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## **Terms of Reference of the Audit Committee**

**Dated**                    **14 September 2020**

**Phoenix Spree Deutschland Limited**

## **Terms of Reference of the Audit Committee (the "Committee")**

### **1 Membership**

- 1.1 The Committee shall be made up of at least two Members. The Committee shall include at least one Member of the Risk Committee. Members shall be appointed by the Board on the recommendation of the Nomination Committee or otherwise in consultation with the Chair.
- 1.2 All Members shall be independent non-executive Directors at least one of whom shall have recent and relevant financial experience and ideally holding a professional qualification from one of the professional accountancy bodies. The Committee as a whole shall have competence relevant to the sector in which the Company operates.
- 1.3 The chair of the Company may only be a Member provided that he or she was considered independent on appointment as chair of the Company. If the chair of the Company is a member, the Board should explain in the annual report why it believes this is appropriate.
- 1.4 All Members should have sufficient competence to understand, analyse and, when necessary, challenge the management accounts and draft public financial statements.
- 1.5 Only Members shall have the right to attend Committee meetings. However, other individuals, such as representatives of the Property Advisor, may be invited to attend all or part of any meeting as and when appropriate and necessary by the Committee.
- 1.6 The external auditors will be invited to attend meetings of the Committee on a regular basis.

### **2 Chair**

- 2.1 The Board shall appoint the Chair. The Chair has the responsibility of liaising with the Board.
- 2.2 The Company's chair shall not be the Chair.
- 2.3 The Chair shall chair the meetings of the Committee unless the Chair is UK resident and unable to travel to Jersey for meetings then a Jersey resident member may be appointed chair for that meeting.
- 2.4 In the absence of the Chair, the remaining members present shall elect one of themselves to chair the meetings of the Committee.

### **3 Secretary**

- 3.1 The Company Secretary (or his/her delegate) or such other person as the Board may determine from time to time shall be the secretary of the Committee.
- 3.2 The secretary of the Committee (or his/her delegate) will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to the issues.

3.3 The secretary of the Committee or his/her delegate shall attend meetings of the Committee to take minutes.

3.4 In the absence of the secretary of the Committee, the Members present at a meeting of the Committee shall elect another person to act as the secretary for the purposes of that meeting.

#### **4 Quorum**

4.1 The quorum necessary for the transaction of business of the Committee shall be two members.

4.2 The secretary of the Committee shall ascertain, at the beginning of each meeting, the existence of any conflicts of interest and minute them accordingly. The relevant Member shall not be counted towards the quorum and he/she must abstain from voting on any resolution of the Committee in which he/she and/or his/her associates have a material interest.

4.3 A duly convened meeting of the Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Committee.

#### **5 Frequency of meetings**

5.1 The Committee shall meet at least two times a year and otherwise as required.

5.2 Any Member or the external auditors may request a meeting if they consider that one is necessary.

5.3 Meetings of the Committee will be arranged to the extent reasonably possible to tie in with the publication of the Company's financial statements for the full and half year.

5.4 Outside of the formal meeting programme, the Chair, and to a lesser extent the other Members, will maintain dialogue with key individuals involved in the Company's governance, including the Chair of the Board, the Property Advisor, the Administrator/Company Secretary and the external auditor.

#### **6 Attendance at meetings**

6.1 Members may attend meetings of the Committee either in person or through other telephonic and/or electronic means of communication. Such a meeting of Members shall only be validly convened if the majority of the Members participating are located outside the United Kingdom. Such a meeting shall be deemed to take place where the Chair of the meeting then is located provided that no meeting can take place in the United Kingdom.

6.2 Should any Member wish to attend a meeting through telephonic and/or electronic communications, prior arrangements shall be made with the secretary of the Committee.

6.3 The Property Advisor and a representative of the external auditors shall normally attend meetings along with the Members.

## **7 Notice of meetings**

- 7.1 Meetings of the Committee shall be summoned by the secretary of the Committee at the request of any of its Members or at the request of the Chair.
- 7.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date shall be forwarded to each Member, and to any other person required to attend, within a reasonable time prior to the date of the meeting.
- 7.3 An agenda of items to be discussed shall be forwarded to the Chair of the Committee in the first instance unless otherwise agreed by the Chair of the Committee, then circulated to each member of the Committee and any other person required to attend within a reasonable time prior to the date of the meeting. Supporting papers shall be sent to Members and to other attendees as appropriate, at the same time.
- 7.4 Any Member shall be entitled, by notice to the secretary of the Committee, to include other matters relevant to the functions of the Committee in the agenda of a Committee meeting.
- 7.5 All meetings of the Committee shall be held outside the United Kingdom.

## **8 Minutes of meetings**

- 8.1 The secretary of the Committee (or his/her delegate) in attendance at the meetings of the Committee shall minute in sufficient detail all proceedings and resolutions of all such meetings, including the names of those present and in attendance. The minutes should also include any concerns raised by any Member and/or dissenting views expressed.
- 8.2 Draft minutes of the Committee meetings shall be circulated to the Chair of the Committee for review and comment prior to circulation to the wider Committee within a reasonable time after the meeting with a final draft tabled to the next available Audit Committee meeting for approval and at the Board meeting for information purposes, unless it is considered inappropriate to do so by the Chair.
- 8.3 Minutes of the Committee meetings shall be kept by the secretary of the Committee and shall be available for inspection by any Member or Director at any reasonable time on reasonable notice.

## **9 Duties**

The Committee shall be responsible for performing the duties below for the Group.

### **9.1 Financial Reporting**

- 9.1.1 The Committee shall monitor the integrity of the financial statements of the Company, including its annual and half-yearly reports, preliminary announcements and any other formal statements relating to its financial performance, and review and report to the Board on significant financial reporting issues and judgements which those statements contain. In particular, the Committee shall review and challenge where necessary:

- a) the consistency of, and any changes to, significant accounting policies on a year on year basis;
- b) the methods used to account for significant or unusual transactions where different approaches are possible;
- c) whether the Company has followed appropriate accounting policies and made appropriate estimates and judgements, taking into account the external auditor's views on the financial statements;
- d) the valuation of the Company's property portfolio as this is a key determinate of the Company's NAV, its profit or loss and the Property Advisor's remuneration;
- e) the clarity of disclosure in the Company's financial statements and the context in which statements are made; and
- f) all material information presented with the financial statements, such as the business review and the corporate governance statement (insofar as it relates to audit management).

9.1.2 The Committee shall ensure that the financial statements adequately disclosure how stakeholder interest and the matters set out in Section 172 of the Companies Act 2006 have been considered in Board discussions and decision making.

9.1.3 The Committee shall review any other statements requiring Board approval which contain financial information first, where to carry out a review prior to Board approval would be practicable and consistent with any prompt reporting requirements under any law or regulation including the Listing Rules or Disclosure Guidance and Transparency Rules sourcebook. Where the Committee is not satisfied with any aspect of the proposed financial reporting by the Company, it shall report its views to the Board.

## 9.2 **Narrative reporting**

9.2.1 The Committee shall review and report to the Board whether the annual report and accounts is fair, balanced, understandable, comprehensive, consistent with prior years and explains how the Board assesses the performance of the Company's business during the financial year as required by the AIC Code.

9.2.2 As part of this review, the Committee shall consider if the annual report and financial statements provide the information necessary to shareholders to assess the Company's position and performance, strategy and business model, and reviews the description of the Company's key performance indicators as well as the governance section of the annual report.

9.2.3 The Committee should provide advice to the Board for the purposes of including a statement in the annual and half-yearly financial statements as to whether it considers it appropriate to adopt the going concern basis of accounting in preparing them, and identify any material uncertainties as to

the Company's ability to continue to do so over a period of at least 12 months from the date of approval of the financial statements.

- 9.2.4 Taking account of the Company's current position and principal risks, the Committee should review and recommend a viability statement for the Board to include in the annual report explaining how it has assessed the prospects of the Company, the risks identified by the Risk Committee, over what period it has done so and why it considers that period to be appropriate. The Committee should state whether it has a reasonable expectation that the Company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

### 9.3 **Internal controls**

- 9.3.1 The Committee shall review the adequacy and effectiveness of the Company's internal financial controls systems.
- 9.3.2 The Committee shall review the Group's procedures for the prevention, detection and reporting of fraud, bribery and corruption.
- 9.3.3 The Committee shall monitor and review, in conjunction with the Risk Committee, the internal control and risk management systems of the Company's service providers.
- 9.3.4 The Committee shall approve, in conjunction with the Risk Committee, the statements to be included in the annual report concerning internal financial controls, risk management, including the assessment of principle risks and emerging risks, and the viability statement.

### 9.4 **External audit**

The Committee shall:

- 9.4.1 consider and make recommendations to the Board, to be put to the Shareholders for approval at an annual general meeting, in relation to the appointment, re-appointment and removal of the Company's external auditor;
- 9.4.2 ensure that at least every ten years the audit services contract is put out to tender and in respect of such tender oversee the selection process and ensure that all tendering firms have such access as is necessary to information and individuals during the duration of the tendering process;
- 9.4.3 in the event the external auditor resigns, investigate the issues leading to this decision and decide whether any action is required;
- 9.4.4 monitor and annually review the external auditor's independence and objectivity, taking into consideration relevant UK and Jersey law, the Ethical Standard and other relevant professional and regulatory requirements and the Group's relationship with the auditor as a whole, in order to satisfy itself that there are no relationships between the external auditor and the

Company (other than in the ordinary course of business) which could adversely affect the auditor's independence and objectivity

- 9.4.5 be responsible for approving the level of remuneration of the external auditors, including fees for audit and non-audit services, to ensure that the level of fees is appropriate to enable an effective and high quality audit to be conducted;
- 9.4.6 approve the terms of engagement of any external auditor, including any engagement letter issued at the start of each audit and the scope of the audit;
- 9.4.7 monitor the external auditor's compliance with the relevant ethical and professional guidance on the rotation of the audit partner, the level of fees paid by the Company compared to the overall fee income of the firm, office and partner and other related requirements;
- 9.4.8 annually assess the qualifications, expertise and resources of the external auditor and the effectiveness of the audit process (with feedback from the property Advisor, accountants and Administrator), including an assessment of the quality of the audit, the handling of key judgements by the auditor, the auditor's response to questions from the Committee and a report from the external auditor on their own internal quality procedures;
- 9.4.9 evaluate the risks to the quality and effectiveness of the financial reporting process and consideration of the need to include the risk of the withdrawal of their auditor from the market in that evaluation;
- 9.4.10 review and approve the annual audit plan and ensure that it is consistent with the scope of the audit engagement, having regard to the seniority, expertise and experience of the audit team;
- 9.4.11 review the findings of the audit with the external auditor. This shall include but not be limited to, the following:
  - a) discussing the major issues that arise during the audit;
  - b) the auditor's explanation of how the risks to audit quality were addressed;
  - c) the key accounting and audit judgments;
  - d) the auditor's view of their interactions with senior management;
  - e) the levels of errors identified during the audit and the effectiveness of the audit process;
- 9.4.12 review any representation letters requested by the external auditor before they are signed by the Board;
- 9.4.13 meet regularly with the auditors (including once at the planning stage, where the nature and scope of the audit will be considered, and once post audit at the reporting stage to discuss any issues arising from the audit) and, at least once a year, meet with the external auditor without the

Property Adviser present, to discuss the auditor's remit and any issues arising from the audit;

9.4.14 develop and recommend to the Board the Company's formal policy on the provision of non-audit services by the external auditor, including approval of non-audit services by the Committee and specifying the types of non-audit service to be pre-approved, and assessment of whether non-audit services have a direct or material effect on the audited financial statements. The policy should include consideration of the following matters:

- a) threats to the independence and objectivity of the external auditor and any safeguards in place;
- b) the nature of the non-audit services;
- c) whether the external audit firm is the most suitable supplier of the non-audit service;
- d) the fees for the non-audit services, both individually and in aggregate, relative to the audit fee; and
- e) the criteria governing compensation.

## **10 Reporting responsibilities**

10.1 The Committee shall produce a report to be included in a separate section of the Directors' report within the annual report describing the Committee's role and detailing its activities and how independent oversight over external auditors has been exercised. The report should include:

10.1.1 the significant issues that the Committee considered in relation to the financial statements and how these were addressed;

10.1.2 an explanation of how it has assessed the independence and effectiveness of the external audit process and the approach taken to the appointment or re-appointment of the external auditor, information on the length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans;

10.1.3 in the case of a Board not accepting the Committee's recommendation on the external auditor appointment, reappointment or removal, a statement from the audit committee explaining its recommendation and the reasons why the Board has taken a different position (this should also be supplied in any papers recommending appointment or reappointment);

10.1.4 if the external auditor provides non-audit services, an explanation of how auditor objectivity and independence is safeguarded.

10.2 The Chair shall report formally to the Board after each meeting, on all matters within its duties and responsibilities and shall also formally report to the Board on how it has discharged its responsibilities. This report shall include:

10.2.1 the significant issues noted in the financial statements, annual and half-yearly reports, and how these issues were addressed;

- 10.2.2 its assessment of the effectiveness of the external audit process, the approach taken to the appointment or reappointment of the external auditor, length of tenure of audit firm, when a tender was last conducted and advance notice of any retendering plans; and
- 10.2.3 any other issues on which the Board has requested the Committee's opinion.
- 10.3 The Committee shall oversee how environmental guidelines (as determined by the Corporate Social Responsibility Committee) are reported upon in the annual report and accounts.
- 10.4 The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.
- 10.5 In the compiling of the reports referred to in this paragraph 10.1 and 10.2, the Committee should exercise judgement in deciding which of the issues it considers in relation to the financial statements are significant, but should include at least those matters that have informed the Board's assessment of whether the Company is a going concern and the inputs to the viability statement. The report to Shareholders need not repeat information disclosed elsewhere in the annual report and accounts but could provide cross-references to that information.
- 10.6 The Committee Chair shall seek shareholder engagement on matters within the scope of the Committee's responsibilities including attending the Annual General Meeting of the Company (ideally in person but, if not possible, by phone) to answer any shareholder questions on the Committee's activities.

## **11 Other matters**

- 11.1 The Committee shall have access to sufficient resources in order to carry out its functions and discharge its duties. In the event that the Committee determines that it has insufficient resources, it may make a request to the Board. The Board shall convene a Board meeting as soon as reasonably practicable to consider the request.
- 11.2 All Members shall have access to the advice and services of the secretary of the Committee with a view to ensuring that procedures of the Committee and all applicable rules and regulations are followed.
- 11.3 The Committee shall be provided with appropriate and timely training, both in the form of an induction programme for new Members and on an ongoing basis for all Members.
- 11.4 In the event that the Committee or any Member requires access to independent professional advice in connection with its/his/her duties, a request may be made to the Company. All such requests shall be processed in accordance with the Company's pre-defined procedures for seeking independent professional advice at the Company's expense.
- 11.5 The Committee shall oversee any investigation of activities which are within its terms of reference.

- 11.6 Every Member shall give sufficient time and attention to his/her duties as a Member. He/she shall give the Company the benefit of his skills and expertise through regular attendance and active participation.
- 11.7 The Committee shall, at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.
- 11.8 The Committee shall give due consideration to laws and regulations relevant to the Company, in particular the Companies (Jersey) Law 1991 (as amended), the provisions of the AIC Code and the Financial Conduct Authority's Listing Rules, Prospectus Rules, Disclosure Guidance and Transparency Rules and any other applicable rules, as appropriate.
- 11.9 The Committee shall work and liaise as necessary with all other Board committees ensuring interaction between committees and with the Board is reviewed regularly, taking particular account of the impact of risk management and internal controls being delegated to different committees.

## **12 Authority**

The Committee is authorised to:

- 12.1 seek any information it reasonably requires from any Director in order to perform its duties and all Directors are directed to co-operate with any reasonable request made by the Committee;
- 12.2 obtain, at the Company's expense, independent legal, accounting or other professional advice on any matter if it believes it necessary to do so;
- 12.3 call any Director or adviser to be questioned at a meeting of the Committee as and when required; and
- 12.4 have the right to publish in the Company's Annual Report details of any issues that cannot be resolved between the Committee and the Board.

## **Definitions**

In these Terms of Reference, unless the context requires otherwise, the following definitions shall apply:

**"AIC Code"** means the Association of Investment Companies Code of Corporate Governance

**"Board"** means the board of Directors of the Company

**"Chair"** means the chair of the Committee from time to time

**"Company"** means Phoenix Spree Deutschland Limited

**"Company Secretary"** means the company secretary of the Company from time to time

**"Directors"** means the directors of the Company from time to time

**"Group"** means the Company and its subsidiaries from time to time

**"Member"** means a member of the Committee from time to time

**"Property Advisor"** means the property advisor to the Company from time to time

**"Shareholders"** means the shareholders of the Company