held by the company or a subsidiary company; no votes may be cast in respect of a share the depositary receipt for which is held by the company or a subsidiary company.

Shares in respect of which voting rights may not be exercised by law or by the articles of association shall not be taken into account, when determining to what extent the shareholders cast votes, to what extent they are present or represented or to what extent the share capital is provided or represented.

- 5.5. Upon the proposal of the supervisory board the general meeting of shareholders shall have the power to decide to cancel shares acquired by the company from its own share capital.

**Shares, Share certificates, Share register.**

**Article 6.**

Shares shall be in the form of an entry in the share register without issue of a share certificate.

**Article 7.**

- 7.1. A register shall be kept by or on behalf of the company, which register shall be regularly updated and, at the discretion of the managing board, which register may, in whole or in part, be kept in more than one copy and at more than one place.  
A part of the register may be kept abroad in order to meet requirements set out by foreign statutory provisions or provisions of the foreign exchange.
- 7.2. Each shareholder's name, his address and such further data as the managing board deems desirable, whether at the request of a shareholder or not, shall be entered in the register.

- 7.3. The form and the contents of the share register shall be determined by the managing board with due regard to the provisions of paragraphs 1 and 2 of this article.

**Article 8.**

- 8.1. Upon request a shareholder shall be given free of charge a declaration of what is stated in the register with regard to the shares registered in his name, which declaration may be signed by one of the specially authorized persons to be appointed by the managing board for this purpose.
- 8.2. The provisions of article 7 and 8 shall equally apply to those who hold a right of usufruct or of pledge on one or more registered shares, with the proviso that the other data required by law must be entered in the register.

**Transfer of shares.**

**Article 9.**

- 9.1. The transfer of a registered share shall be effected either by service upon the company of the instrument of transfer or by written acknowledgement of the transfer by the company, subject however to the provisions of the following paragraphs of this article.
- 9.2. The provisions of the foregoing paragraphs of this article shall equally apply to the allotment of registered shares in the event of a judicial partition of any community of property or interests, the transfer of a registered share as a consequence of a judgment execution and the creation of limited rights in rem on a registered share.

**Managing board.**

**Article 10.**

- 10.1. The company shall be managed by a managing board consisting of one or more managing directors under the supervision of the supervisory board. The number of members of the managing board shall be resolved by the general meeting of shareholders upon the proposal of the supervisory board. The members of the managing board shall be appointed by the shareholders meeting.
- A managing director is appointed for the period up to and including



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the first ordinary general meeting of shareholders which is held after three full calendar years have elapsed since the day as per which he was appointed.

A retired managing director may immediately be re-elected.

- 10.2. Managing directors shall be appointed and revoked by the general meeting of shareholders upon the proposal of the supervisory board for each vacancy to be filled.
- 10.3. Without prejudice to the provisions of article 25, paragraph 2, a proposal to make one or more appointments to the managing board may be placed on the agenda of a general meeting of shareholders by the supervisory board.
- 10.4. The company has a policy regarding the compensation of the managing board. The policy will be adopted by the general meeting of shareholders upon the proposal of the supervisory board.
- 10.5. The supervisory board shall determine the compensation of the individual managing directors, within the scope of the compensation policy referred to in the previous paragraph. The supervisory board will submit for approval by the general meeting of shareholders a proposal regarding the compensation in the form of shares or rights to acquire shares. This proposal sets forth at least how many shares or rights to acquire shares may be awarded to the managing board and which criteria apply to an award or a modification.

#### **Article 11.**

- 11.1. The general meeting of shareholders shall be entitled to suspend or dismiss one or more managing directors.
- 11.2. The managing directors can be jointly or individually suspended by the supervisory board. After suspension a general meeting of shareholders shall be convened within three months, at which meeting it shall be decided whether the suspension shall be cancelled or maintained.

The person involved shall be given the opportunity to account for his actions at that meeting.

#### **Representation.**

**Article 12.**

- 12.1. The entire managing board as well as each managing director may represent the company.
- 12.2. The managing board shall have power to perform legal acts as specified in section 2:94, paragraph 1, Civil Code in so far as such power is not expressly excluded or limited by any provision of these articles or by any resolution of the supervisory board.

**Article 13.**

- 13.1. The supervisory board shall appoint one of the managing directors as chairman of the managing board.
- 13.2. Resolutions of the managing board shall be passed by simple majority of votes. In the event of a tie of votes the chairman of the managing board shall have a casting vote.
- 13.3. A director shall not participate in the deliberations and decision-making on any matter in respect of which his direct or indirect personal interests conflict with those of the company and the business carried on by the company. If no board resolution can be passed as a result of this, the supervisory board shall pass the board resolution.

**Article 14.**

- 14.1. Without prejudice to provisions made elsewhere in these articles, the managing board shall require the prior express approval:
  - (i) from the supervisory board for decisions relating to:
    - 1. the formation of subsidiaries, acquisition or sale of any participation, and conclusion of any cooperation and participation agreement;
    - 2. all pluriannual plans of the company and the budget for the first coming year, covering the following matters:
      - investment policy;
      - policy regarding research and development, as well as commercial policy and objectives;
      - general financial policy;
      - policy regarding personnel;

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3. all acts, decisions or operations covered by the above list and constituting a significant change with respect to decisions already adopted by the supervisory board or not provided for in the above list and as specifically laid down by the supervisory board by resolution passed by it to that effect;
- (ii) from the general meeting of shareholders with respect to resolutions: regarding a significant change in the identity or nature of the company or the enterprise, including in any event
  - (a) transferring the enterprise or practically the entire enterprise to a third party, (b) entering into or cancelling any long-term cooperation between the company or a subsidiary (*“dochtermaatschappij”*) and any other legal person or company or as a fully liable general partner of a limited partnership or a general partnership, provided that such cooperation or the cancellation thereof is of essential importance to the company, and (c) the company or a subsidiary (*“dochtermaatschappij”*) acquiring or disposing of a participating interest in the capital of a company with a value of at least one-third of the company's total assets according to the consolidated balance sheet and notes thereto in the most recently adopted annual accounts of the company;

the absence of the approval provided for above may not be raised by or against third parties.

- 14.2. The managing board shall require the approval of the general meeting of shareholders or the supervisory board according to the law and the provisions of these articles as well as such resolutions as are clearly defined by a resolution of the general meeting of shareholders or the supervisory board to that effect.

#### **Article 15.**

In the event of the absence or inability to act of one or more managing directors the remaining managing directors or managing director shall temporarily be responsible for the entire management. In the event of the absence or inability to act of all managing directors, one or more persons

appointed by the supervisory board for this purpose at any time shall be temporarily responsible for the management.

**Supervisory board.**

**Article 16.**

- 16.1. The supervisory board shall be responsible for supervising the policy pursued by the managing board and the general course of affairs of the company and the business enterprise which it operates. The supervisory board shall assist the managing board with advice relating to the general policy aspects connected with the activities of the company. In fulfilling their duties the supervisory directors shall serve the interests of the company and the business enterprise which it operates.
- 16.2. The managing board shall provide the supervisory board in good time with all relevant information as well as the information the supervisory board requests, in connection with the exercise of its duties.
- 16.3. At least once per year the managing board shall inform the supervisory board in writing of the main features of the strategic policy, the general and financial risks and the management and control systems of the company.  
The managing board shall then submit to the supervisory board for approval:
- a) the operational and financial objectives of the company;
  - b) the strategy designed to achieve the objectives; and
  - c) the parameters to be applied in relation to the strategy, *inter alia*, regarding financial ratios.

**Article 17.**

- 17.1. The supervisory board shall consist of one or more members, to be appointed by the general meeting of shareholders on proposal of the of shareholders. The number of supervisory directors shall be determined by the general meeting of shareholders.
- 17.2. Without prejudice to the provisions of article 25, paragraph 2, a proposal to make one or more appointments to the supervisory board

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may be placed on the agenda of the general meeting of shareholders by the supervisory board.

- 17.3. The general meeting of shareholders shall appoint a chairman and a vice-chairman of the supervisory board.

**Article 18.**

- 18.1. The supervisory board may appoint one or more of its members as delegate supervisory director in charge of supervising the managing board on a regular basis. They shall report their findings to the supervisory board. The offices of chairman of the supervisory board and delegate supervisory director are compatible.
- 18.2. With due observance of these articles of association, the supervisory board may adopt rules regulating the division of its duties among its various supervisory directors.
- 18.3. The supervisory board may decide that one or more of its members shall have access to all premises of the company and shall be authorized to examine all books, correspondence and other records and to be fully informed of all actions which have taken place, or may decide that one or more of its supervisory directors shall be authorized to exercise a portion of such powers.
- 18.4. At the expense of the company, the supervisory board may obtain such advice from experts as the supervisory board deems desirable for the proper fulfillment of its duties.

**Article 19.**

- 19.1. A supervisory director is appointed for the period up to and including the first ordinary general meeting of shareholders which is held after two full calendar years have elapsed since the day as per which he was appointed.  
A retired supervisory director may immediately be re-elected.
- 19.2. The supervisory board may establish a rotation scheme.
- 19.3. The supervisory directors may be suspended or dismissed by the general meeting of shareholders. The supervisory board may make a proposal to the general meeting of shareholders for the suspension or dismissal of one or more of its supervisory directors.

**Article 20.**

20.1. The supervisory board may pass resolutions by simple majority of the votes of the members in office.

Each supervisory director has the right to cast one vote. In case of a tie the vote of chairman shall decide. In case of absence a supervisory director may issue a proxy, however, only to another supervisory director.

A supervisory director may not take part in deliberations and the adopting of resolutions if he has a direct or indirect personal interest in them which conflicts with the interests of the company and its business. If a resolution cannot be adopted as a result, the resolution must be adopted by the general meeting of shareholders.

The supervisory board may pass resolutions in writing without holding a meeting provided that the proposals for such resolutions have been communicated in writing to all supervisory directors and no supervisory director is opposed to this method of passing a resolution.

20.2. The managing directors shall attend meetings of the supervisory board at the latter's request.

20.3. Meetings of the supervisory board shall be convened by the chairman of the supervisory board, either on request of two or more supervisory directors or on request of the managing board, or by the supervisory directors requesting the meeting to be held.

20.4. The supervisory board shall draw up standing orders regulating inter alia the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone as well as by video or by equivalent means or communications.

20.5. If one or more supervisory directors are absent or unable to act, the remaining supervisory director or Supervisory Directors will be charged temporarily with the supervision of the company. If all the supervisory directors are absent or unable to act, a person to be appointed by the general meeting of shareholders for an indefinite

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period for this purpose will be charged temporarily with the supervision of the company.

**Article 21.**

The general meeting of shareholders determines the compensation to the members of the supervisory board or to one or more of its members. The supervisory board members shall be reimbursed for their expenses.

**General meeting of shareholders.**

**Article 22.**

- 22.1. The ordinary general meeting of shareholders shall be held each year within six months after the close of the financial year.
- 22.2. At this general meeting shall be dealt with:
  - a. the written report of the managing board on the course of business of the company during the past financial year, and the report of the supervisory board;
  - b. adoption of the annual accounts and the declaration of dividend in the manner laid down in article 33;
  - c. granting of discharge to the members of the managing board for their management during the past financial year and to the members of the supervisory board for their supervision on such management;
  - d. filling vacancies on the managing board;
  - e. filling vacancies on the supervisory board;
  - f. the proposals placed on the agenda by the managing board or by the supervisory board, together with proposals made by shareholders in accordance with the provisions of these articles.

**Article 23.**

- 23.1. Extraordinary general meetings of shareholders shall be held as often as deemed necessary by the supervisory board and shall be held if one or more shareholders and other persons entitled to attend the meetings of shareholders jointly representing at least one-tenth of the issued share capital make a written request to that effect to the managing board or supervisory board, specifying in detail the business to be dealt with.

- 23.2. If the managing board or supervisory board fail to comply with a request under paragraph 1 above in such manner that the general meeting of shareholders can be held within six weeks after the request, the persons making the request may be authorized by the President of the Court within whose jurisdiction the company is established to convene the meeting themselves.

**Article 24.**

- 24.1. General meetings of shareholders shall be held at its place of establishment and at Amsterdam, Haarlemmermeer (Schiphol Airport), Rotterdam, Badhoevedorp or The Hague.
- 24.2. The notice convening a general meeting of shareholders shall be published electronically and shall be permanently and directly accessible until the general meeting of shareholders.
- 24.3. The notice convening the meeting shall be issued by the managing board, by the supervisory board or by those who according to the law or these articles are entitled thereto.
- 24.4. The notice convening a general meeting of shareholders shall contain inter alia:
- a. the agenda stating the business to be transacted;
  - b. the location and time of the general meeting of shareholders;
  - c. the procedure for participating in the general meeting by written proxy;
  - d. the procedure for participating in the general meeting of shareholders and the company's website address;
  - e. the registration date within the meaning of article 27.2 and the manner in which persons entitled to vote and attend meetings can register and the manner in which they can exercise their rights.

**Article 25.**

- 25.1. The notice convening the meeting referred to in the foregoing article shall be issued no later than on the forty-second day prior to the meeting.
- 25.2. The agenda shall contain such business as may be placed thereon by



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the person(s) entitled to convene the meeting, and furthermore such business as has been requested of the managing board by one or more holders of shares or of depositary receipts for shares issued with the concurrence of the company at least sixty days prior to the date of the meeting in accordance with the law.

Resolutions shall not be passed in the meeting on business other than that on the agenda.

**Article 26.**

- 26.1. General meetings of shareholders shall be presided over by the chairman of the supervisory board or in his absence by the vice-chairman of the supervisory board. In case of absence of the chairman and the vice-chairman of the supervisory board the meeting shall be presided by any other person nominated by the supervisory board.
- 26.2. Minutes shall be kept of the business transacted at a general meeting of shareholders, which minutes shall be drawn up and signed by the chairman and by a person appointed by him immediately after the opening of the meeting.

**Article 27.**

1. All holders of shares or of depositary receipts for shares issued with the concurrence of the company and other persons entitled to attend meetings are entitled to attend the general meetings of shareholders, to address the general meeting of shareholders and to vote.  
Insofar as regulations do not apply the chairman may regulate the time for those who may speak if he considers this to be desirable with a view to the orderly conduct of the meeting.
2. Persons entitled to vote and to attend meetings are those persons who on the twenty-eighth day prior to the meeting (the day of registration) have these rights and are registered as having these rights in a registry designated by the management board, regardless of who owns the shares, or is holder of depositary receipts for shares issued with the concurrence of the company, at the time the general meeting of shareholders is held.

**Article 28.**

- 28.1. Shareholders and other persons entitled to attend meetings of shareholders may be represented by proxies with written authority to be shown for admittance to a meeting.  
The requirement of written authorisation of the proxy is met if the proxy is recorded electronically. A shareholder is allowed to notify the company of the proxy electronically.
- 28.2. All matters regarding the admittance to the general meeting, the exercise of voting rights and the result of votings, as well as any other matters regarding the affairs at the general meeting shall be decided upon by the chairman of that meeting, with due observance of the provisions of section 13, Civil Code:2.

**Article 29.**

- 29.1. Unless otherwise stated in these articles, resolutions shall be adopted by simple majority of votes of the shareholders. Blank and invalid votes shall not be counted. The chairman shall decide on the method of voting.
- 29.2. In case of an equality of the votes cast the relevant proposal shall be deemed to have been rejected.
- 29.3. The managing board of the company shall make notes of the resolutions passed. In respect of each resolution the company shall note:
- a. the number of shares in respect of which valid votes are cast;
  - b. the percentage of issued capital represented by the number of shares referred to under a;
  - c. the total number of votes validly cast;
  - d. the number of votes cast for and against the resolution and the number of abstentions.

**Article 30.**

At the general meeting of shareholders each share shall confer the right to cast one vote.

**Annual accounts, report of the board of management and distributions.**

**Article 31.**

- 31.1. The financial year shall run from the first day of January up to and

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including the thirty-first day of December.

- 31.2. Each year the managing board shall cause annual accounts to be drawn up, consisting of a balance sheet as at the close of the preceding financial year and a profit and loss account in respect of the preceding financial year with the explanatory notes thereto.
- 31.3. The managing board shall be bound to draw up the aforesaid annual accounts in accordance with established principles of business management.

**Article 32.**

- 32.1. The supervisory board shall cause the annual accounts to be examined by one or more registered accountant(s) designated for the purposes by the general meeting of shareholders or other experts designated for the purpose in accordance with section 393, Civil Code: 2, and shall report to the general meeting of shareholders on the annual accounts, notwithstanding the provisions of the law.
- 32.2. Copies of the annual accounts which have been made up, of the report of the supervisory board, of the report of the managing board and of the information to be added pursuant to the law shall be deposited for inspection by shareholders and other persons entitled to attend meetings of shareholders, at the office of the company as from the date of serving the notice convening the general meeting of shareholders at which meeting those items shall be discussed, until the close thereof.

**Profit and loss.**

**Article 33.**

- 33.1. Distribution of profits pursuant to this article shall be made following approval of the annual accounts which show that the distribution is legally permitted.
- 33.2. Upon proposal of the managing board, the supervisory board shall determine what portion of the profit shall be retained by way of reserve, having regard to the legal provisions relating to obligatory reserves.
- 33.3. The portion of the profit that remains after application of paragraph

2, shall be at the disposal of the general meeting of shareholders.

- 33.4. The general meeting of shareholders is empowered either to distribute the profits in cash or in kind or to withhold distribution of the said portion of the profit in whole or in part.

**Article 34.**

- 34.1. Upon the proposal of the supervisory board the general meeting of shareholders shall be entitled to resolve to make distributions charged to the share premium reserve or charged to the other reserves shown in the annual accounts not prescribed by the law, with due observance of the provisions of paragraph 2.

- 34.2. The supervisory board shall be entitled to resolve that distributions, the amount of which distributions has been resolved upon by the general meeting of shareholders, to shareholders may be made in full or partially in the form of the issue of shares in the share capital of the company.

The distribution to a shareholder according to the preceding sentence shall be made to a shareholder in cash or in the form of shares in the share capital of the company, or partially in cash and partially in the form of shares in the share capital of the company, such, if the supervisory board so resolves, at the option of the shareholders.

**Article 35.**

At its own discretion and subject to section 105, paragraph 4, Civil Code: 2, the managing board may resolve to distribute one or more interim dividends on the shares before the annual accounts for any financial year have been approved and adopted at a general meeting of shareholders.

**Article 36.**

- 36.1 Distributions shall be payable as from a date to be determined by the general meeting of shareholders.
- 36.2. The person entitled to a distribution on registered shares shall be the person in whose name the share is registered at the date of distribution.
- 36.3. Notice of distributions and of the dates and places referred to in the preceding paragraphs of this article shall at least be published in a

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national daily newspaper and abroad in at least one daily newspaper appearing in each of those countries other than the United States, where the shares, on the application of the company, have been admitted for official quotation, and further in such manner as the managing board may deem desirable.

- 36.4. In the case of a distribution under article 34, paragraph 2, any shares in the company not claimed within a period to be determined by the supervisory board shall be sold for the account of the persons entitled to the distribution who failed to claim the shares. The period and manner of sale to be determined by the supervisory board, as mentioned in the preceding sentence, shall be notified according to paragraph 3. The net proceeds of such sale shall thereafter be held at the disposal of the above persons in proportion to their entitlement; distributions that have not been collected within five years after the initial distributions in shares have become due and payable shall revert to the Company.

**Alterations to articles of association, winding up, liquidations.**

**Article 37.**

- 37.1. A resolution to alter the articles of association or to wind up the company shall be valid only provided that:
- a. the proposal to such a resolution has been proposed to the general meeting of shareholders by the supervisory board;
  - b. the full proposals have been deposited for inspection by shareholders and other persons entitled to attend meetings of shareholders, at the office of the company as from the day on which the notice is served until the close of that meeting;
  - c. the proposal to such a resolution has been approved by a majority of at least two-thirds of the votes cast in a meeting.
- 37.2. A resolution to amend the articles of association by which the rights conferred on holders of shares of a specific class as such are changed shall require the approval of the relevant class meeting.

**Article 38.**

- 38.1. If the company is wound up, the liquidation shall be carried out by

the managing board or any person designated for that purpose by the general meeting of shareholders, under the supervision of the supervisory board.

- 38.2. In passing a resolution to wind up the company, the general meeting of shareholders shall upon the proposal of the supervisory board set the remuneration payable to the liquidators and to those responsible for supervising the liquidation.
- 38.3. The liquidation shall take place with due observance of the provisions of the law.
- 38.4. After the liquidation has ended, the books and records of the company shall remain in the custody of the person designated for that purpose by the liquidators during a seven-year period.

**Article 39**

What is left of the company's assets after all creditors have been satisfied shall be divided amongst the shareholders pro rata to their respective holdings of shares.

**Closing statement.**

This deed, drawn up in one original copy, was executed in Rijswijk on the date first before written.

After the substance of this deed had been stated and the content thereof had been explained to the person appearing, that person declared to have taken cognizance of this deed and not to require this deed to be read out in full. Subsequently, after a reading in part in accordance with the law, this deed was signed by the person appearing, who is known to me, and by me, Notary.