

## **BY-LAWS ISME Publications B.V. – translation by SDW**

### **Article 1**

#### **Definitions**

- 1.1 In these by-laws the following definitions represent:
- (a) "**Shares**": Shares in the Capital of the Company;
  - (b) "**Shareholder**": a holder of one or more shares;
  - (c) "**General Assembly**": the general meeting as institution of the Company, also applying on other meetings;
  - (d) "**Limited right**": right to usufruct, as provisioned in title 8 of Book 3 of the Dutch Civil Code, or lien, as provisioned in title 9 of Book 3 of the Dutch Civil Code;
  - (e) "**Director**": an administrator of the Company, as stated in Book 2 of the Dutch Civil Code;
  - (f) "**Board of Directors**" also referred to as "the Board": the administrators of the Company, as provisioned in Book 2 of the Dutch Civil Code;
  - (g) "**Secretary**": the secretary of the Board of Directors, not being a member of the Board;
  - (h) "**Corporate Body**": the General Meeting of the Board;
  - (i) "**Meeting Grantee**": a legal entity or person to whom the Meeting Law applies;
  - (j) "**Meeting Right**": the right to attend and speak at the General Assembly, in person or by proxy.
- 1.2 In these by-laws "written or in writing" also means communication via electronic means, such as e-mail. In addition, as set out in these by-laws, the written requirements will be met when the notification, communication, decision making, proxy, voting, respectively the application, is recorded electronically.
- 1.3 Unless shown otherwise, or in fact meant with a different purpose, a reference to a singular concept or word can also be interpreted in plural and vice versa.
- 1.4 Unless shown otherwise, or in fact meant with a different purpose, a reference to the male sex can also be interpreted to the female sex and vice versa.

### **Article 2**

#### **Name, registered office**

- 2.1 The Company carries the name: ISME Publications B.V.
- 2.2 The Company is registered in Wageningen, the Netherlands.

### **Article 3**

#### **Purpose**

The Purpose of the Company:

- (a) to publish and distribute the scientific journal "The ISME Journal" and other scientific

journals;

- (b) exercising fund-raising activities, as provisioned in Article 9 of the Dutch Corporation Tax Act, to benefit the *International Society for Microbial Ecology* association, with registered office in Wageningen;
  - (c) to acquire and dispose -with or without others- participation, as provisioned in Article 24c of Book 2 of the Dutch Civil Code, or other interests in legal entities, companies and enterprises, the collaboration with those and the governance of them;
  - (d) to obtain, control, exploit, encumber or alienate goods –rights to intellectual property included- as well as investments of Assets;
  - (e) to finance exceptionally though not exclusively subsidiaries as provisioned in Article 24a of Book 2 of the Dutch Civil Code, a group of companies, as provisioned in Article 24b of Book 2 of the Dutch Civil Code, and/or participation, including to borrow and/or lend moneys, direct or in the form of a loan and withdrawing borrowed and/or lend moneys;
  - (f) to enter into agreements by means of which the Company binds itself as a surely or commits itself as a joined debtor, commit and enable others, in particular –though not exclusively- to the benefit of legal entities and companies as meant under (e),
- and to enable and enhance all activities connected to the previously mentioned.

#### Article 4

##### **Capital**

The Capital of the Company is divided into Shares, each with a nominal worth of one euro (€ 1,00).

#### Article 5

##### **Shares, depositary receipts, Limited Rights**

- 5.1 Shares are exclusively registered Shares. The Board can label Shares with consecutive numbers, starting with number 1. The Board can, in compliance with the context of the previous sentence, change the numbering of the Shares.
- 5.2 Depositary Receipts for Shares cannot be issued to a bearer or holder. The General Assembly can decide through a designated decision to apply the Meeting Right to one or more Depositary Receipts for Shares.  
The General Assembly can also decide through a designated decision to withdraw the Meeting Right to one or more Receipts for Shares.
- 5.3 Limited Right can be applied to Shares. The Shareholder has the voting right on the Limited Right Shares.
- 5.4 In deviation of paragraph 3, the voting right comes to the holder of the Limited Right if -under suspensory conditions or not- that is determined at the establishment of Limited Right or it has been determined by a written agreement between the Shareholder and the holder of the Limited Right afterwards; provided that the transition of the voting right - either by transfer or transition of Limited Right- has been approved by the General Assembly.

5.5 The Meeting Right shall be given to Shareholders who have no voting right in consequence of Limited Right on one of their Shares. It shall also be given to vote-entitled holders of Limited Right Shares.

The Meeting Right does not apply to holders of Limited Rights who do not have voting rights.

#### Article 6

##### **Delivering Shares, exercising shareholder rights**

6.1 The transfer of a Share will require a notarial deed, made and signed by a Notary established in the Netherlands.

6.2 The provisions of paragraph 1 of this Article equally apply to the establishment and deliverance of the Limited Right to Shares.

6.3 After a legal act, as provisioned in paragraphs 1 and 2 of this Article, and after coming to a written agreement as provisioned in Articles 4 and 5, the rights attached to those Shares can only be exercised after the act is received by the Company or if the Company has acknowledged the legal act in writing. Provisions in the previous sentence do not apply if the Company itself was a party at the legal act.

6.4 Provisions in paragraph 3 of this Article apply accordingly to the supply of a Depository Receipt for a Share that is linked to the Meeting Right, provided that the acknowledgement or service will be effected by a deposited deed of delivery.

#### Article 7

##### **Establishing an address, petition calls and notifications, register of Shareholders**

7.1 The Board of Directors keeps a register where the names and addresses of all Shareholders and holders of Limited Right Shares are recorded, with a listing of dates when the Shares, or right to Shares, were transferred to them, as well as the date of acknowledgement or service of transfer, and the amount paid upon each Share. Also holders of Depository Receipts for Shares linked to Meeting Rights are recorded in the register with listings of the dates on which the Meeting Rights were linked to their Shares and the dates of acknowledgement or service transfer.

7.2 The people whose information must be recorded in the register as mentioned in paragraph 1 of this Article need to submit their residing town and address in writing to the Company and they must supply the Board of the Company with the necessary documents needed for the register.

7.3 Petition calls, notifications, announcements and, in general, all messages that are meant for the people as provisioned in paragraph 2 of this Article occur in writing to the addresses they have submitted to the Company.

7.4 The register as provisioned in paragraph 1 is updated by the Board on a regular basis; records must also be made in the register of each discharge of liability of payments that were not made.

#### Article 8

##### **The issue of Shares**

8.1 The General Assembly is authorized to issue Shares, including the determination of the issue price and other terms and conditions.

Payment in a currency other than the par value is subject to the Company's consent.

After the establishment this can only occur with consent of the General Assembly.

8.2 What is determined in the previous paragraph shall also apply to granting rights to subscribe for Shares but does not apply to issuing Shares to someone who already acted on the right to subscribe for Shares.

8.3 The transfer of a Share shall require a notarial deed, made and signed by a Notary established in the Netherlands.

8.4 The Company cannot obtain Shares.

8.5 With obtaining a Share the nominal amount must be paid. It can be negotiated if the nominal amount, or part of it, has to be paid after a particular amount of time or after the Company has requested to do so. A clause as such can only succeed if stipulated before the actual point when the Share is granted and must have the approval of the General Assembly.

The exempt of the obligation to pay is only possible in the event a resolution has been made to reduce the value of the Shares.

## Article 9

### **Pre-emptive right**

9.1 Unless it is contrary to the law, on issuance of Shares each Shareholder shall have pre-emptive rights in proportion to the aggregate of his Shares on the day of distribution.

9.2 When a Shareholder does not (on time or not in full) proclaim his pre-emptive right, the pre-emptive right of the Share becoming available shall benefit the remaining Shareholders, in proportion as referred to in paragraph 1 of this article.

9.3 For each issue of a Share the General Assembly may decide to restrict or exclude a pre-emptive right, provided that such decision is made at the same time of the Share issue resolution.

9.4 The Company will announce the issue of pre-emptive right and the timespan during which this can be exercised, to all Shareholders. Pre-emptive right may be exercised for a timespan to be decided by the General Assembly, but shall last at least four weeks, calculating from the date following on the day a notice has been published.

9.5 The determined in the paragraph above shall be accordingly applicable to granted rights to subscribe for Shares.

## Article 10

### **Acquiring Shares or Depository Receipts thereof by the Company**

10.1 After pre-approval of the General Assembly the Board may decide on the acquisition of Capital Shares of the Company.

The Company's acquisition of Shares not paid in full shall be null and void.

The Company's acquisition of fully paid Shares, other than for no consideration, is not possible if the equity Capital of the Company, less the purchase price, is less than the

reserves that have to be obtained by law or the by-laws of the Company or if the Board knows, or should reasonably foresee that following the distribution the Company cannot continue to pay its debt due. The last adopted financial year report is decisive in determining the equity Capital and Reserves.

10.2 Acquisition of Shares in conflict with the requirements of paragraph 1 of this Article is void.

10.3 The previous paragraphs of this Article do not apply to Shares acquired by the Company under universal title of succession.

10.4 In this Article, under Shares one can also interpret Depositary Receipts for Shares.

#### Article 11

##### **Reduction of Capital**

11.1 The General Assembly can, by changing the Company by-laws, decide to reduce the subscribed Capital by cancellation of Shares or devaluing Shares. The resolution concerned must specify the Shares to which the resolution pertains and the manner of execution.

11.2 A resolution to cancel may only concern Shares held by the Company itself or of which it holds the Depositary Receipts for Shares.

In all other cases cancellation can only be executed with the approval of the Shareholders concerned.

11.3 If the General Meeting resolves to reduce the par value of the Shares by amendment of the by-laws of association -regardless whether this is done without redemption or against partial repayment on the Shares or upon release from the obligation to pay up the Shares -such reduction must be made pro rata on all Shares.

The requirement of proportionality may only be abandoned with the consent of all Shareholders concerned.

11.4 The decision to reduce the subscribed Capital with repayments of Shares is only permitted when the equity Capital of the Company is larger than the reserves obligated to be kept by virtue of the law or by-laws of the Company. Such decision has no impact as long as the Board has given no approval. The Board shall only withhold its approval if it knows or should reasonably expect that the Company cannot continue to pay its debts due.

11.5 An exemption from the obligation to pay is only possible in the execution of a resolution to reduce the nominal amount of Shares. The provisions of paragraph 1,2,3 of this Article shall correspondingly apply, mutatis mutandis.

#### Article 12

##### **Joint benefit**

In the event that several persons hold rights to a Share, or have Limited Rights to such a Share, the joint beneficiaries may only be represented in a vis-à-vis with the Company by a single designated person.

#### Article 13

## **Restrictions/approval**

- 13.1 Each transfer of Share needs the approval of the General Assembly.
- 13.2 The Shareholder who wishes to transfer one or more of his Shares – hereinafter to be referred to as the “transferor”- shall give notice to the Board. Such notice must include a request of approval and must state the number of Shares – hereinafter to be referred to as the “package”- intended to be transferred, the identifying numbers of those Shares and, if known, the name and address of (each) person or entity (ies) to whom the Shares are to be transferred to and the agreed price or the manner in which the prices are set.
- 13.3 After receipt of the notification, as provisioned in paragraph 2 of this Article, the following must be executed:
- (a) The Board and the General Assembly must hold a meeting, in a timespan that the meeting can be held within four weeks after the meeting announcement;
  - (b) The General Assembly must decide on the request of the transferor within six weeks after receipt of the notification;
  - (c) The decision of the General Assembly, within the term established under (b), must be communicated to the transferor.
- 13.4 Approval is considered to have been granted if:
- (a) The provisions of paragraph 3 sub (c) have not been (partially) met;
  - (b) The General Assembly, simultaneously with refusal of the approval, have not notified the Transferor of the name(s) of the prospective buyer(s) –hereinafter to be referred to as “Candidate(s)”- willing to purchase the Package against payment in cash.
- The General Assembly can also appoint the Company as Candidate, if such acquisition is not contrary to the law and/or by-laws and the transferor has declared to agree with such an act.
- 13.5 When the requested approval is granted or deemed to have been granted the Transferor, for three months thereafter, is free to transfer the Package to the person(s) or entity (ies) for the agreed price as provisioned in paragraph 2 of this Article.
- 13.6 If the General Assembly has appointed one or more Candidates on time, the Transferor, fully taking into account his right as provisioned in paragraph 8, has ten days to notify the General Assembly in writing in case he wishes to withdraw. If such withdrawal is the case, the Board will communicate this to the Candidate(s) and fellow-Shareholders without delay.
- If the Transferor has withdrawn, he is not authorized to transfer the Package.
- 13.7 When the Transferor has not withdrawn, the price of the Package will be determined by common agreement between the Transferor and the Candidate(s) -hereinafter to be referred to as “Parties “ -with due regard for the term as provisioned in paragraph 6 of this Article. Should the parties fail to come to an agreement within thirty days from the end of the aforesaid term, the price of the Package, equal to its value, will be determined by an independent expert -unless the Parties have mutually agreed to appoint more than

one expert- within the term of thirty days. The appointment of the expert shall be done in mutual agreement of both Parties; if no agreement is reached within fourteen days after the aforesaid term of thirty days, an expert will be appointed, at the request of the first party to take action, by the Chair, or his replacement, of the Nederlandse Beroepsorganisatie van Accountants (Dutch association for professional accountants) .

13.8 When the price of (the Shares belonging to) the Package is set by one or more experts, the Transferor is free to decide within thirty days if he will transfer the package against the set price to the Candidates.

13.9 The costs made by the expert(s) for setting the price will be charged to the Transferor in case he does not agree with the set price and consequently does not want to transfer to the Candidate(s). In all other cases the set price will be charged to the Company.

#### Article 14

##### **Board**

14.1 The Company is administered by a Board of Directors comprising at least one Director. The number of Board of Directors is determined by the General Assembly. A Director must be a member of the Executive Board of the *International Society for Microbial Ecology*, an association, with registered office in Wageningen. As soon as a Director is no longer a member of the Executive Board of the *International Society for Microbial Ecology*, he will simultaneously step down as member of the Board of Directors.

14.2 Directors will be appointed through the General Assembly. If there are more Directors, the General Assembly can appoint one or more Directors as Managing Director. The General Assembly shall determine the remuneration and further terms of employment of each Director as established in Article 15 paragraph 3.

14.3 A Director can at all times be suspended and dismissed by the General Assembly. The Director concerned will have the opportunity to justify himself at the General Assembly, assisted by (legal) counsel should he so wish.

14.4 A Director can appoint a Secretary, who will attend and minute the meetings of the Board of Directors. Furthermore, the Secretary can be granted, whether or not by rule, other powers pursuant article 16.3.

#### Article 15

##### **Decisions made by Board, absence or inability**

15.1 A multi-person Board decides with an absolute majority of the votes cast. Should votes result in a tie a Director may require second round of votes. In case the second round results in a tie too or no second round is held, the general Assembly is authorized to decide on the concerning matter.

15.2 A Director does not take part of the deliberation and decision if he has a direct or indirect interest adverse to the interest as provisioned in Article 6 paragraph 1. When no decision can be made due to the above described paragraph, the decision will be made by the General Assembly.

- 15.3 In case of absence or inability of a Director, the remaining Director(s) shall be temporarily charged with the management of the Company.  
In case of absence or inability of all Directors or of the only remaining Director, the person appointed by the General Assembly shall be temporarily charged with the management of the Company.  
What is determined in the by-laws concerning a Director or Board of Directors also applies on this appointed person. Furthermore he ought to call a General Assembly as soon as possible so that the appointment of one or more Directors can be realized.
- 15.4 For the purposes of this Article, absence means:
- (i) Suspension;
  - (ii) Illness;
  - (iii) Unreachability,
- in the events of sub (ii) and (iii) and without the possibility of contact for a period of five days between the Board of Directors and the Company -unless the General Assembly- where applicable, sets a different term.

#### Article 16

##### **Representation**

- 16.1 In performing its tasks, the Board of Directors shall act in accordance with the interest of the Company.
- 16.2 The Board of Directors represents the Company. In case the Board of Directors exists of more than one person and no Managing Director has been appointed, the authorization to represent the Company shall be vested in every member of the Board of Directors separately.
- 16.3 The Board of Directors can grant power of attorney to one or more persons, including the Secretary, and may change or revoke such power of attorney.

#### Article 17

##### **Restrictions of authority of the Board of Directors**

- 17.1 The General Assembly is authorized to subject decisions made by the Board of Directors to her approval, provided that the General Assembly notifies and describes its decision in detail to the Board of Director.  
The absence of any approval required pursuant to this Article shall not affect the representative powers of the Board of Directors as provisioned in Article 16 paragraph 2.
- 17.2 The Board of Directors shall act according to the General Assembly. The Board is bound to the instructions, unless these contradict the best interest of the Company and its related undertakings.

#### **GENERAL ASSEMBLY**

#### Article 18

##### **Meeting Calls, place of the meeting**

- 18.1 Without prejudice to the provisions of Article 23, the General Assembly will be held as



often as the Managing Director or Board of Directors wishes to hold it.

The power to call the General Assembly shall vest in the Board of Directors and in each -unsuspended- Director individually.

- 18.2 The Board of Directors shall call for a General Assembly -unless it is contrary to a vital interest of the Company- in case one or more Shareholders or Meeting Grantees, who jointly represent no less than one hundredth of the issued Capital, have requested in detailed writing the items they wish to discuss.

When the General Assembly does not take place within four weeks after the request has been made, the requesting party -with due observance of the law and the by-laws of the Company- are entitled to call the General Assembly, without for that purpose requiring authorization from the Preliminary Relief Judge of the District Court.

Paragraph 3 of this Article is applicable on the Meeting Call described in the above sentence.

- 18.3 Every Shareholder and person entitled to participate in the General Assembly must be given a meeting Call. The Meeting Call must not be given later than the eight day prior to the date of the General Assembly.

The Meeting Call shall be given in writing and will state the agenda items.

- 18.4 If the Company has received a request to submit an agenda item, no later than the thirties day prior to the Meeting, by one or more Shareholders or other Meeting Grantees -jointly representing no less than one hundredth of the issued Capital- it will be submitted in the Meeting Call as mentioned in paragraph 3 of this Article; provided there is no overriding and compelling interest of the Company for not doing so.

- 18.5 If the requirements regarding the Meeting Call have not been observed, valid resolutions may nonetheless be adopted -also applying on agenda items that have not been announced according to prescribed manner- provided that all Meeting Grantees have agreed that the items can be decided on and the Board of Directors have been granted time to issue advice.

- 18.6 General Assemblies will be held in the district where the Company is registered.

Notwithstanding paragraph 5 of this Article, General Assemblies held elsewhere –or outside of The Netherlands- can only make legal decisions if all Meeting Grantees have agreed upon the place of the Meeting and the Board of Directors have been given time to issue advice.

## Article 19

### **Access to and leadership of the General Assembly**

- 19.1 All Shareholders and Meeting Grantees have access to the General Assembly.

Meeting Right also applies on every Director who is not suspended and on other Meeting Grantees invited by the chair of the concerning meeting to (partly) join.

- 19.2 In the event a Shareholder or Meeting Grantee wants to join by proxy, he must hand over a written authorization to the chair.

- 19.3 The chair of the General Assembly is the only Managing Director of the Company, or

the Director with most years of service to the Company, or a person appointed by the Board of Directors -from within its members or not-.

If the chair is not present and the Board of Directors do not appoint a replacement chair, the General Assembly will appoint itself.

19.4 Unless a notarial report is prepared or the chair wishes to write the minutes, the Secretary will minute the meeting.

If the Secretary is not present, the chair appoints a person to minute the meeting.

The approval of the minutes will be done by the General Assembly, within the meeting or at the next assembly, by signature of the chair and minute writer.

## Article 20

### **Voting rights, decision making**

20.1 Each Share gives the right to cast one vote, unless the law and/or by-laws of the Company state that the voting right linked to the Share cannot be practiced.

20.2 With determining how and if Shareholders vote, present or represented, or the extent to which the Company's Share Capital is represented, any Shares in respect of which no vote may be cast shall be disregarded.

20.3 The General Assembly will decide through an absolute majority of the casted votes.

20.4 Votes abstained and invalid votes will be deemed not to have been cast.

20.5 Votes concerning matters shall be cast verbally and votes concerning persons shall be cast by anonymous closed written ballots, unless the chair of the meeting adopts or permits another voting method without the objection of one of those present with voting rights.

20.6 If the votes are equally divided in an election of persons, a revote shall be taken; if the votes are again equally divided the proposal is considered as rejected and, if applicable, subject to the next paragraph.

If in an election amongst more than two persons nobody obtained an absolute majority a revote shall be taken between the two persons who received the greatest number of votes, if necessary after an interim vote.

If the votes are tied at another election than between persons as described above, the proposal is rejected.

## Article 21

### **Decision making outside a meeting**

21.1 Decisions by the Shareholders can be made outside a meeting provided all Meeting Grantees have agreed with this alternative way and have furthermore casted votes in writing in such numbers in favor of the concerning proposal, as is described in the law and/or the by-laws of the Company.

The requirement of votes in writing shall also be met if the resolution, specifying how each Meeting Grantee entitled to vote has cast his vote, is laid down in writing.

21.2 The Directors shall be granted time to issue advice prior to the decision making.

21.3 Persons who made a decision outside the meeting inform the Board of Directors of their

decision without delay. That decision will be communicated in the upcoming General Assembly.

#### Article 22

##### **Financial year, year report**

22.1 The financial year of the Company is in calendar years.

22.2 Annually, within five months after the end of each financial year - save where this period is extended by a maximum of five months by the General Assembly on the basis of special circumstances – the Board of Directors shall prepare annual accounts based on the financial year.

These documents shall issue information-insofar as determined under the law- as described in Article 392 paragraph 1 of Book 2 of the Dutch Civil Code.

22.3 The financial year reports shall be signed by each Director. In case one or more of the signatures are missing, this shall be stated and reasons for the omission shall be given.

22.4 The Company will attempt to have the year reports, and if necessary the reports of the board and pursuant information stipulated in Article 392, ready and available as soon as possible at the Company's office though no later than the Meeting Call of the General Assembly designated to review the reports as stated in Article 21 paragraph 1.

Shareholders and Meeting Grantees can review the reports in the General Assembly and can obtain a free copy.

#### Article 23

##### **Annual General Assembly, approval of year reports**

23.1 A General Assembly will be held each year, or if Article 21 paragraph 1 is applicable, within six months after most recent financial year of the Company has passed.

23.2 The financial reports are adopted by the General Assembly. The adoption does not automatically imply discharge of the Directors. The Board of Directors shall render account for its leadership in the past financial year, on a yearly basis, after which the General Assembly can decide to discharge the Board of Directors, notwithstanding the provisions of Article 249 of Book 2 of the Dutch Civil Code.

23.3 If all Shareholders are also the Directors of the Company, the signing of the year reports by the Directors will not automatically also count as the adoption of the reports as referred to in paragraph 2.

#### Article 24

##### **Profit and Loss**

24.1 Profit is at the disposal of the General Assembly.

24.2 The Company may only realize Profit distribution to the extent that the equity exceeds the amount of the issued Capital plus the reserves to be kept pursuant to the law.

24.3 Distribution of Profit will take place after adoption of the year reports, which show distribution is affordable. The decision of the General Assembly to distribute Profit has no validity unless the Board of Directors has given approval.

The Board of Director shall only withhold its approval if it knows or should reasonably

- expect that following the distribution the Company cannot continue to pay its debts due.
- 24.4 For the purposes of determining the allocation of Profits, any Shares or Depository Receipts for Shares held by the Company plus any Shares or Depository Receipts for Shares of which the Company has a usufruct, shall not be taken into account.
- 24.5 The General Assembly can decide to make interim distributions.  
Distributions as referred to in this paragraph can only be executed when the provisions of paragraph 2 and 3 of this Article have been met.
- 24.6 Unless the General Assembly determines a different term, the dividend will be made payable within thirty days after adoption.
- 24.7 The General Assembly may resolve that dividends will be distributed in whole or in part in a form other than cash.
- 24.8 Loss must be charged directly to the free reserves. A deficit may only be offset against the reserves prescribed by law to the extent that this is allowed by law.

#### Article 25

##### **Changes of by-laws, legal status change, merger or demerger**

The General Assembly is authorized to change the by-laws of the Company, change the legal status of the Company and to merger/demerger as provisioned in Title 7 of Book 2 of the Dutch Civil Code.

#### Article 26

##### **Termination and liquidation**

- 26.1 The General Assembly is authorized to terminate the Company.
- 26.2 Unless the General Assembly decides otherwise or unless provided otherwise by law, the Board of Directors shall be the liquidators of the Company.
- 26.3 After all debts have been paid; the remaining funds of the dissolved Company will be transferred to the Shareholders, in proportion to the nominal amount of the instalments of the paid-up Capital.
- 26.4 The reports, documents and other records of the liquidated Company shall be stored as long as the law provides with the persons who have been appointed as liquidators in writing.