

FOUNDATION

S.12933 engels

Today, *, appeared before me, mr. T.P. Seinstra, civil-law-notary in Amsterdam:

Mister **Thomas John Graham**, living at 23, Coombe Road, Kingston upon Thames, Surrey, England, born in Littleborough (UK) on 23rd January 1948, passport number 032012070, married.

The person appearing declared that by virtue of this instrument he hereby incorporates a foundation and establish the following articles of association:

NAME AND DOMICILE

Article 1

1. The name of the Foundation is “**Stichting European Digital Cinema Forum**”.
2. It is established at Amsterdam.

OBJECTIVE

Article 2

Ojective of the Foundation is:

- To promote the creation of a technical and business framework for the harmonious introduction of Digital Cinema in all its forms in Europe.
- To bring together, from various European countries, participants representing the three constituent elements involved with the development of Digital Cinema:
 - Cinema industry – including distributors, exhibitors, producers and directors;
 - Industrial companies– including equipment manufacturers and telcos;
 - Institutions – including government bodies, Film Institutes, Associations, and Technical Societies.
- To encourage the flow of information, share experiences and ensure the closest possible co-operation and synergy amongst all professionally interested parties worldwide.
- To support a non-discriminatory approach that enables an open and competitive market to develop all the relevant parts of the system including content creation, delivery and exhibition.
- To study the development of various new services and service features such as new cinema venues, different types of venue and additional services for traditional cinema venues.

DURATION

Article 3

The Foundation is formed for an indefinite period.

ADMINISTRATION

Article 4

1. The Foundation shall be managed by a Board of Administrators, consisting of no less than eight and no more than fifteen members. The members shall not act on behalf of nor be required to consult with third parties, other than their own companies/organisations.
2. The members of the Board of Administrators shall be appointed by the Board of Administrators. Each of the Founding Organisations (Swedish Film Institute, CNC, CST, BKSTS, DTI) shall have the right to nominate one member. Additionally, UNIC and FIAD shall also have the right to nominate one member. Candidates for the remaining posts will be nominated by the participants in the Foundation from the three constituencies –Cinema Industry, Industrial companies & institutions. In the case that more candidates are nominated than vacancies exist, the Board will conduct a ballot in which each Participant will have the right to vote for one candidate. The Board will establish Regulations governing the nomination and ballot procedures such that candidates thus selected represent an equal balance between the three constituent elements of Digital Cinema identified in Article 2 above.
3. The Board of Administrators shall appoint a President, two Vice-Presidents, the Secretary and the Treasurer from amongst its members. Whenever possible, each of the President and two Vice-Presidents shall be drawn from a different constituent element of the FOUNDATION.
4. Persons who have a contract of employment with the Foundation may not serve on the Board of Administrators.
5. Without prejudice to the obligation to fill any vacancy arising, the Board of Administrators shall continue to function as a lawful administrative body in the event of the number of members falling below the minimum number referred to in the first paragraph of this article.
6. The members of the Board of Administrators shall be appointed for two years.

BOARD OF ADMINISTRATORS (TERMINATION OF MEMBERSHIP)

Article 5

1. Membership of the Board of Administrators shall be terminated:
 - a on expiry of the Board member's term of office;
 - b. in the event of the Board member's death or receivership or the occurrence of a legal circumstance whereby the person concerned no longer has control of his estate;
 - c on resignation by the member concerned;
 - d. on dismissal by the Board of Administrators;
 - e. were the relationship between the Board member and the nominating participant organisation is ended.
2. Retiring Board members as referred to in paragraph 1.a shall be eligible for immediate reappointment.

3. Where the Board of Administrators decides to dismiss a member within the meaning of paragraph 1.d of this article, such decision must be taken by a majority of at least three quarters of the votes cast at a meeting of all the remaining members of the Board of Administrators. A member of the Board of Administrators or a participating organisation may only be dismissed if the interests of the Foundation have been damaged or if the relationship with the Board member has been disrupted to such extent that no further constructive collaboration would be possible.

DUTIES OF THE BOARD OF ADMINISTRATORS

Article 6

The Board of Administrators shall promote the interests of the Foundation and, with due observance of this Constitution, shall be empowered to take all decisions and measures which are necessary or desirable in the achievement of the object defined in Article 2.

EXPENSES

Article 7

The Board members may claim reimbursement from the Foundation of expenses incurred on the Foundation's behalf. The expenses qualifying for reimbursement shall be set out in the Regulations.

REPRESENTATION

Article 8

1. The Board represents the foundation.
2. The Foundation can also be represented at law by no less than two members of the Board of Administrators.
3. The General Manager of the Foundation may be empowered by the Board of Administrators to represent the Foundation in such matters as the Board may determine.

BOARD MEETINGS

Article 9

1. The Board of Administrators shall meet as often as the Chairman deems necessary or at the request of two other Board members.
2. Meetings shall be convened in writing, giving at least four weeks' notice.
3. Resolutions shall be adopted by a simple majority vote, save where determined otherwise by the Constitution. These resolutions shall be valid in law only if they are passed at a meeting attended by at least half of the Board members, save where determined otherwise by the Constitution.
4. All voting shall be oral. However, at the request of a member who is entitled to vote, voting on persons shall be by unsigned ballot. Other forms of voting, such as by acclamation, shall be permitted if none of those entitled to vote objects to this procedure. Blank votes shall be deemed not to have been cast.
5. In the event of a tied vote, the motion shall be deemed to have been rejected.
6. The Board of Administrators may also pass resolutions outside meetings, provided that such resolutions are passed unanimously.

7. Minutes of the proceedings of Board meetings and of resolutions passed outside meetings shall be kept by the Secretary or by a person appointed to do so. The Minutes shall be submitted for approval to the next Board meeting. The Minutes shall be signed by the Chairman and Secretary in witness of their adoption.
8. The General Manager of the foundation shall attend the meetings of the Board of Administrators of the Foundation in an advisory capacity, unless determined otherwise by the meeting.
9. The General Manager may offer advice to the Board of Administrators of the Foundation, whether or not requested to do so.
10. The Board of Administrators shall be empowered to establish Regulations and to amend them. A resolution to that effect shall require a majority of two-thirds of the votes cast at a meeting attended by at least two-thirds of the members in office.

COMMITTEES

Article 10

1. The Board of Administrators may appoint committees to study certain aspects of the Foundation's activities.
2. The Board of Administrators shall determine the tasks of the committee and shall regulate its powers in the Regulations or in the committee's terms of reference.

PARTICIPATING COMPANIES, INSTITUTIONS, ORGANISATIONS AND PERSONS

Article 11

The Board of Administrators shall decide on the admission of participating companies, institutions, organisations and persons to the Foundation in accordance with the procedure referred to in Article 9, paragraph 3. Individual membership must be business membership not private membership.

PARTICIPANTS' COUNCIL

Article 12

1. The Board of Administrators of the Foundation May appoint a Participants Council to assist in the performance of its tasks.
2. The Participants' Council shall consist of representatives of the participating companies, institutions, organisations and persons within the Foundation. The size and composition of the Participants' Council together with the frequency and conduct of its meetings shall be determined in the Regulations.
3. The Participants' Council may offer the Board of Administrators advice on aspects of Foundation policy, whether or not requested to do so.

AUTHORITY OF THE BOARD OF ADMINISTRATORS

Article 13

The Board of Administrators shall be empowered to decide to conclude agreements to acquire, dispose of or encumber registered goods and to conclude agreements whereby the Foundation is made guarantor, assumes joint and several liability, stands surety for a third party or guarantees the debt of a third party, provided that a resolution to that effect is passed in the manner defined in Article 9 paragraph 10.

GENERAL MANAGER

Article 14

1. The Board of Administrators may appoint a General Manager of the foundation to assist in the fulfilment of its duties.
2. The General Manager shall provide the Board of Administrators with all the information which it may require, whether or not requested to do so.

FUNDING

Article 15

1. The Foundation funds shall comprise:
 - a. contributions made by public sector organisations, businesses and international organisations;
 - b. contributions made by the participating companies, institutions, organisations and persons;
 - c. subsidies and donations;
 - d. testamentary dispositions and legacies;
 - e. all other lawful acquired revenues

Testamentary dispositions may only be accepted sub beneficio inventarii.
2. The amount of the contributions referred to in paragraph 1.b of this article and the collection of and accounting for such contributions shall be subject to separate Regulation.

ACCOUNTING, REPORTING AND BUDGETING

Article 16

1. Within six months of the end of each financial year, the Secretary shall report on the Foundation's activities in the preceding financial year and the Treasurer shall present the accounts for the year. An external auditor shall examine the accounts.
2. Unqualified adoption of the annual accounts by the Board of Administrators of the Foundation shall serve to ratify the actions of the General Manager in respect of his day-to-day management during the preceding financial year as reflected in the accounts.
3. The budget for any financial year shall be established not later than the first month of the year in question.
4. A full years operating costs should be the target for funds to be held in reserve.

FINANCIAL YEAR

Article 17

The financial year of the Foundation shall *start* today.

RULES AND REGULATIONS

Article 18

In all matters not specifically regulated by this Constitution, the Board of Administrators shall establish all further rules and provisions relating to the Foundation in the Regulations. These rules and regulations shall be amended or supplemented by the Board of Administrators as necessary and shall not be in conflict with the Constitution or any statutory provision.

AMENDMENT OF THE CONSTITUTION AND DISSOLUTION OF THE FOUNDATION

Article 19

1. The Board of Administrators shall be empowered to amend this Constitution and/or dissolve the Foundation.
2. The Board of Administrators, by a majority of at least three-quarters of the votes cast, may resolve to table a motion for amendment of the Constitution or dissolution of the Foundation at a meeting specifically convened for that purpose which is attended by all the members of the Board of Administrators.
3. If a quorum is not present at the meeting at which a motion as referred to in the preceding paragraph is to be tabled, the motion shall be decided at a meeting to be convened within seven days of that date and to be held not less than fourteen days and not more than thirty days after the first, by a majority of at least three-quarters of the votes cast, irrespective of the number of members present at the meeting.

LIQUIDATION

Article 20

1. On dissolution of the Foundation, its assets shall be liquidated by its Board of Administrators. The Constitution shall remain in force as far as possible during the liquidation.
2. The Founding Organisations shall determine the application of any surplus. The application of the surplus shall in any event be consistent with, or as far as possible conducive to, the object of the Foundation.

CONCLUDING CLAUSE

Article 21

In all cases which are not covered either by the Constitution or by the Rules and Regulations as referred to in Article 18, the Board of Administrators shall decide.

The appearer is known to me, the notary.

WHEREOF THIS DEED, the original thereof was executed in Amsterdam on the day and year first above written.

After substance of the present deed had been made known to them, parties have unanimously declared that they had taken cognizance of the full contents thereof and that they did not wish the same to be read in full. Immediately after a reading in part, the parties and I, civil-law-notary, hereonto set our hands at.