

Adrian W. Kammerer
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Swiss Association

Publication 17

NIEDERER KRAFT & FREY

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In the **NKF series** of publications an informal sequence of articles and essays is published that deal with issues from the field of business activity of Niederer Kraft & Frey.

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Foreword

Switzerland has a longstanding tradition and well-established experience in hosting institutions established in the form of an association. Due to the very liberal and flexible regulatory regime, the favourable tax environment and the stable and reliable political and financial system, associations of Europe-wide and global relevance have chosen to be domiciled in Switzerland for decades. Amongst others, to name but a few, global and regional players such as the Fédération Internationale de Football Association (FIFA <http://de.fifa.com/>), the Union des Associations Européennes de Football (UEFA, <http://de.uefa.com/>) and the International Ice Hockey Federation (IIHF, <http://www.iihf.com/>) are domiciled in Switzerland as Swiss law governed associations.

Depending on the specific case, the establishment of a Swiss law governed association may be of a variety of advantages for its founders and members. This overview on associations under Swiss law provides some preliminary information on a selection of matters we believe to be of interest for readers wishing to have a glance on Swiss association law. It is intended to give a summary on the key topics in connection with associations governed by Swiss law which, based on our experience, are the ones that are of predominant interest for natural persons assessing the possibility and advantages of incorporating such an entity.

Furthermore, an English translation of the legal provisions on Swiss associations is provided as well as a template with simple and standard articles of association of a Swiss association. It goes without saying that the template must be adopted to the specific intentions of the founders and the circumstances given in a specific case and may require considerable elaboration according to a particular situation. Furthermore, the articles may be completed by additional internal regulation such as, e. g. by-laws, directives and guidelines addressing any given matter, e. g. the regulation of committees, etc.

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I. Legal summary Overview

A. Incorporation

- (1) Under Swiss law, an association qualifies as a group of natural persons and/or legal entities constituted and organized on the basis of a written agreement with the pursuit of a non-economic purpose.
- (2) The Swiss Civil Code ("CC") is very liberal and highly flexible on the formation of associations. Associations established for political, religious, scientific, artistic or other non-economic purposes acquire legal personality (status) as soon as such intention is expressed in the agreement of constitution.
- (3) Associations running a commercial enterprise to promote their non-economic aim are required by law to register in the competent commercial register. For other associations, registration in the commercial register is optional. It is to be noted however that, today, many associations of a major importance are established to pursue economic goals such as, e.g., professional organisations and trade unions. Non-profit associations may, for the better attainment of their goals, carry on an industrial or commercial activity. Such additional activity, however, must be of a subsidiary character and may not form the principal objective of the association, in which case no registration is required.
- (4) The agreement of constitution, i.e. the deed of foundation or articles of association, must be drafted in writing and state the intention for having a corporate existence, the aim(s), resources, and organization of the association. Section C (pages 28 et seq.) provides a simple template of such articles of association.

B. Name and Domicile

1. Legal Name

- (5) The association's name may be registered with the commercial register in English language. The registration of a German translation is possible but not requested.

2. Legal Domicile

- (6) The association's founding members (following incorporation: the general meeting) may freely select the association's legal domicile which is determined in the articles of association.
- (7) The establishment of the association's legal domicile may partly have an impact on its reputation and perception by authorities and the general public (i. e. perception differences exists between, e. g., legal entities domiciled in Zug and entities domiciled in Zurich). As regularly associations shall be tax exempt, reputational aspects may be of primary relevance to determine the association's legal domicile.

C. Organisation

1. Corporate Bodies in General

- (8) As a general rule, associations have three corporate bodies: (i) the general meeting; (ii) the board of directors; and (iii) the auditors while two of the foregoing corporate bodies are required by law: the general assembly and the board of directors. The articles of association may provide for further corporate bodies such as, e. g., councils, committees and the like.
- (9) The general meeting is the supreme governing body of the association. It decides on the admission and expulsion of members, appoints the board of directors and resolves all matters not assigned to other corporate bodies in the articles of association.

Furthermore, the general meeting has the non-delegable and inalienable right to amend the articles of association, the right to decide on the dissolution of the association, and the right of supervision over the association's other corporate bodies. Correlative to the right of supervision is the right to dismiss other corporate bodies at any time without prejudice to contractual rights of dismissed persons.

- (10) The board of directors has the right and duty to manage the affairs of the association and to represent it in accordance with the powers conferred on it as set forth in the association's articles of association.

The Swiss NPO-Code (i. e. Corporate Governance Guidelines for Non-Profit Organisations in Switzerland, see http://www.swiss-npocode.ch/e_

npocode.htm) suggests that the board of directors should be structured in a way to enable its members to develop informed and independent views on key issues of the association. Furthermore, according to the NPO-Code, the board of directors should consist of a minimum of five members (§ 13 NPO-Code). We regularly recommend to adhere to the suggestions stated by the NPO-Code unless specific, justifiable and reasonable issues direct to proceed differently.

- (11) Auditors: The association is subject to an annual audit depending on the association's size. Swiss law provides that the association's book-keeping is subject to an ordinary audit if two of the following values are exceeded in two consecutive fiscal years: (i) balance sheet total of CHF 10 m; (ii) sales revenue of CHF 20 m; and (iii) yearly average of 50 full-time employment positions. For good corporate governance purposes we normally recommend to appoint an auditor in any event. Again, subject to the association's size, the articles of association and the general meeting may determine the association's audit differently. The Swiss NPO-Code assumes that the accounts of the association are submitted to an auditor (§ 27 Swiss NPO-Code).

2. Board of Directors in Particular

2.1 Election Procedures

- (12) Although board members are generally appointed by the general meeting, the articles of association may provide for other election mechanisms, e. g. by way of co-optation (i. e. the board of directors elects its members).
- (13) Are eligible as board members either members of the association and/or non-members (the latter may be excluded through the articles of association).
- (14) Subject to differing provisions set forth in the articles of association, board members are elected with simple majority by the general meeting.
- (15) An election requires the express consent of the designated board member. If the association is registered with the commercial register, a formalised acceptance declaration ("*Wahlannahmeerklärung*") must be filed with the commercial register.

2.2 Term of Office

- (16) Swiss law does not provide for a fixed term of office for board members; the association may determine the term of office in its articles of association.
- (17) Irrespective of the aforementioned, the general meeting has the (inalienable) right to dismiss board members at any time without prejudice to contractual rights of the dismissed persons.
- (18) The NPO-Code suggests that a period of office of a board member should not exceed four years, and that no individual shall remain board member for longer than twelve years (§ 14 NPO-Code). A term of office of one year is regularly recognised as good corporate governance in Switzerland.

2.3 Board Meetings

- (19) Board meetings may be called orally or in writing, including or without an agenda, to the extent the articles of association do not provide for differently.
- (20) Swiss law does not provide for a minimum number of annual board meetings. According to Swiss legal doctrine, board meetings shall be called as need arises. In addition, board meetings shall be called upon the request of one fifth of the board members.
- (21) The NPO-Code does not provide for a minimum number of annual board meetings. However, as a general rule, corporate governance standards (set out for corporations) suggest to hold at least four ordinary board meetings per year, whereby the number of meetings shall be adjusted in view of the relevant circumstances (e. g. ongoing business, complexity, etc.).
- (22) Board meetings may also be held by way of telephone and/or video conferences. Board resolutions may be taken by way of circular resolutions.

2.4 Residency Requirements of Board Members

- (23) Swiss law does not provide for residency requirements towards board members of Swiss associations. This contrasts the rules applying to Swiss corporations and limited liability companies where at least one person (not necessarily a board member), holding (sole) signatory rights on behalf of the association, must be resident in Switzerland.
- (24) In practice, the federal office for the commercial registers as a rule prefers that Swiss associations have at least one individual holding (sole) signatory power residing in Switzerland. Moreover, the availability of at least one local representative is an aspect of good corporate governance. Furthermore, Swiss tax authorities regularly require that the association appoints a local representative, e. g. a board member (holding sole signatory power). In summary, we regularly strongly recommend to have Swiss resident individuals available authorised to represent, and act for and on behalf of, the association.

3. Membership

3.1 Establishment and Termination of Membership

- (25) Membership may be acquired either by participation in the foundation of the association or by granting of membership by the association at a later stage. At any time, new members may be admitted by simple resolution of the association's general meeting. No one can be forced to join an association whereas it is in the association's discretion to refuse an applicant, even if the latter fulfils the conditions required for admission. Nevertheless, admission and exclusion shall not lead to an excessive limitation of competition. The association's articles determine the procedure of admission, which is generally within the competence of the general meeting.
- (26) Membership terminates by resignation (of the member) or by expulsion (by the association, i. e. the general meeting). Each member may leave the association at six months' notice. The articles may shorten this period whereas an extension is prohibited. In certain cases, the courts may admit a resignation becoming effective immediately.

- (27) If the association's articles do not provide for the contrary, a member may only be excluded on material grounds, such as, e. g., for non-payment of membership fees. The articles may, however, set forth grounds of expulsion or even permit exclusion without indicating any reason. The expulsion must in any case comply with the requirements of form and must not be arbitrary. If, according to the articles, expulsion is in the competence of a body other than the general assembly, then appeal against the expulsion may be addressed to the general meeting.

3.2 Membership Rights and Duties

- (28) Members have various rights, such as, most importantly, the right to vote; also, members have the right to ask for a convocation of the general meeting; to be informed about the activities of the association; to demand the annulment of certain assembly resolutions being in contradiction to the law or to the articles; as well as the right of the maintenance of the stated non-economic aim of the association.
- (29) Members have only few duties towards the association, i.e. the obligation of loyalty towards the association, whose interests they must not prejudice. They must also pay the fees fixed by the articles or necessitated by the financial situation of the association. Provided that the association's articles do not contain provisions to the contrary, the liability of the association is limited to its own assets and members do not have a liability for the association's debt. The articles may provide for other obligations of members.

3.3 General Meetings

- (30) Swiss law does not provide for a fixed frequency of general meetings. Hence, general meetings are called in accordance with the articles of association, usually by the board of directors.

In addition, pursuant to statutory law, 20 % of the total of the association's members may request calling a general meeting.

- (31) As a general rule, Swiss associations normally hold (at least) one general meeting per year, which, inter alia, resolves on the annual financial statements.

D. Representation

1. Representation

- (32) Generally, the board of directors is responsible for its constitution and the granting of signatory powers.
- (33) Signatory powers may be granted to natural persons, irrespective of whether or not such persons are board members. Signatories may hold sole or joint signatory power by two for the association.
- (34) If the association is not registered with a commercial register, each board member holds the power of representation (*“Vertretungsmacht”*) and thus may legally bind the association (e. g. by way of contracts, but also through tortuous acts). If the association is registered in a commercial register, the signatory powers have to be determined by the board of directors and be registered with the commercial register.

2. Legalization Requirements regarding Signatories

- (35) In order to register signatory rights of board members (or other natural persons) with the commercial register, the following documents are required:
 - a. board resolution resolving on the signatory powers;
 - b. signature specimen for each signatory;
 - c. application to the commercial register.
- (36) The law requires the signature on the signature specimen to be legalized by a notary public. Ideally, this is done before a notary public in Switzerland.

In case signing the signature specimen in front of a Swiss notary public should not be feasible, the signature specimen may also be signed before a non-Swiss notary public. In such case, further requirements must be taken into consideration, including the requirement of obtaining an additional legalization or an apostille. In certain countries, the possibility exists to sign the signature specimen at a Swiss Embassy or Consulate respectively to avoid the – somewhat cumbersome – process of legalization and notarization/apostille abroad.

- (37) Each filing with the commercial register requires the filing of an application (“Anmeldung”) together with all necessary schedules, each in the form of a signed original or certified (by a notary public) copy. PDF copies will not be accepted by the commercial register.

E. Liability

1. Liability of the Members

- (38) The assets of the association exclusively secure its liabilities unless the articles of association provide for otherwise. If the articles of association provide for a personal liability of its members (from which we strongly recommend to abstain), the form of such liability may be determined freely. It may concern all or only some of the association’s members, and it may be limited to a certain amount or be unlimited.

2. Liability of the Board Members towards third Parties

- (39) When dealing with third parties, the association’s board members are personally liable for their misconceptions. Third parties (which also comprise the members of the association) may claim their directly suffered damages caused by an intentional or negligent violation of a board member’s duties. The conditions for such liability depend on the applicable liability provisions (tort law, protection of personage, merger law, etc.).
- (40) Where more than one board member is held responsible, such liable board members are liable jointly and severally; i. e., each board member may be held liable for the entire amount of damage to the extent that he/she caused or assisted to cause such damage.
- (41) For its contractual obligations, only the association may be held liable.
- (42) Of course, respective D&O insurance solutions are available to cover respective risks of board members of Swiss associations.

3. Liability of the Board Members towards the Association itself (responsibility claims)

- (43) The association's board of directors has the duty to act in the association's best interests and to administer it in observance of the law and the association's articles of association. The association's internal corporate bodies must compensate the association for damages resulting from unfaithful and careless performance caused by intentional or negligent breach of their duties.
- (44) As far as the procedure principles of the association were complied with, Swiss case law presumes dutiful conduct of the board. Particularly in cases of challengeable or null and void resolutions (i. e., illegal resolutions or resolutions which do not comply with the articles of association), a breach of duty is regularly assumed by pertaining Swiss case law. The respective board member is though only liable for his/her own breach of duties. However, any kind of fault is sufficient, including slight negligence.
- (45) The creditors of an association – unlike the creditors of a corporation according to Art. 757 of the Swiss Code of Obligations – have no right of action against the association's board members.

F. Funding and Bookkeeping; Bank Accounts

1. Funding and Bookkeeping

- (46) To carry out its business, the association will require a certain funding. The amount of required funding of course depends on the association's business plan and envisaged operations.
- (47) Swiss law does not provide for minimum capital requirements for associations (in contrast, such requirements exist for corporations and limited liability companies, see below).
- (48) Funding of the association may be effected in various ways. Generally, associations are funded through membership contributions. Swiss law provides that each member is obliged to pay membership contributions as set out in the articles of association. Nonetheless, the articles of association may provide for other funding regimes.

(49) The board of directors is responsible for the bookkeeping of the association. In contrast to Swiss corporate law, the law on associations does not contain specific duties of board members in case of a capital loss or over-indebtedness. However, in order to avoid allegations of poor corporate organization/poor corporate governance, the articles of association may provide for corresponding duties of the board of directors (notably, according to currently pending legislation, it is envisaged to establish duties to notify in connection with over-indebtedness and illiquidity also for associations).

2. Opening of a Swiss Bank Account

(50) Under Swiss law, an association may hold bank accounts in its own name. Generally, the board of directors is responsible for the opening (and closing) of bank accounts.

(51) Swiss banks usually decline to open bank accounts through written correspondence. Opening a bank account through a power of attorney may be possible, depending on the bank's internal procedures and directives. However, it should be noted that due to the (ever increasing) know-your-customer regulation and recent political developments, banks may well prove to be rather reluctant to such an approach. Thus, reputable banks will most likely require that two board members (holding according signatory powers) will be available for a brief meeting with the bank.

(52) To open a bank account, the association will be required to provide: (1) a copy of the articles of association, (2) the excerpt from the commercial register, and (3) a board resolution regarding the bank account opening and granting of signatory powers (*vis-à-vis* the bank).

(53) By determining the signatory powers *vis-à-vis* the bank, the association may confer the day-to-day bank account management to individual board members or third parties, which may or may not have signatory powers as per the commercial register (i.e. the signatory powers *vis-à-vis* the bank may defer from those registered in the commercial register).

G. Tax

- (54) Associations with charitable or other non-profit objectives (i. e. altruistic objectives in the interest of the public) may apply for an exemption from income and capital taxes under certain conditions. Otherwise, associations are subject to tax on their income exclusive of the contributions of the members. In Switzerland, income taxes are levied on federal, cantonal and communal level. In addition, on cantonal and communal level an annual capital tax on the net wealth of the associations is levied.
- (55) A tax exemption may also be possible for Swiss domiciled associations that conduct the majority of their activities abroad to the extent the other conditions for a tax exemption – in particular the charitable purpose – are still met.
- (56) Notably, associations may well run commercial enterprises and still be granted a tax exemption provided that the business is subordinated and ancillary to the charitable objectives and serves to meet the latter's goals.

H. Termination

- (57) The general meeting may resolve the dissolution of the association at any time; the association will be dissolved by operation of law in the event of insolvency or if its bodies can no longer be constituted. Finally, if the aim of the association becomes illegal or immoral, dissolution may be pronounced by court order at the request of the competent authority or any interested party.

I. Brief Overview on alternative Establishments

- (58) Below, we very briefly set out alternatives to the establishment of an association, namely (i) a company limited by shares ("*Aktiengesellschaft*"), (ii) a limited liability company (*Gesellschaft mit beschränkter Haftung*) or (iii) a foundation ("*Stiftung*").

1. Company Limited by Shares

- (59) A Swiss company limited by shares is a typically capital-oriented structure which determines the shareholders' rights. However, also a company limited by shares may be set-up to pursue non-profit objectives. Tax exemption for such latter structure is available.
- (60) A company limited by shares requires a minimum fixed share capital of CHF 100,000.
- (61) As a company limited by shares is an autonomous legal entity, the company's liabilities are secured by the company's assets only; the shareholders are neither personally liable nor must the articles of association impose any further obligation on the shareholders (other than paying in the amount fixed for the subscription of the shares on their issue).

2. Limited Liability Company

- (62) In contrast to the company limited by shares which is particularly capital-oriented, the limited liability company constitutes a hybrid company type. A limited liability company may also be set-up to pursue non-profit objectives.
- (63) For a limited liability company, CHF 20,000 are required as fixed share capital.
- (64) Generally speaking, the limited liability company is an individual-related legal person in which one or several persons or commercial companies are shareholders and whose liabilities are secured by the assets of the company only. However, in contrast to the company limited by shares, a limited liability company allows to impose additional obligations on the shareholders. Hence, a limited liability company may be set-up in a more personalised nature than a company limited by shares.
- (65) In Switzerland, limited liability companies have not (yet) attracted considerable recognition by market participants although they offer obvious advantages for, e.g., start-up undertakings.

3. Foundation

- (66) Swiss law governed foundations are often used for common welfare and cultural institutions or company pension plans. The objectives of the foundation are determined by the founder whilst the assets dedicated to the foundation are the means for the corporate bodies to pursue the objects of the foundation.
- (67) A foundation does not have members but only beneficiaries. Foundations are often established for charity purposes. Swiss law provides for government supervision over foundations.
- (68) The law does not provide for a fixed minimum capital, however, in practice, foundations are regularly capitalized with at least CHF 50,000.

II. Regulation of Associations (Excerpt of the Swiss Civil Code)

Art. 60

A. Formation

1. Groups of persons organized as corporate bodies

Associations engaged in political, religious, scientific, artistic, charitable, social, or other activities without a business purpose, shall acquire legal entity status as soon as the will to be organized as corporate bodies becomes apparent from the articles of association.

The articles of association shall be in written form and shall state the purpose, the resources and the organization of the association.

Art. 61

2. Entry in the Commercial Register

The association may be entered in the Commercial Register as soon as its articles of association have been adopted and its board of directors has been appointed.

The association is obligated to apply for entry if:

- a. it pursues a business carried out in a commercial manner in order to attain its purpose;
- b. it is subject to the obligation to have its accounts audited.

The application shall be accompanied by the articles of association and the list of the members of the board of directors.

Art. 62

3. Association without status of legal entity

Associations that cannot attain or have not yet attained legal entity status shall be treated like simple partnerships.

Art. 63

4. Relationship between the articles of association and the law

1 In the absence of provisions in the articles of association concerning the organization and the relationship between the association and its members, the articles below shall apply.

2 Provisions that are mandatory law cannot be modified by the articles of association.

Art. 64

B. Organization

5. General meeting

§ 1. Importance and calling

The general meeting is the supreme corporate body of the association.

It shall be called by the board of directors.

The calling shall be made according to the articles of association and, furthermore, by force of law if one fifth of the members request it.

Art. 65

6. Competence

The general meeting decides on the admission and expulsion of members, appoints the board of directors and resolves all matters not assigned to other bodies of the association.

It shall supervise the activity of the corporate bodies and may, at any time, dismiss them, without prejudice to contractual rights of the dismissed persons.

If justified by valid reasons, the right to dismiss exists by force of law.

Art. 66

§2. Resolutions

a. Form

Resolutions shall be taken by the general meeting.

A written consent by all members to a motion shall be equivalent to a resolution of the general meeting.

Art. 67

b. Voting rights and majority

At the general meeting, all members shall have the same voting rights.

Resolutions of the association shall be taken by a majority vote of the members in attendance.

A resolution on items not duly announced may be taken only if expressly permitted by the articles of association.

Art. 68

c. Denial of voting rights

Each member shall be denied, by force of law, the right to vote on resolutions relating to legal transactions or legal disputes between, on the one hand, himself, his spouse, or a person related to him by direct descent, and, on the other hand, the association.

Art. 69

7. Board of directors

§ 1. Rights and duties in general

The board of directors shall have the right and the duty to attend to the affairs of the association and represent the association in accordance with the powers conferred to it under the articles of association.

Art. 69 a

§ 2. Accounting

The board of directors shall keep books on revenues and expenditures as well as on the financial situation of the association. If the association is obligated to apply for entry in the Commercial Register, the provisions on commercial accounting of the Code of Obligations shall apply.

Art. 69 b

8. Auditors

The association must submit its accounts to an auditor for an ordinary audit, in two consecutive years, if, two of the following values are exceeded:

- a. balance sheet total of 10 million francs;
- b. turnover of 20 million francs;
- c. annual average of 50 full-time employment positions.

The association must submit its accounts to an auditor for a limited audit if a member who is subject to personal liability or an obligation to make supplementary financial contributions so requests.

The provisions of the Code of Obligations on auditors of corporations shall apply by analogy.

In all other cases the articles of association and the meeting of members may organize the audit at their discretion.

Art. 69 c

9. Organizational deficiencies

In the absence of one of the association's required corporate bodies, a member or a creditor may request the judge to take the necessary measures.

The judge may, in particular, set a time limit for the association to restore the status required by law and, if necessary, appoint an administrator.

The association shall bear the cost of these measures. The judge may order the association to pay an advance to the appointed person.

For valid reasons, the association may request the judge to dismiss a person appointed by him.

Art. 70

C. Membership

10. Admittance and withdrawal

The association may admit members at any time.

Any member may withdraw from the association by force of law if he announces his withdrawal six months before the end of the calendar year, or, if an administrative period is provided for, six months before the end of such period.

Membership shall be inalienable and shall not pass by way of inheritance.

Art. 71

11. Duty to pay membership fees

Members may be required to pay fees if the articles of association so provide.

Art. 72

12. Expulsion

The articles of association may define the reasons for which a member may be expelled, but may, however, also allow the expulsion without indicating the reasons.

In such cases, a challenge of an expulsion based on the reasons therefore shall not be permissible.

If the articles of association do not include any provision in this regard, the expulsion may be pronounced only by a resolution of the association and for valid reasons.

Art. 73

13. Position of former members

Members who resign or are expelled shall not have any claim to the assets of the association.

They shall be liable for their outstanding subscription fees which is due for (?) is this subscription the period during which they were members.

Art. 74

14. Protection of the purpose of the association

A change in the purpose of the association may not be imposed on any member.

Art. 75

15. Protection of membership

Each member shall be entitled by force of law to challenge in court, within one month of his having gained knowledge thereof, resolutions that he has not consented to and that violate the law or the articles of association.

Art. 75a

Liability

The assets of the association shall be liable for the association's debts. Such liability shall be exclusive, unless otherwise provided for by the articles of association.

Art. 76

D. Dissolution

16. Methods of dissolution

§1. By resolution of the association

The association may resolve its dissolution at any time.

Art. 77

By force of law

The association shall be dissolved by force of law if it is insolvent or if the board of directors can no longer be appointed in conformity with the articles of association.

Art. 78

By judgment

- ⁽⁶⁹⁾ The dissolution shall be declared by the judge upon complaint by the competent authority or an interested party if the purpose of the association is illegal or immoral.

Art. 79

17. Deletion of the entry

If the association is entered in the Commercial Register, the board of directors or the judge shall notify the registrar of the dissolution, requesting deletion.

(Translation by Swiss American Chamber of Commerce)

III. Articles of Association (Simple Standard Template)

[•Name of Association]

Articles of Association

Article 1

Name and Registered Office

- 1) Under the name of the “[•]” exists a non-profit making association (Verein) in the sense of articles 60 to 79 of the Swiss Civil Code. This Association is an independent legal entity with legal capacity. It is governed by Swiss law. Its duration is unlimited.
- 2) The Association is domiciled in [•].
- 3) The official language of the Association is English.

Article 2

Purpose

- 1) The purpose of the Association, a non-profit organization, is
 - a. [•].
 - b. [•].
 - c. [•].
- 2) The Association may engage in all activities and take all actions necessary and appropriate to carry out the above objectives.

Article 3

Full Members [• and Associate Members]

- 1) Full members of the Association must be [•] engaged in the fields of [•] or similar matters.
- 2) [• Associate members shall have no right to vote or to take part in elections and shall not be entitled to be on the Board or to be members of councils, committees or sub-committees unless stated otherwise in the by-laws.]

Article 4

Membership Fees

- 1) Each full member and associate member will pay a membership fee. The membership fee will be limited to CHF [•] per full member and associate member and per year.
- 2) Membership fees will be due on demand for payment and shall be paid within 30 days.

Article 5

Beginning and End of Membership

- 1) The founding members as per the Association's deed of incorporation are the initial full members of the Association.
- 2) Otherwise, full membership and associate membership commences upon appointment by the General Assembly (see Article 10 para. (2)).
- 3) Full membership and associate membership ceases on the date on which a member resigns, or is removed, from his or her functions as provided for in Article 3 para. (1).
- 4) Full members and associate members may resign from the Association at any time by notifying the secretariat in writing. Resigning members have no rights against the assets of the Association.

Article 6

Resources

The Association derives its resources from: (a) fees and contributions provided by the full members and associate members; (b) donations, grants, and other payments; (c) its assets.

Article 7

Liability

The Association's financial obligations can be satisfied only from its assets. The full members and the associate members of the Association shall not be personally liable for the obligations or debts of the Association.

Article 8

Corporate Bodies

The corporate bodies of the Association are:

- A) the General Assembly;
- B) the Board; and
- C) the Auditors.

The General Assembly

Article 9

Constitution

The General Assembly consists of the full members [• (but not of the associate members)] of the Association.

Article 10

Powers

The General Assembly shall have the following powers:

- a) to adopt and amend the Articles of Association;
- b) to appoint new full members and new associate members;
- c) to create and dissolve advisory technical committees and other bodies;
- d) to elect and dismiss the President, Treasurer and Secretary from amongst its full members;
- e) to approve the engagement of the audit firm by the Board pursuant to Article 15 clause (f);
- f) to approve the annual report issued by the audit firm pursuant to Article 18 para. (4) and the accounts of the Association;
- g) to adopt, after approval of the annual report issued by the audit firm pursuant to Article 15 clause (f); resolutions discharging the members of the Board from all liabilities;
- h) to pass resolutions on matters which are by law or by the Articles of Association reserved to the General Assembly or validly submitted to it by the Board.

Article 11

Meetings of the General Assembly

- 1) The General Assembly will take place upon invitation by the President of the Association, or by the request of at least 20 % of the full members. The notice shall state the place and time of the meeting, the items of the agenda as well as the motions for consideration, if any. Meetings must be called at least twenty days in advance. Full members may attend meetings in person or by telephone conference call. A quorum for meetings of the General Assembly shall be established by the participation in the meeting of at least the absolute majority of all full members.
- 2) No later than twenty days prior to the day of the ordinary General Assembly, the Board's annual report and the auditors' report shall be made available to the full members for inspection at the registered office of the Association. Each full member may request a copy of such documents to be sent to him or her without delay. Reference thereto is to be made in the notice calling the General Assembly.
- 3) If no objection is raised, the full members may hold a General Assembly without observing the prescribed formalities of calling the meeting. As long as the absolute majority of all full members is present in person or by telephone conference call, all items within the powers of the General Assembly may validly be discussed and decided upon at such a meeting.
- 4) The General Assembly will be chaired by the President or, in the case of his inability, another full member attending the General Assembly.

Article 12

Voting Rights

Each full member has one vote at the General Assembly.

Votes are not transferable to another full member or a third person.

Article 13

Resolutions

- 1) Unless provided otherwise by mandatory provisions of the law or by the Articles of Association, resolutions shall be passed and elections shall be made by the absolute majority of all votes represented at the General Assembly.
- 2) The chairperson of the meeting will have the casting vote.

Board

Article 14

Election Term

- 1) The Board will be composed of the Association's President, its Treasurer and, the Secretary of the Association who must be full members of the Association.
- 2) Each member of the Board shall serve for a three-year term following his/her election, such term ending on the day of the respective ordinary General Assembly.
- 3) Members of the Board may be re-elected.
- 4) The members of the Board act voluntarily and will not receive a compensation for such voluntary office. They will be reimbursed for any out-of-pocket expenses reasonably incurred, however.

Article 15

Powers

The Board shall perform, inter alia, the following functions:

- a) Develop an annual program and budget for the consideration of the General Assembly.
- b) Prepare nominations for full membership and associate membership for decision by the General Assembly.
- c) Day to Day management decisions, not directly handled by the secretariat, respectively, the Chief Executive Officer.
- d) Establishment and amendment of the Association's organisational rules.
- e) Establishment of councils and sub-committees.
- f) Subject to the approval of the General Assembly (Article 10 clause e), the Board shall, for each financial year, engage an audit firm.

Article 16

Chief Executive Officer

- 1) The Board may employ a Chief Executive Officer, who need not be a member of the Association, to be in charge of the management of the Association.
- 2) The Chief Executive Officer, in consultation with the Board, and in line with the approved program and budget of the Association, may hire secretariat staff to assist in fulfilling the mission of the Association.
- 3) The Chief Executive Officer shall administer the affairs of the Association and represent the Association vis-à-vis third parties in accordance with organizational rules and policies established in consultation with the Board. The Chief Executive Officer shall have the right to be present, without vote, at all meetings of the General Assembly and Board, and he/she shall have the authority to sign on behalf of the Association.

Article 17

Administrative Procedures

- 1) The Board shall make an annual report on its activities and those of the Association.
- 2) The members of the Board may adopt procedures to implement internal administrative functions of the Association.

Auditors

Article 18

Election, term of office

- 1) The auditors shall be elected by in accordance with Article 10 clause (e) and Article 15 clause (f) of the Articles of Association for a term of office of one year. After expiry of their term they may be re-elected.
- 2) Auditors may only be professional auditing firms.
- 3) The auditors shall audit the accounts and examine the books of the Association in accordance with pertaining Swiss law. They are entitled to require such evidence as they deem appropriate.
- 4) One annual audit is to take place within two calendar months from the close of each financial year (Article 19). The auditors' report shall be submitted by the Board to the general meeting for approval.

Article 19

Financial Year

The accounts of the Association will be established on December 31 each year, and for the first time on 31 December 20[•].

Article 20

Dissolution and Liquidation

- 1) The Association will be dissolved
 - a) when it has fulfilled its purposes;
 - b) by vote of the full members according to Article 13;
 - c) in the circumstances provided for by the law.
- 2) In case of dissolution of the Association, the Board must proceed to its liquidation. The Board shall distribute the assets of the Association, after payment of all debts of the Association, to the full members (but not to its associate members).

Article 21

Entry into Force

The founding members have adopted the present Articles of Association by way of correspondence. The present Articles of Association have entered into force today.

[•Place&Date]

On behalf of the founding members:

[•Signature]

[•Signature]

- Publication* 1 (1992) Statuten nach neuem Aktienrecht
Articles of Incorporation pursuant to the new corporation law
Statuts conformes au nouveau droit des sociétés anonymes
Statuto secondo il nuovo diritto della società anonima
(out of print)
- Publication* 2 (1992) Organisation und Organisationsreglement nach neuem
Aktienrecht
Organization and organisational regulation according to the
new corporation law
(out of print)
- Publication* 3 (1994) Persönliche Haftungsrisiken nach neuem Aktienrecht
with English summary
Personal liability risks pursuant to the new corporation law
(out of print)
- Publication* 4 (1997) Das revidierte schweizerische Anlagefondsrecht
Eine Einführung
with English summary
The revised Swiss law on investment funds
An introduction
(out of print)
- Publication* 5 (1997) Statuten der Aktiengesellschaft
Articles of association of the corporation
Statuts de la société anonyme
Statuto della società anonima
2. Auflage
(out of print)
- Publication* 6 (1997) Einführung in das neue Schuldbetreibungs- und
Konkursrecht der Schweiz
with English summary
Introduction to the new Swiss debt enforcement and
bankruptcy law
(out of print)
- Publication* 7 (2000) Das schweizerische Umweltrecht. Eine Übersicht
The Swiss environmental law. An overview
(also available in book stores)
- Publication* 8 (2000) Die schweizerische GmbH – gestern, heute und morgen
with English summary/avec résumé en français
The Swiss LLC – yesterday, today, and tomorrow
(out of print)

- Publication 9 (2002) Die schweizerische Stiftung
with English summary
The Swiss foundation
(not available in book stores)
- Publication 10 (2002) Corporate Governance
Regeln guter Unternehmensführung in der Schweiz
with English summary
Corporate Governance
Rules of a Good Corporate Management in Switzerland
(not available in book stores)
- Publication 11 (2006) Sport und Recht
Sports and Law
(also available in book stores)
- Publication 12 (2007) Neuerungen im Schweizer Wirtschaftsrecht
New Features of Swiss Business Law
(not available in book stores)
- Publication 13 (2009) Amts- und Rechtshilfe:
10 aktuelle Fragen
(not available in book stores)
- Publication 14 (2010) Key Employee Retention in M&A Transactions
(not available in book stores)
- Publication 15 (2010) Die neue schweizerische Zivilprozessordnung
(not available in book stores)
- Publication 16 (2010) Das schweizerische Prozessrecht im Umbruch
(not available in book stores)

