PUTTING LE MAIRE INTO PERSPECTIVE
Business Organization and the Evolution of Corporate Governance in the Dutch Republic, 1590-1610

by

Oscar Gelderblom (UU), Abe de Jong (EUR) and Joost Jonker (UU)

First draft, please do not quote or circulate

Comments welcome at o.gelderblom@uu.nl; ajong@rsm.nl; j.jonker@uu.nl

This version: 23 October 2009

Abstract

To understand the origins of shareholder advocacy in the Netherlands, we need to know more about the context in which gave rise to Le Maire's 1609 petition against the VOC board. We analyse the way in which corporate organization evolved from the perspective of the principal-agent theory. The main forms of Dutch business all struck a judicious balance between the various stakeholders, but the VOC's corporate structure was heavily biased towards one principal, the state, to the detriment of the shareholders, because of the company's purpose as an instrument for war and colonial conquest. The protests of Le Maire and others underline that the VOC was a deviation from the trend of corporate evolution, and not characteristic for the emergence of joint-stock companies.

1. Introduction

Was Isaac le Maire really the pioneer champion of shareholder rights when he drafted his petition against the policies of the Dutch East India Company (VOC) in 1609 and followed that up with his famous bear raid on the company's shares? Or was he a troublemaker and a scoundrel who tried to undermine a great corporation, first with self-serving and unrealistic demands for more power over company policy, then with dangerous share manipulations?

Enraged company officials of course presented him as the latter, whereas corporate governance historians have preferred to hail the former. If we want to understand these conflicting views, we need to know more than we do about the corporate governance norms in the Dutch Republic around 1600. A useful framework to do so is the principal-agent theory, a financial-economics perspective which helps to understand the interests of all parties and, as a result, the effectiveness of the VOC charter. Jensen and Meckling's view of the firm as a 'legal fiction which serves as a nexus of contracting relationships' is particularly useful.[1] Their principal-agent relations are characterized by a divergence of interests and imperfect information, which create agency problems and agency costs.

The agency problems in Jensen and Meckling (1976) are moral hazard agency problems. These problems occur in situations where two parties possess equal information at the time of the initialization of the contract, i.e. information is complete. Afterwards the agent has superior information to that available to the principal. This information differential, together with divergent interests, may induce behavior by the agent that is beneficial to him or her, but harms the principal. According to Jensen and Meckling, these costs may stem from three sources.[2] First, monitoring costs are caused by efforts of the principal in order to obtain additional information that reduces the asymmetry in information. Second, bonding costs are caused by actions of agents that reduce information asymmetries. These costs are borne by the principal to the extent to which they mitigate the agency problem. Third, residual losses may occur.

In this paper we discuss the VOC charter in light of the principal-agent theory. We identify the principals and agents, as well as divergences of interests and information asymmetries. We confront the VOC charter with corporate governance norms and practices in the late 16th and early 17th century. In particular, emphasize the role of Isaac le Maire and, to a lesser extent, that of Willem Usselinx. Paul Frentrop's 2002 book did important groundwork

[1] M.C. Jensen and W.H. Meckling, 'Theory of the firm: managerial behavior, agency costs and ownership structure', in: *Journal of Financial Economics* 3 (1976) 305-360, ibidem 311.
[2] Jensen and Meckling, 'Theory of the firm' 308.

here, but he took the foundation of the VOC in 1602 as his point of departure, whereas, to gain perspective, we would want to know what went on before and connect this with what came later.[3] We conduct this analysis by taking an approach informed by modern agency theory. This approach also enables us to take a fresh look at the alleged character of the VOC as one of the first joint-stock limited liability company (*naamloze vennootschap* or NV).

Traditionally, the historiography of Dutch corporate development regards the VOC as the first example of an NV and sees this form of organization as crucial to its economic success. Scholars broadly agree about the legal pedigree of the VOC. The company was essentially a private partnership with addititional features, such as the limited liability for directors and for shareholders derived from various older forms of business organization.[4] However, opinions differ as to the precise evolutionary path, i.e. which feature emerged why, when, and whence; and about origins, motivations and evolutions of particular features, such as limited liability.[5] Looking at the relationship between agents and various principals should help clear up the reigning confusion as to the provenance of these features but, more importantly, comparing such arrangements will give us a better understanding of where exactly the VOC fits in the evolutionary path of Dutch corporate law. Indeed, we find, for instance, that the corporate governance norms which Le Maire wanted applied were common in others business organizations, such as the partnerships with additional features, and also normal today. This finding turns the VOC from a famous first specimen into a mutant deviating from the evolutionary path.

The paper is structured as follows. We begin by discussing the agency problems in early trading companies and in the VOC as signalled by its charter, and analyze these problems from modern perspectives on corporate governance (Section 2). The next section looks at the emergence of large partnerships in the intercontinental trade, which led to a

---

[3] P.M.L. Frentrop, *A History of Corporate Governance, 1602-2002* (Deminor: Brussels 2003).

[4] ***Den Heijer, Harris, De Vries and Van der Woude. S. van Brakel, *De Hollandsche handelscompagnieën der zeventiende eeuw, hun ontstaan, hunne inrichting* (Den Haag 1908); idem, 'Bijdrage tot de geschiedenis der naamlooze vennootschap', in: *Rechtsgeleerd magazijn* 31 (1912) 261-306; idem, ***; E.J.J. van der Heijden, *De ontwikkeling van de naamlooze vennootschap in Nederland vóór de codificatie* (Van der Vecht: Amsterdam 1908); idem, ***; W.D.H. Asser, *In solidum of pro parte, een onderzoek naar de ontwikkelingsgeschiedenis van de hoofdelijke en gedeelde aansprakelijkheid van vennoten tegenover derden* (Brill: Leiden 1983). A different interpretation linking the trading companies to *partenrederijen* or the part-owning of ships is represented by K. Lehmann, *Die geschichtliche Entwicklung des Aktienrechts bis zum Code de Commerce* (Heymann: Berlin 1895); W.M.F. Mansvelt, *Rechtsvorm en financieel beheer bij de VOC* (Swets & Zeitlinger: Amsterdam 1922). A good survey of the debate in H.J. den Heijer, *De geoctroieerde compagnie, de VOC en de WIC als voorlopers van de naamloze vennootschap* (Kluwer: Deventer 2005) 35-36.

[5] According to De Vries and Van der Woude the directors of the predecessors did not enjoy third-party limited liability, whereas Den Heijer thinks they did: J. de Vries, A. van der Woude, *The first modern economy, success, failure, and perseverance of the Dutch economy, 1500-1815* (Cambridge UP: Cambridge 1997) 385; Den Heijer, *Geoctroieerde compagnie* 27, 35-36.

division of labour between common shareholders and directors. Section 4 focuses on the pivotal role of the state in shaping the VOC charter, after which Section 5 discusses the agency conflicts during the first years of the VOC's existence, as evident from the 1606 draft charter of the West India Company or WIC and from Le Maire's protests. Conclusions follow in Section 6.

2. Agency problems in the long distance trade

The VOC emerged from the amalgamation between the *voorcompagnieën*, pioneer companies in the Asian trade active from 1595, and thus built on an already quite wide experience with financing and managing long-distance trade. Unfortunately we do not know exactly to what extent the VOC charter reflected this experience, for the articles of association of these *voorcompagnieën* have survived only in fragments. But we can get a good idea of the problems that had, or had not, arisen by analysing the 46 VOC charter clauses concerning corporate governance for potential agency problems.

The VOC had three main stakeholders. First, the *bewindhebbers* or shareholder-directors; second, the financiers, i.e. the shareholders and bondholders; third, the state in the form of the Estates-General, the highest political institution in the Dutch Republic. Out of the 46 articles, 29 dealt with various aspects of corporate governance and defined the positions of the stakeholders.[6] Three features stand out. First, the impact which the character of the VOC as a semi-public enterprise entrusted with overseas trade and warfare had on the structure of the company's governance. The Estates-General and notably the Republic's highest civil servant, advocate-general Johan van Oldenbarnevelt, pressured the *voorcompagnieën* to merge for reasons of state and consequently kept a close rein on the VOC as well. The hot rivalry between the *voorcompagnieën* undermined the country's fragile political unity and economic prosperity, and seriously limited the prospects of competing successfully against the well-entrenched Spanish, Portuguese, and English Asian traders. By attacking the Luso-Hispanic overseas empire, a large, united company would also help to win the ongoing war against the Spanish Habsburgs. Doing this required establishing and maintaining a forceful presence in Asia under the flag of the Republic. For those reasons the VOC received a charter

[6] We follow the text of the 1602 charter as printed in J.A. van der Chys, *Geschiedenis der stichting van de Vereenigde O.I. Compagnie en der maatregelen van de Nederlandsche regering betreffende de vaart op Oost-Indië, welke aan deze stichting voorafgingen* (Engels: Leiden 1857) 118-135. We counted articles 2, 3, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42 as dealing with aspects of corporate governance.

for 21 years plus suzerain rights, the right to wage war and make treaties in the name of the Estates-General.[7]

Four corporate governance clauses tied the VOC closely to the authorities at various levels. Article 6 gave the Estates-General discretionary powers to overrule the *bewindhebbers* or managing directors. Under articles 15 and 16 the company had to supply data about incoming goods and about sales revenues to the provincial and city authorities if their inhabitants had supplied 50,000 guilders capital or more. If those authorities chose to appoint someone to organize share subscriptions for the company, that agent had a right to full financial information so as to keep the authorities, but not the shareholders, informed. In the end these clauses remained dead letters. Finally, article 26 put the right to appoint managing directors in the hands of the provincial estates.

The second feature which stands out is that the charter devoted attention to the VOC shareholders in only six of the 46 articles.[8] No. 10 gave administrative details about the subscription procedure. The VOC charter said nothing about the shareholders' right to information. Nor did the shareholders have any right of representation with the board. An early proposal to organize the Asian trade in a chamber such as the Portuguese Casa de India had envisaged such a representation, as the WIC charter did later, but the VOC charter did not.[9] We may detect the hand of the state here; presumably the public interest of limiting the spread of sensitive information about war and other policy considerations weighed heavier than the private interests of shareholders. As for financial information, shareholders only obtained a promise of full accounts after ten years, in 1612. Two articles defined exit rights: a general one for all shareholders after the 1612 accounts (No. 7), and a special right for the shareholders in a going concern which was being merged into the VOC, if they objected to the terms of the merger (No. 9). Article 14 detailed some conditions for the intracompany accounts and for the statutory accounts to be presented to shareholders in 1612, and No. 17 gave shareholders a right to a dividend once the available cash reached five per cent of capital.[10] One curious article (No. 27) stipulated that small shareholders had the same rights as

[7] Van der Chys, *Geschiedenis* 130, article 35. Senior VOC officers had therefore to swear an oath of allegiance to both the company and to the Estates-General.
[8] Van der Chys, *Geschiedenis* 118-135, counting articles 7, 9, 10, 14, and 17.
[9] De Jonge, *Opkomst* I 257-261. The proposal probably dated from 1600 or 1601. Interestingly, the 1602 merger talks initially appear to have envisaged the executive committee of XVII *bewindhebbers* as a semi-public board for the Asian trade, though without shareholder representation, but this idea no longer appeared in the second draft: ibidem 262, 272. As late as 1622 Usselinx still pleaded for a public board charged with running the Asian trade and headed by the stadholder: Van Rees, *Geschiedenis staathuishoudkunde* 424-427, 455.
[10] The initial document and the second draft drawn upby the merger committee had specified a threshold of ten per cent: De Jonge, *Opkomst* 266, 273.

big ones when it came to sharing in the company's expected benefits. This was no doubt inserted to counter the existing practice, widely decried in the late 1590s, to carve up the sale of spices between the directors.[11] The charter clearly envisaged the VOC contracting debts, denying the directors commission on the issuing of bonds (No. 30), but said nothing about bondholders or the priority of their claims over those of shareholders in case of bankruptcy.

3. The prominent position of directors

By contrast, the charter gave very extensive and detailed attention to the directors. No fewer than 22 of the 29 corporate governance clauses concern the *bewindhebbers* in one way or another.[12] Seven laid down the responsibilities of the board, the tasks and responsibilities of the individual directors, their oath of office, and their position as officials in having no personal liability for the company's debts (No.'s 2, 3, 6, 12, 27, 32, 33, 42). A further five detailed the directors' remuneration and reimbursement arrangements (No.'s 5, 28, 29, 30, 31). Finally, various articles reflected the difficult merger negotiations between the various *voorcompagnieën*, fuelled by the keen economic and political rivalry between the Dutch Republic's fiercely autonomous cities. The company would be composed of four departments named *kamers* or chambers, one for each city or region which brought its *voorcompagnie* into the merger (No.'s 1, 2). The *bewindhebbers* of those companies became the directors of the VOC, so no fewer than 76 *bewindhebbers* were appointed and the charter named them all individually (No.'s 18-26). Once natural wastage had whittled this number down to 60 it would fall to provincial estates and city councils to fill vacancies from a list of candidates proposed by the company.[13] Surprisingly, given the rotation schemes and limited appointment terms common to similar appointments in the Republic, directors sat for life.[14] Each chamber delegated a set number of its directors to the regular meetings of the 17-strong executive committee.

The attention devoted to the directors was the outcome of several factors. First, reasons of state appear to have weighed very heavily indeed. With 12 articles detailing the relations between the company and the Estates-General or other authorities, the state really

[11] J.G. van Dillen, 'Nieuwe gegevens omtrent de Amsterdamsche compagnieën van verre', in: *Tijdschrift voor Geschiedenis* 45 (1930) 350-359.
[12] Van der Chys, *Geschiedenis* 118-135, counting articles 2, 3, 5, 6, 12, 18-23, 24-25, 26, 27, 28, 29, 30, 31, 32, 33, and 42.
[13] ***Ratio *bewindhebbers* to shareholders, 1602-1620.
[14] Cf. Usselinx' comments comparing the *bewindhebbers* to the boards of orphanages, church wards, and hospitals in Van Rees, *Geschiedenis staathuishoudkunde* 417

acted as the second principal for the directors as their agents and determined the balance of power within the company, as we will argue more fully below.[15] Second, the charter was drafted by a committee of directors from the *voorcompagnieën* keen to keep their hold on a lucrative enterprise and at the same time concerned with the risk of incurring unknown liabilities arising out of a company with an unusually long lifespan.[16] The powerful merchant Balthasar de Moucheron for instance, who had taken the lead in more than one expedition, only wanted to join on his own terms, and to placate him he got them, only to walk away within a year because of a policy disagreement.[17] According to Willem Usselinx, a large merchant well versed in the intercontinental trade, the VOC charter was drafted by *bewindhebbers* bent on defending their own interests and the Estates-General had allowed that to pass so as to achieve the desired merger.[18] Third, as officers in a state-sponsored enterprise for warfare, trade, and colonial expansion the directors would occupy newly created, semi-public functions of major importance, if only because their position was unique in spanning the whole Republic, not just one of its constituent provinces. No other business enjoyed excise privileges for the whole of the country (No. 41) or had rights to apprehend fugitive sailors wherever it found them (No. 43). Fourth, the directors' function was also a fairly recent corporate innovation in need of definition. As a rule neither shipping companies nor partnerships had permanent directors. Shipping companies usually employed a bookkeeper and a captain, no more, and the accounts were settled after the term agreed by the shareholders: a particular voyage or a shipping season. Once the accounts settled the shareholders were free to reinvest or not.[19]

Partnerships sometimes did have a division of labour, notably if the partners were separated by distance, if the partnership employed an agent elswhere, or if the collaboration was a sideline for one or more partners.[20] This latter case happened very often indeed. Merchants commonly had numerous and constantly shifting partnerships with one another, some short-term and for particular purposes, a shipping voyage or the joint purchase or sale of a cargo load, others for longer terms and broader purposes, say the trade in a commodity with a particular country or the manufacturing of one thing or another. To forestall potential agency problems, merchants could fall back on a range of tried solutions from Europe's long history of long-distance trade. Remuneration schemes were jigged to provide incentives,

[15] Van der Chys, *Geschiedenis* 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.
[16] A report on the negotiations in De Jonge, *Opkomst* I 262-281.
[17] De Jonge, *Opkomst* I *** (conditions De Moucheron).
[18] Usselinx' remarks in Van Rees, *Geschiedenis staathuishoudkunde* 410.
[19] ***Ref *partenrederijen* lit: Wegener Sleeswijk.
[20] ***Ex brandy venture Spain, Brazil; iron foundry Sweden, Cunertorff & Snel.

while partnership contracts stipulated the obligations of the partner-manager towards the joint enterprise in broad terms, referring to a general obligation to manage a business and its administration in good faith, with due diligence and in conformity with the style or custom of merchants. During the second half of the sixteenth century a very important form of limited liability developed for partnerships, in that the principal could claim not to be liable for obligations which his agent had incurred outside his remit, i.e. the purpose of the partnership.[21] With so many partnerships being for particular purposes and terms, this served to help check the impact of agent misbehaviour on principals. As for the custom of merchants, this large and flexible body of business norms served as an efficient guideline of conduct since in case of need courts called on expert witnesses to testify on the customs in the local community.[22]

One such custom was the requirement for proper account keeping coupled to the acceptance of ledgers, account books, and supporting documentation such as bills, account extracts, and correspondence as legal proof in litigation. The status of legal proof made archives valuable, so contemporary depictions of merchant offices always show voluminous archives, sometimes even boxed and labelled.[23] The gradual adoption of double-entry bookkeeping, facilitated by the publishing of practical handbooks such as the manuals of Jan Ympyn (Antwerp 1543) and Claes Pietersz (Amsterdam 1576), made business accounts far more transparent and thus easier to check.[24] Proper account keeping provided the basis for other self-evident norms. Partners in a venture had a right of access to all documents at all times plus a mutual obligation to draw up comprehensive annual accounts. Such annual reckoning was so normal that contracts only mentioned exceptions, for instance the settling of accounts after the liquidation of a shipping expedition of uncertain length, or after the number of years a particular venture was planned to run.[25] Similarly, merchants keeping current accounts with each other customarily exchanged account extracts for approval.

Thus the general obligations of partners towards each other were quite clear, as indeed those of partner-managers, but with the *voorcompagnieën* the need for a structured division of labour between shareholders on one hand and shareholder-managers on the other manifested itself. The company of nine Amsterdam merchants which sent out the first expedition in 1595

[21] Van Brakel ***, Van der Heijden; Asser; extent and timing of this limited liability.
[22] Ref doleanten; on the question of to what extent such norms amounted to a *lex mercatoria* see Gelderblom, *Violence, Opportunism and Growth* (Forthcoming Princeton UP 2010).
[23] ***ref Fugger, Jan Luyken.
[24] Jonker & Sluyterman, *At Home* 18; Gelderblom, *Violence, Opportunism and Growth* (Forthcoming Princeton UP 2010).
[25] Voorcompagnieen; ***Brazil venture Van Brakel.

already styled themselves as *bewindhebbers* different from the general body of shareholders, which included the entire crew of the four ships involved, since the company took two months' wages as a share in the venture for each member.[26] Subsequent ventures used the general enthusiasm ignited by the overall success of the Asian trade to recruit an increasing number of partners into the companies, enabling them to send out expeditions counting ten to fourteen ships.

The corporate governance of these ventures mirrored the system for recruiting the shareholders. The companies were formed by a fairly small number of initiators, who drafted shareholders through family and business relations.[27] Once set up, the company was run by its initiators, now known as *bewindhebbers* and acting as first among equals. One document refers to them as the agents of the participants, a point repeatedly emphasized by Usselinx as well.[28] These directors probably received a remuneration for their efforts, but we do not know how much, or in which form, i.e. a fixed salary or a percentage of revenues. The emerging differentiation in tasks and pay do not appear to have affected contemporary conceptions about the character of the association. In 1620 Usselinx described the WIC, then still in the project stage, as a *gemeene rederije*, perhaps best translated as a joint enterprise, in which all shareholders enjoyed equal rights of election and appointment. Consequently the directors ought to be chosen by and from the shareholders; letting city councils appoint them violated that principle.[29]

One clear sign of a divide between them and the other shareholders appeared in the articles of association of the initial expedition. The text itself has not survived, but we know from a related set of regulations that the contract denied participants the right to demand full accounts from the directors until all goods had been sold, during which time the participants would also have to contend themselves with such information as the board of directors was prepared to divulge.[30] These clauses about accounting and about information sharing clearly served to highlight the fact that the company, by force of circumstance, deviated from the customary norms of full disclosure and annual accounts to partners. Everyone had to bide their patience for up to two years until the ships had returned to European waters and sent their fast-sailing yachts ahead with news and data. Once that had happened directors

[26] De Jonge *Opkomst* I, 97, art. 24.
[27] ***Discussion about question whether shareholders in direct relation with company Van Brakel, Van de Heijden, Den Heijer; clearly the case with first expedition from De Jonge *Opkomst* I, 97, art. 24.
[28] Van Dillen, 'Nieuwe gegevens' 354 (1597); Van Rees, *Geschiedenis staathuishoudkunde* 448, 416, 446, 448, 451.
[29] Van Rees, *Geschiedenis staathuishoudkunde* 416.
[30] De Jonge, *Opkomst* I, 97, article 24 of the regulations concerning the expedition crew, referring to the contract between the participants.

presumably gave participants a rough idea of the results, if only so as to secure their support for another venture.[31] However, the regulations also show a subtle change in the status of the company's shareholders. The ban on the crew selling their shares before the return to port suggests that the exclusion of shareholders from the day-to-day running of the business was matched by an exit option in the form of transferable shares, possibly tied to an obligation to give the company an offer of first refusal.[32] The exit option does not appear to have been exercised very often in the case of the *voorcompagnieën*; a keen market for company shares sprang up only with the launch of the VOC.[33] By then the trading option was considered so normal that the charter did not even mention it. But the *bewindhebbers* who drafted the document clearly had agreed on a rough transfer procedure; the preambule to the ledger with share subscriptions of the Amsterdam and Zeeland chambers mention it in identical words.[34]

Exit options were a normal feature in shipping companies, as often as not tied to a right of first refusal for the other shareholders, but they made sense for partnerships only if these had performed a clear separation between partner-managers who could sign for the company, and simple partners who could not. This type of company became quite common; in 1610 Le Maire managed a whaling company with seven shareholders who traded their shares.[35] The separation of functions probably led to a wider application of the limited liability principle. Common shareholders could not only claim this if directors went beyond the purpose of the partnership, but also because they were no longer in direct managerial control. The shareholder-managers must also have enjoyed internal limited liability, i.e. they could not be called on to pay more than their share, but they do not appear to have acquired external liability, that is they remained personally liable for a company's obligations. In 1597 the prominent Rotterdam businessman Johan van der Veken petitioned the Estates General to release him from litigation over company debts since he ought not to be held personally liable for them, but we do not know whether his claim succeeded.[36] The fact that article 42 the VOC charter expressly excluded the directors' personal liability suggests that the point needed articulation and did not follow automatically from a company's constitution. Even in the

[31] This was already the case with the first expedition: Van Dillen, 'Nieuwe gegevens' 355-356.
[32] De Jonge *Opkomst* I, 97, art. 24.
[33] O. Gelderblom and J.P.B. Jonker, 'Completing a financial revolution: the finance of the Dutch East India trade and the rise of the Amsterdam capital market, 1595-1612', in: *Journal of Economic History* 64 (2004) 641-672; cf. Van Dillen, 'Nieuwe gegevens' 355-356, for examples of early transfers.
[34] J.G. van Dillen, *Het oudste aandeelhoudersregister van de Kamer Amsterdam der Oost-Indische Compagnie* (Nijhoff: The Hague 1958) 105-106; W.S. Unger, 'Het inschrijvingsregister van de Kamer Zeeland der Verenigde Oost-Indische Compagnie', in: *Economisch Historisch Jaarboek* 24 (1946-1948) 1-33, ibidem 13-14.
[35] 't Hart 'Walvisvaart' 211-212.
[36] De Jonge, *Opkomst* I, 239-240; ***chk petitions SG.

1620s not everyone had picked this up. The Delft chamber of the Noordsche Compagnie had apparently not excluded their directors' personal liability, so it became embroiled in a lengthy court case about the payment of beer ordered for the company's ships. The directors finally settled in *1647 by sharing the bill.[37]

4. The main principal

Though the importance of the VOC as a semi-public enterprise has been emphasized before in the literature, the agency theory framework helps us understand the full extent to which this aspect shaped the company's biased corporate governance structure. Together with delegates from the various *voorcompagnieën*, representatives from the Estates-General formed part of the committee which drafted the charter and the committee gave progress reports to the Estates.[38] Reasons of state, the desire to take the war to the Luso-Hispanic overseas empire and conquer a Dutch empire there, brought the company into being and determined the way in which it was run in two ways, direct and indirect. First, in return for granting a 21 year monopoly on trade with Asia plus other privileges and concessions such as the suzerain rights and tax breaks, the state received direct benefits: a small lump sum plus a range of instruments to guide policy.[39] The provincial Estates appointed new *bewindhebbers* (No. 26) and the Estates-General could override them (No. 6). Regional and local authorities could appoint agents to monitor the company (No. 15-16), but as we have seen this failed to happen. In addition the company had to submit reports about returning fleets to the Republic's Admiralties and the commanding officer had to report in person to the Estates-General (No.'s 36, 45).

These articles amounted to a strong injunction forcing *bewindhebbers* to minimize agency behaviour towards the Estates-General, both via monitoring (board composition) and bonding (reporting, appointments). Though the *bewindhebbers* possessed an obvious information advantage over any other stakeholder in the VOC, they had a clear incentive to share this with the state and not with the shareholders. The state could, and did, help them in numerous ways, big and small: providing ships and ordnance, promulgating sanctions to speed up tardy share subscriptions, or issuing regulations for trading the company's shares,

[37] Van Brakel, 'Noordsche Compagnie' ***; chk exact details case.
[38] De Jonge, *Opkomst* I, 262-281 for a report of the proceedings.
[39] Van der Chys, *Geschiedenis* 118-135, counting articles 6, 15-16, 26, 34-36, 38, 39, 41, 44, 45.

which included a ban on naked short selling after Le Maire's raid.[40] Delegates from the *bewindhebbers* frequently attended the Estates' meetings: to supply information, give expert advice on a range of issues, or to get something done.[41] As for the indirect ways, the system for filling vacancies provided the authorities with strong leverage over the board. Giving the appointment of directors to the provincial authorities meant ensuring that board members would be 'one of them', recruited from candidates suitable for public office, i.e. men adhering to Calvinism, the dominant religion, and fully aware that their career and the social position of their family depended on their success in maintaining the stability of the status quo. Rather than economic appointments, the directors' positions soon became social and political assets, part of the cement mix which bound the elite together. The Amsterdam city council underlined this when, in 1610, they appropriated the right to appoint directors in the most powerful chamber from the Estates of Holland.[42] It seems reasonable to assume that the directors' interests included personal wealth maximization via transactions with the VOC (tunneling) and via direct expropriation. Examples of both surfaced over time, one of them in Le Maire's petition. However, the additional dimension of board appointments was probably as important in guiding the behaviour of directors.

Set against that the incentives to have the *bewindhebbers* minimize agency behaviour towards the other principals, bondholders and shareholders, were fairly weak. Directors were required to keep a minimum holding as a guarantee for their oath of office and by extension for the proper conduct of the staff hired and paid by them (No.'s 28, 33). As financiers, bondholders and shareholders were jointly entitled to the financial surplus of the VOC's operations. In the modern setting, bondholders are preferred claimants and are entitled to interest payments and timely repayment of the principal. In case the firm cannot meet these fixed claims, a default occurs and liquidation payouts follow the priority rules. The charter gave no such provisions at all. We know no more than that the *bewindhebbers* appear to have used bonds to favour preferred investors, who were keen on them because of the regular interest payments and good rates. Consequently we do not know either to what extent the VOC shareholders were residual claimants with respect to the bondholders. As we have noted above, the shareholders' statutory right to dividends if revenues amounted to five per cent of capital was ignored, and they had very limited information and no voting rights. In addition the rapid rise of share trading gave investors a very convenient exit option.

[40] ***Examples from Resolutions Estates-General.
[41] *** Examples from Resolutions Estates-General.
[42] Gaastra, *Geschiedenis VOC* [*32].

From a pure agency perspective, the weak position of shareholders vis-a-vis the directors opened an enormous potential for agency costs. Some of those have already been noted; others follow below, and still more surfaced during the 1620s struggle with discontented shareholders (see the paper by Matthijs de Jongh). One would expect investors to price protect against these agency costs, but poor data means that we cannot really see whether they did. The VOC's shares were fairly rapidly subscribed and are reported to have traded substantially above par for some time after. The fact that the board asked the Estates-General for special measures to prod tardy subscription payers suggests that some investors may have had second thoughts, but there simply is insufficient evidence one way or another.[43] Shareprices seem to have fluctuated with the general outlook of the company, i.e. the arrival of news from Asia and rumours about dividend payments; to what extent agency issues had an impact we simply cannot say.

5. Le Maire's gripes

There is ample evidence, however, that within a few years the VOC's charter and policy created serious friction within the board and between the board and the shareholders. We do not know the full extent of what happened, nor the nature of the arguments, but the signs are unmistakeable. Three prominent directors and large shareholders resigned from the board in successive years: De Moucheron (1603), Pieter Lintgens (1604) and Le Maire (1605). They were driven mainly by frustration over the company's general business policy, since all three attempted to move back into the Asian trade one way or the other, by sponsoring the launch of trade companies under the auspices of the French King Henri IV or by organizing naval expeditions to try alternative routes not covered in the VOC charter. [44] Wanting to establish a firm presence in Asia, the company invested heavily during its first years and even so made little headway. Consequently no dividends were being paid, all the more galling since the last expedition sent out by *voorcompagnieën* in 1602 started showering dividends three years later to the shareholders who had wisely opted not to turn let their share be subsumed into the VOC.[45] This must have caused uproar from the rest, who now knew that a large amount of

[43] ***RSH [1605] resolution prod subscribers.

[44] Van Rees, *Geschiedenis staathuishoudkunde* 29, 31, 33-34. The efforts by De Moucheron and Lintgens to set up trading companies abroad inspired the VOC board to have Le Maire swear an oath that he would not compete with the company; this did not, however, deter him. Ref. bio Le Maire; ***Chk his share position in NA, also for what follows.

[45] Van Rees, *Geschiedenis staathuishoudkunde* 27: from 1605 to 1610 respectively 15, 75, 40, 20, 25, 50 per cent for a total of 225. Van Rees erroneuously attributes these dividends to the VOC, which paid its first

money had come in without being paid out. Combined with continuing bad news from Asia, the discontent over dividends appears to have pushed the company's share price from 140 per cent in 1605 down to 80 in 1606.[46] Two years later the board considered the VOC's prospects to be so poor that it petitioned the Estates-General to lift the statutory accounts due in 1612, fearing that disclosure would lead to a precipitous withdrawal of capital. The request was granted; in agency terms, two stakeholders conniving to sideline the third one.[47] A subtle shift in terminology suggests that, at more or less the same time, the board also sought to redefine the position of the shareholders towards the company. Initially shares were known as *partijen*, i.e. literally parts in the company similar to the parts shipowners held in a ship, and together the holders of parts or *participanten* formed the company. From 1606, however, the VOC started substituting the term *actie* or action-in-law for *partijen*, signifying that the holders were no longer considered a part of the company, but outside owners of a right to dividends.[48]

The experiences with the VOC were so disappointing overall that the initial plans to set up a similar company for the Atlantic trade envisaged a radically different corporate governance structure. In 1606 the Estates of Holland circulated a draft charter for a West India Company (WIC).[49] The overall structure of the proposed company was to resemble that of the VOC. A single-tier board of *bewindhebbers* headed the company, with day-to-day decisions delegated to a committee of seventeen. In the VOC this board operated more or less independently, but the draft charter envisaged giving the WIC shareholders power over it in two ways. First, the *bewindhebbers* would no longer be appointed by city councils or provincial estates, but elected by and from shareholders with a minimum holding of two to four thousand guilders, depending on the chamber in which they had invested. A third of the *bewindhebbers* would have to seek re-election every two years.[50] Usselinx, as keen an advocate of shareholders' rights as Le Maire but more articulate and persistent, saw regular board elections by shareholders as a guarantee that directors would not act as masters of other

---

dividend only in 1610. Article 9 gave shareholders in the last expedition of the *voorcompagnieën* the right to opt out. The Delft shareholder W.J. Dedel had clearly done this and, having received 130 per cent by 1607, he sold his share: H.T. Colenbrander, 'Ueber das erste Auftreten des Wortes "Aktie" in den Niederlanden', in: *Zeitschrift für das gesamte Handelsrecht* 50 (1901) 383-387, ibidem 386-387.

[46] De Jonge, *Opkomst* III 69.

[47] Van Rees, *Geschiedenis staathuishoudkunde* 47. ***Chk date request; precise arguments used. In a 1620s memo about the WIC, Usselinx ascribed the poor results of the VOC to the fact that the charter had turned *bewindhebbers* from agents into principals: ibidem 446.

[48] Colenbrander, 'Auftreten des Wortes "Aktie"' 386-387.

[49] The text in A.C. Meijer, '"Liefhebbers des Vaderlandts ende beminders van de commercie", de plannen tot oprichting van een Generale Westindische Compagnie gedurende de jaren 1606-1609', in: *Archief, mededelingen van het Koninklijk Zeeuwsch Genootschap der Wetenschappen* (1986) 21-72, ibidem 50-59.

[50] Articles 17, 18, 19, Meijer, 'Liefhebbers' 55.

people's money, like they did in the VOC, but as agents, as they should.[51] Second, the large shareholders would elect a supervisory board of *hoofdparticipanten* or leading shareholders to audit the accounts and discuss policy with the *bewindhebbers*, the first manifestation of the two-tier board later to become characteristic of Dutch corporate governance.[52] The draft charter also proposed keeping separate accounts for the commercial activities and for warfare, and drawing up full accounts every six years rather than every ten. Finally shareholders would get a dividend if profits reached ten per cent of capital, as originally proposed for the VOC but lowered to five per cent in the charter, which latter threshold had clearly proved too low.[53] Even Le Maire's scathing profit estimate of no more than 2.3 million guilders over seven years meant that the company ought to have paid the statutory dividend in most years and thus had formally transgressed its charter, giving shareholders another legitimate cause for complaint.[54] The figure was therefore doubled so the WIC could conserve cash.

The 1606 blueprint can only be understood as an attempt to remedy perceived shortcomings in the VOC charter of four years before and shows that a more balanced model of corporate governance for long-distance trading companies, eliminating some key agency issues by giving more power to the shareholders, was not only conceivable, but in fact conceived. The fact that the Estates of Holland issued the draft also shows that these shortcomings were sufficiently serious to warrant official attention.[55]

Le Maire's 1609 diatribe and innovative bear raid on the VOC shares of the same year thus formed part of a groundswell of discontent which had already been running for some time. Indeed, given the signs of discontent about the company's corporate governance, Le Maire's criticism on that subject appears quite muted, all the more remarkable for the fact that he continued to hold a large number of shares, which he only sold the following year.[56] He subordinated his criticism on the point to his main concern, that the VOC's monopoly should be restricted and not, as the board wanted, extended. Big merchants such as he and De Moucheron were keen to get the scope of the intercontinental trade widened and chafed at the

---

[51] Van Rees, *Geschiedenis staathuishoudkunde* 448, 451.
[52] Article 21, 23-26, Meijer, 'Liefhebbers' 55-56. According to Usselinx, the *hoofdparticipanten* were later dropped at the instigation of representatives from the country's main ports, i.e. *bewindhebbers* from the VOC who feared that they would have to introduce a similar structure: Van Rees, *Geschiedenis staathuishoudkunde* 411, 423.
[53] Article 22, Meijer, 'Liefhebbers' 56; De Jonge, *Opkomst* 266, 273 for the original VOC proposals. Usselinx considered ten per cent inadvisable and thought apparently that no figure should be mentioned: Van Rees, *Geschiedenis staathuishoudkunde* 452.
[54] *Shareholder Rights at 400* 45.
[55] ***subsequent developments; Usselinx' complaint about WIC draft reflecting the repression of shareholders as practised by the VOC: Van Rees, *Geschiedenis staathuishoudkunde* 409.
[56] NA 1.04.02 VOC No. 7060, ledger of shareholders ***fol no's.

unproductive VOC monopoly. But perhaps Le Maire also decided to focus the main thrust of his arguments on what he wanted to achieve most because he realized that demands for corporate governance changes stood little chance since the Estates-General would unlikely alter a structure designed in its favour. Moreover, at a time when immigrants from the Southern Netherlands like De Moucheron, Lintgens, and Le Maire were slowly but surely sidelined by the Hollands majority for reasons already mentioned, calls for more power coming from that corner were unlikely to be popular, whereas claims for free and fair trade opportunities would attract a wide audience.[57]

Whatever his motives, Le Maire concentrated on his objections to the VOC board's business policy and discussed only three main corporate governance complaints.[58] First, the company's rising debt burden cut into the shareholders' profits, so that no dividends had yet been paid and were unlikely to be paid before the statutory 1612 accounts.[59] Second, the dictatorial board refused to take advice or hear arguments. Third, the directors enriched themselves to the detriment of shareholders while trying to get the obligation to publish accounts lifted.[60] The complaints amounted to a bill for the woeful agency costs arising from the impotence of shareholders: this had brought the latent conflict of interest between bondholders and shareholders to the fore and allowed the directors to get away with milking the company, which without public scrutiny of the accounts would continue indefinitely. In combination with the sweeping proposals of the 1606 WIC draft statutes, Le Maire's complaints show that contemporaries were acutely aware of the VOC charter's failings. Yet nothing was done. The Estates-General duly lifted the company's obligation to publish accounts and subsequent drafts for a WIC charter reverted to the VOC model, omitting the clauses on shareholder representation. Clearly the main principal wanted to keep a tight hold over its companies and ignored other interests.

6. Conclusion

During the last decade or so of the 16th century, the rapidly growing scale of the Dutch long-distance trade posed new challenges to corporate law. The flexible legal system enabled

[57] O. Gelderblom, 'De deelname van Zuid-Nederlandse kooplieden aan het openbare leven van Amsterdam (1578-1650), in: C. Lesger, L. Noordegraaf, *Ondernemers en bestuurders, economie en politiek in de Noordelijke Nederlanden in de late Middeleeuwen en de Vroegmoderne Tijd* (NEHA: Amsterdam 1999) 237-258.
[58] We follow the English text as published in *Shareholder Rights at 400, Commemorating Isaac Le Maire and the First Recorded Expression of Investor Advocacy* (APG: s.l. 2009).
[59] *Shareholder Rights at 400* 39, 40, 42, 45.
[60] *Shareholder Rights at 400* 39, 40-41, 45.

existing forms such as the shipping company and the partnership to adapt by developing arrangements to safeguard the evolving interests of stakeholders and third parties, redefining liabilities and solving emerging agency issues. This framework proved sufficiently flexible to accomodate the biggest challenge, the overseas trade with Asia; the joint-stock company with tradeable shares fitted naturally on the foundations of what had gone before. Yet the VOC differed materially from its predecessors: by its size, scope of operations, purpose, and its durability. And by the relationships between its principals. The importance of war and colonial conquest under its purposes determined the company's heavily biased corporate structure, in favour of the authorities and to the detriment of shareholders, who were treated as outsiders. The deficiencies of this construction were quickly recognized, but never remedied. With the war against Spain and colonial conquest in full swing, reasons of state would not allow that, and turning the *bewindhebbers* positions into a key instrument for social and political advancement created a powerful lobbygroup firmly defending the status quo, against which protests from outsiders like Le Maire and Usselinx stood no chance. Put in perspective, Le Maire's protests thus definitely reflected the corporate governance norms of his time.