

## Draft for Discussion of Supplementary Rules for the Swiss Rules Regarding Disputes under Corporate Law

<i>Draft for discussion: Arbitration Clause</i>
<i>MANDATORY RULES</i>
1. Any dispute <i>under corporate law excluding matters for which the summary proceeding according to the Swiss Civil Procedure Code is applicable [and excluding actions for cancellation of outstanding equity shares according to the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading]</i> shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.
2. The seat of the arbitration shall be ... <i>(at the company seat/other city in Switzerland);</i>
3. The arbitral proceedings shall be conducted in ... <i>(insert desired language).</i>
<i>SELECTION OF POSSIBLE ADDITIONAL RULES</i>
<i>Number of Arbitrators</i>
4. [The number of arbitrators shall be ... <i>("one", "three", "one or three")</i> ]
<i>Obligation to File an Action to the Arbitral Tribunal only and to Raise an Objection to the Jurisdiction of the State Courts</i>
5. [The Company and the members of the Company's organs are obliged to file actions concerning a dispute falling under the present arbitration clause to the arbitral tribunal only and to raise an objection to the jurisdiction of the state courts should an action concerning a dispute falling under the present arbitration clause be filed against them before a state court.]
<i>Costs</i>
6. [The arbitral tribunal may, at the request of a claimant who is a shareholder of the Company, order the Company to pay the costs of the arbitration proceeding and the costs reasonably incurred by the claimant shareholder for legal representation and legal assistance, provided that, based on the facts and the applicable law, the claimant had reasonable cause for filing the action and provided that the action does not conflict with predominant interests of the Company.]
7. [The arbitral tribunal may order the Company to advance the costs of the arbitration proceeding and the costs reasonably incurred or estimated to be incurred by a claimant who is a shareholder of the Company for legal representation and legal assistance ( <i>Cf. VOGT/HIRSIGER-MEIER/HOFER, n. 190.</i> )]
<i>Delivery</i>
8. The announcement pursuant to Article 2(1) of the Supplementary Rules for the Swiss Rules Regarding Disputes under Corporate Law shall be delivered in the form provided for in these Articles of Association for notifications issued by the Company.  In addition, such delivery shall be made via postal and e-mail to all serviceable addresses and authorized recipients that have been provided by shareholders for this purpose.

*SCOPE OF APPLICATION*

**Article 1**

1. The Swiss Rules Supplementary Rules for Corporate Disputes apply to disputes under corporate law pertaining to Swiss Joint Stock Companies according to art. 620 *et seq.*, Swiss Partnerships Limited by Shares according to art. 764 *et seqq.* and Swiss Limited Liability Companies according to art. 772 *et seqq.* of the Swiss Code of Obligations.
2. The Swiss Rules Supplementary Rules for Corporate Disputes apply to arbitral proceedings based on a statutory arbitration clause.
3. The Swiss Rules Supplementary Rules for Corporate Disputes supplement the Swiss Rules of International Arbitration (Swiss Rules). They apply if a statutory arbitration clause refers to the Swiss Rules. To the extent the manner of proceeding is not specifically set out in these Swiss Rules Supplementary Rules for Corporate Disputes, the provisions of the Swiss Rules apply.
4. This version of the Swiss Rules Supplementary Rules for Corporate Disputes, in force as from [DD MMMM YYYY], shall apply to all arbitration proceedings in which the Notice of Arbitration is submitted on or after that date, unless the parties have agreed otherwise.

*INFORMATION REGARDING THE COMMENCEMENT AND THE TERMINATION OF THE ARBITRAL PROCEEDING*

**Article 2**

1. The Company shall announce within [5] days the commencement of a proceeding against the Company concerning the existence of the Company, the validity or legality of the resolutions of its bodies, the dissolution of the Company, or the determination of an appropriate compensation payment following a restructuring.
2. The announcement pursuant to Article 2(1) shall be delivered in the form provided for in the Articles of Association for notifications issued by the Company and, where applicable, in accordance with any special provision in the Articles of Association concerning such an announcement.
3. The announcement pursuant to Article 2(1) shall outline in a concise manner the legal requests and the essential facts as well as the background on which the action is based. It shall contain the contact details [of the claimant(s) and the respondent(s) and their respective legal representatives as well as] of the Secretariat of the Swiss Arbitration Centre that is administering the arbitral proceeding.  
If the announcement is made public, *e.g.* if it is published in the Swiss Official Gazette of Commerce, the publicized version of the announcement may be shortened to provide the contact details along with a brief summary of the legal requests and essential facts.
4. The Company shall announce within [5] days the termination of a proceeding covered by Article 2(1). Regarding the form of the announcement, Article 2(2) applies.
5. The announcement pursuant to Article 2(4) shall refer to the announcement regarding the initiation of the proceeding, indicate the form of the termination of the proceeding, and contain a brief statement about the outcome of the case.

*APPOINTMENT OF THE ARBITRAL TRIBUNAL*

**Article 3**

1. [The appointment of the arbitral tribunal shall be governed by Articles 10 and 11 of the Swiss Rules, subject to the following special provisions.]
2. After the announcement of the commencement of a proceeding pursuant to Article 2(1) has been issued, the Court shall for 20 days receive comments on the appointment of the arbitral tribunal from persons who may be directly affected by the legal effects of the arbitral award.
3. The Court shall, upon their request, inform persons who on a *prima facie* basis establish that they may be directly affected by the legal effects of the arbitral award of the course of the procedure regarding the appointment of the arbitral tribunal. After each appointment of an arbitrator, the Court shall for the time limit within which the parties to the arbitral proceeding may also express their views on the appointed arbitrator receive written comments or objections drawn up in a reasoned manner concerning this appointment by persons who on a *prima facie* basis have established that they may be directly affected by the legal effects of the arbitral award. For this purpose, the Court shall, upon request, provide to such persons its pertinent correspondence with the parties and the arbitrators. The Court shall take such comments and objections into account when confirming the respective arbitrator in accordance with Article 8(1) of the Swiss Rules. The Court shall transmit a copy of its confirmation to persons having submitted such written comments or objections.  
  
The Court, on its own initiative, may make the relevant information available on a secure internet platform to those persons who on a *prima facie* basis establish that they may be directly affected by the legal effects of the arbitral award.

*CONSOLIDATION AND JOINDER OF THIRD PERSONS*

**Article 4**

1. [In accordance with Article 6(1) of the Swiss Rules, an additional party asserting a claim against an existing party in an arbitral proceeding already pending under these Rules shall do so by submitting a notice of claim. If a third person files a separate action regarding a dispute which is the subject of another arbitral proceeding already pending under these Rules, the Court may consolidate the arbitral proceedings pursuant to Article 7(1) of the Swiss Rules.]
2. Third persons may participate in the arbitral proceeding in accordance with Article 6(4) of the Swiss Rules. In its decision on the request to participate, the arbitral tribunal shall in particular take into account the potential legal effects of the arbitral award on the respective third person.
3. The arbitral tribunal takes appropriate measures to ensure the orderly and expeditious conduct of the proceedings, such as *e.g.* ordering interveners to form groups and to appoint a common representative.

*INFORMATION REGARDING THE COURSE OF THE ARBITRAL PROCEEDING*

**Article 5**

1. The Secretariat of the Swiss Arbitration Centre in charge of an arbitral proceeding shall, upon request, communicate to persons who on a *prima facie* basis establish that they may be directly affected by the legal effects of the arbitral award the names of the members of the arbitral tribunal and the contact details of the Chairman of the arbitral tribunal before which the arbitral proceeding is pending. Before granting such request, the Secretariat shall consult with the Chairman, who, at his own discretion, may consult with the other members of the arbitral tribunal and the parties of the arbitral proceeding. The Secretariat shall provide the contact details of the persons whose request it has granted to the Chairman.
2. The arbitral tribunal shall, upon request, inform persons who may be directly affected by the legal effects of the arbitral award of the course of the arbitral proceeding and may allow such persons to inspect a part of the files. The arbitral tribunal shall notify the parties thereof. Before granting such request, the arbitral tribunal, at its own discretion, may consult with the parties of the arbitral proceeding.

*[NON-SWISS COMPANIES]*

**Article 6**

The Swiss Rules Supplementary Rules for Corporate Disputes apply to disputes under corporate law within corporations or similar entities incorporated under foreign law, provided that the arbitral proceedings are based on an arbitration clause contained in that entity's articles of incorporation or equivalent document providing for arbitration under the Swiss Rules. If the arbitral proceeding pertains to a corporation or similar entity incorporated under foreign law, the Court, the Secretariat and the arbitral tribunal may, at their own discretion, deviate from the provisions of these Swiss Rules Supplementary Rules for Corporate Disputes. When doing so, they may consult with the parties as they deem appropriate.]