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# STATUTES

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## I. Name, Domicile, Duration Objectives and Funds

### **Article 1: Name and Duration**

Under the name of "ITFA International Trade and Forfaiting Association" exists an association (Verein) in the sense of articles 60 to 79 of the Swiss Civil Code. Its duration is unlimited. The Association is domiciled in Zurich (Switzerland). The official language of the Association is English.

### **Article 2: Objectives**

The objectives of the Association are:

- a) to promote good relations amongst its members and to provide a basis for joint examination and discussion of questions relating to the trade and forfaiting business;
- b) to issue rules and make recommendations regarding the conduct of such business;
- c) to offer consultancy to all members and participants for questions relating to trade and forfaiting transactions;
- d) to promote and co-ordinate contacts with governmental and non-governmental organisations and bodies.

The Association is not-for-profit and does not intend to operate a commercially-run business.

### **Article 3: Funds**

The funds of the Association consist of membership subscriptions, contributions and legacies, revenues from activities of the Association and subsidies of public entities. The Association shall be liable for its liabilities solely with assets of the Association; any personal liability of the members shall be excluded.



## II. Membership

### Article 4: Eligibility of Members, Group and Membership and Associate Members

- (1) May become members of the Association: financial institutions and intermediaries which permanently conduct trade and forfaiting business and which enjoy a good reputation for conducting their business in a proper manner.
- (2) Of enterprises where there is a principal/branch office relationship, only ~~one~~ the principal office may become a ~~shall represent that~~ member of the Association but such branch offices shall be entitled to take part in the activities of the Association. An enterprise may select a Group Membership in which all entities which are subsidiaries, parent or holding companies or subsidiaries of such parent or holding company, of that enterprise (as defined by the legal system in the country of incorporation of such enterprise) may participate in the activities of the Association. Members, whether possessing single or Group Membership, are represented towards the Association and exercise their rights in General Meetings through a delegate from within the principal office of their organisation and appointed by them.
- (3) May become associate members of the Association: organisations which do not qualify as members pursuant to the preceding section (1) of this article but which have an important role in the international trade and forfaiting business and which maintain close relations with the Association.
- (4) Associate membership shall be governed by articles 5, 6, 24, 25, 26 and 27 of these statutes, exclusively. In particular, associate members shall have no right to vote or to take part in elections and shall not be entitled to have persons from within their organizations on the Board.

### Article 5: Application and Admission

- (1) Membership must be applied for in writing ~~to the Board Membership Committee.~~
- (2) Applications will be dealt with and decided upon by the Chairman and Board member responsible for memberships. Membership Committee consisting of 2-4 Board members.



(23) In case of rejection of the application ~~by the Membership Committee~~, the applicant may request consideration of the application by the whole Board. The Board may reverse ~~the any prior~~ decision ~~of the Membership Committee~~. The Board's decision shall be final.

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~~(4) The Board shall issue by-laws concerning the organisation and the procedures of the Membership Committee (including guidelines for the admission of new members).~~

## Article 65: Resignations; Loss of Membership; Disciplinary Sanctions

- (1) A member may resign from the Association by giving notice in writing to the Board.
- (2) Membership shall terminate automatically upon the occurrence of any of the following events:
  - (i) a member ceases to fulfill the conditions of membership pursuant to article 4 (1), or
  - (ii) a member is adjudicated bankrupt, makes any arrangements or composition with or concerning creditors or goes into liquidation for reasons other than reconstruction.
- (3) In the event of a breach or contravention by a member of these statutes or any rules which are in force or enacted from time to time by the Association, or in the event of a member causing substantial damage to the interests of the Association, such member may be subject to disciplinary sanctions including, but not limited to, reprimands, suspension or loss of membership.
- (4) The decision to impose disciplinary sanctions pursuant to section (3) of the present article shall be taken by the Membership Committee with a right of appeal of the member concerned to the Board within 30 days after delivery of the decision. The decision of the Board shall be final.
- (5) The Board may issue by-laws governing the disciplinary sanctions referred to in section (3) of the present article and the procedures applicable to such disciplinary sanctions.
- (6) Subscriptions shall be payable in full for the financial year in which the resignation or loss of membership takes effect or throughout a suspension of membership. In the event of a resignation or loss of membership, a member will have no claim to the assets of the Association.



### III. Organisation

#### Article 7: Regions

- (1) The Board shall have the power to group members of specific countries or geographical areas into regions.
- (2) Each such region shall elect a regional committee which will represent the interests of the members in that region towards the Board. The rules governing the election and the proceedings of such committee shall be established by the individual region, subject to any by-laws to be issued by the Board.

#### Article 8: Bodies

The bodies of the Association are

- A) The General Meeting
- B) The Board
- C) The Auditors

#### A. The General Meeting

#### Article 9: Supremacy of the General Meeting

The General Meeting of the members is the supreme body of the Association.



## Article 10: Meetings; Convening

- (1) The ordinary General Meeting of the members must be convened once during every financial year (article 28).
- (2) Extraordinary General Meetings may be called by the Board at its discretion and must also be convened by the Board as soon as practicable upon request in writing by not less than one-fifth of the members of the Association. Such requests must state in detail the business to be transacted during the extraordinary General Meeting to be called.
- (3) The notice of a General Meeting containing the full agenda and all relevant material shall be mailed to all members not later than sixty days before the date of the General Meeting.





- (4) Members may appoint more than one delegate, but only one of them, the "voting delegate", shall be entitled to exercise membership rights. Board members may not be appointed as voting delegates.

## Article 11: Quorums

- (1) The quorum necessary for transaction of business shall be the presence of one third of the total number of votes, unless otherwise provided in the present statutes. The total number of votes corresponds to the total number of members of the Association (excluding associate members), as at the time of the General Meeting. If such quorum is not reached a second meeting may be convened within 90 days of the date of the first one, which second General Meeting may transact business irrespective of the number of members represented.
- (2) Each member shall have one vote.
- (3) A member may be represented at a General Meeting by a delegate of another member provided such appointed delegate carries an authorised proxy for the member in question. A delegate may not carry proxy for more than 5 members.

## Article 12: Resolutions

- (1) The General Meeting shall carry resolutions by simple majority of the votes present, except where provided otherwise in the present statutes.
- (2) 10% of the members shall be entitled to propose a resolution to a General Meeting. Any such proposal must be submitted in writing to the Board not later than 90 days before the General Meeting. Counter-proposals to items on the agenda of a General Meeting may be made by any member at any time before or at the appropriate time during the General Meeting. Any proposal or counter-proposal referring to a provision of the statutes shall be formulated in such a manner that, if adopted, it can be included among the pertaining provisions without any alteration of the wording.
- (3) For the purposes of the present statutes "simple majority" shall mean the next whole number exceeding 50 per cent of the votes present and "two-thirds majority" shall mean 66 2/3 per cent of the votes present or, if 66 2/3 per cent result in a fraction, the next whole number of votes present.



- (4) Elections to the Board shall be conducted in accordance with article 16 (2).
- (5) Voting may be conducted using electronic means of any type whatsoever including email. Where voting is conducted by any such electronic means, the voting may open before, and close after, the date of the General Meeting and for such period as is set out in the relevant notice calling the General Meeting.

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## Article 13: Powers of the General Meeting

The General Meeting shall have the exclusive power

- (1) to amend the statutes by a majority of two-thirds of the votes present;
- (2) to disallow without retroactive effect, upon a resolution proposed in accordance with article 12 (2), any rules or recommendations enacted by the Board;
- (3) to elect the members of the Board in accordance with article 16 (2) and to terminate their mandate in accordance with article 15 (4);
- (4) to elect the Auditors;
- (5) to approve the annual accounts and to grant discharge to the Board;
- (6) to determine on the limits within which the Board shall determine the annual subscriptions to be paid by the members, provided that such annual subscriptions shall in no event exceed EUR 2'000. with the exception of the Group Membership referred to in Article 4 (2) which may not exceed EUR 2'500;
- (7) to decide on the termination of the Association (article 29), and
- (8) to resolve on such items as may be brought before it by the Board.

## Article 14: Chair; Minutes

- (1) The chairman or, in the case of his inability, another member of the Board shall preside over the General Meeting.
- (2) The tellers will be proposed by the chairman of the meeting for approval by the General Meeting.
- (3) Minutes will be kept of all General Meetings. Such minutes will have to state on all business transacted during a General Meeting and will be signed by the chairman of the meeting and by the tellers. The minutes will have to be approved by the following General Meeting.



## B. The Board

### Article 15: Composition of the Board; Term of Office

- (1) The Board shall consist of 3 to 12 members.
- (2) The term of office of any Board member shall be three years. At the end of each such period, the Board member shall retire. Retiring members may be re-elected for an unlimited number of additional terms of office of three years by re-presenting themselves.
- (3) A member of the Board may resign from his position by giving notice in writing to the chairman.
- (4) A member of the Board may, during his term of office, be dismissed or suspended from his position by a resolution of the General Meeting.
- (5) Board membership shall automatically terminate if a Board member is no longer associated with a member of the Association or becomes associated with a member of the Association which is already represented in the Board.
- (6) In no event shall a member have more than one person from within its organization on the Board.

### Article 16: Nomination and Election of Board Members

- (1) Nomination of candidates:
    - a) Candidates for Board membership shall be experienced and suitable persons associated with a member of the Association. The selection of the candidates should reflect a balanced representation of
      - the geographic composition of the Association and the current importance in the international trade and forfeiting business of particular regions or areas, and
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- the various functions in the international trade and forfaiting business.

b) 60 days before the date of the General Meeting the Board shall notify the members in writing of the candidates proposed by it ~~or, provided a Nomination Committee has been established pursuant to para. c) below, by the Nomination Committee, respectively.~~

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~~c) If the Board has decided to establish regional committees (article 7) the candidates shall be nominated by a Nomination Committee to be established as follows:~~

~~(i) Each year following the ordinary General Meeting a Nomination Committee shall be established to nominate candidates for the elections to the Board at the time of the General Meeting of the following year.~~

~~(ii) The Nomination Committee shall consist of 6 persons, 3 of whom shall be appointed by the Board from amongst Board members whose term of office does not expire at the next General Meeting and 3 of whom shall be appointed by the regional committees.~~

cd) Members shall be entitled to propose further candidates. Any such proposal must be submitted in writing to the Board not later than 30 days before the General Meeting.

## (2) Election of Board members:

a) Elections shall take place at the time of the General Meeting and shall be decided in the following manner:

(i) Candidates who fail to reach a number of votes corresponding to 20 per cent of the number of valid ballot forms deposited shall not be eligible.

(ii) The eligible candidates shall be elected in the order of relative majority, subject to the number of existing vacancies.

(iii) If two or more candidates obtain the same number of votes and if there are no corresponding vacancies, a second ballot shall be held which shall also be decided by relative majority.

b) Each member shall be entitled to cast a number of votes equal to the number of vacancies to be filled. A member may not cast more than one vote for any one candidate.

c) Elections shall be conducted by the use of ballot forms on which the names of all candidates duly nominated and the details relating to their



firms shall be recorded. Ballot forms shall be completed and deposited in accordance with the instructions of the Board failing which they will be void and shall not be counted.

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(3) Intermediate vacancies:

- a) If a vacancy occurs in the Board other than as a result of the operation of article 15 (2) the Board Nomination Committee shall appoint a person who was not previously elected to the Board by the General Meeting to fill such vacancy. The Board member so appointed shall complete the term of office of his predecessor, unless a resolution to the contrary is proposed to the next General Meeting.
- b) Appointments pursuant to the preceding subsection a) shall be in accordance with the selection criteria for the nomination of candidates stated in article 15.6 and 16 (1).
- c) After the expiration of their term Board members appointed under this provision may be nominated as candidates for Board elections. If elected, the relevant Board member may subsequently be re-elected for not more than one additional consecutive term of office of three years.
- d) The Board, respectively the Nomination Committee, may not appoint persons to the Board pursuant to this provision who were nominated for election to the Board but failed to reach the required number of votes pursuant to article 16 (2) a) (i).

## Article 17: Constitution of the Board

The Board shall elect from among its members a chairman, a deputy chairman and a treasurer who shall serve for the duration of their term as a member of the Board; they may be re-elected to the same or different positions.

## Article 18: Meetings; Resolutions

- (1) Meeting of the Board shall be called by the chairman, or in his absence the deputy chairman, or by one-third of the members of the Board.
- (2) The quorum necessary for the transaction of business at meetings of the Board shall be the presence of at least half of its members unless provided otherwise in these statutes. This provision does not apply to business and activities referred to the Executive Committee.



- (3) Resolutions of the Board shall require the concurrence of a simple majority of its members present, unless otherwise provided in the present statutes.
- (4) Resolutions of the Board may be passed by mail, telefax cable, e-mail, telex or any other form of written (including electronic) communication provided that no Board member requests verbal discussion.

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- (5) The election of the chairman, the deputy chairman, and the treasurer will require a simple majority of the votes of the members of the Board present.

In any ballot if no member obtains a simple majority, a second ballot will be held during which a relative majority will be decisive.

## Article 19: Powers

All matters concerning the Association not specifically reserved to the General Meeting fall within the competence of the Board. In particular, the Board shall have the power

- (1) to enact and amend rules and recommendations applying to operations in the international trade and forfaiting business. Resolutions concerning the introduction, amendment or abolition of rules and recommendations shall require a majority of two-thirds of all members of the Board
- (2) to issue by-laws implementing certain statutory provisions or to govern its own activities and those of its committees. Resolutions concerning the introduction, amendment or abolition of such by-laws shall require a majority of two-thirds of all members of the Board
- (3) to submit proposals for resolutions to the General Meeting.

### **Article 20: Accounting**

The Board is responsible for maintaining the Association's business ledgers. In this context, it acts in compliance with the provisions of the Swiss Code of Obligations.

## Article 21: Executive Committee; Special Committees

- (1) The Board may elect up to two of its members, who, together with the chairman, the deputy chairman, and the treasurer, will form the Executive Committee. The Board may delegate the handling of any business to this committee with the exception of business covered by article 19 (1) to (3).

The Board shall issue by-laws governing the activities and procedures of the Executive Committee.



(2) The Board shall have authority to appoint committees for special tasks. Membership on such committees is not limited to members of the Board.

The Board ~~shall~~may issue by-laws governing the appointment to and the procedures of such committees.

~~After elections to the Board existing committees will automatically be dissolved.~~

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## Article 22: Secretariat

The Board shall have the right to mandate a third party to provide the secretarial services (the "Secretariat"). The Secretariat shall at the same time function as domicile of the Association.

## C. The Auditors

### Article 23: Election; Duties

- (1) The General Meeting elects an auditor if the preconditions mentioned in article 69b CC, rendering an audit mandatory, are fulfilled in two subsequent financial years.
- (2) The Board monitors the business of the Association and points out to the General Meeting if the preconditions in article 69b CC are met, and hence, it becomes necessary to appoint an auditor.
- (3) The General Meeting may decide to elect an auditor if the preconditions of article 69B C are not fulfilled.
- (4) The auditor is elected by the General Meeting for a term of one year. it may be re-elected after the term ends.
- (5) Only auditing companies that are appointed by the Federal Audit Oversight Authority (FAOA) may be appointed as auditors.
- (6) An annual audit must be carried out within four calendar months after the end of each financial year (Article 28). The auditors' report shall be submitted to the General Meeting by the Board.



## IV. Conciliation and Arbitration

### Article 24: General

- (1) The Association may maintain and make available to interested parties, in particular to its members
  - A) institutions and proceedings for conciliation, and
  - B) institutions and proceedings for arbitration.
- (2) The Board may issue by-laws governing the organization and proceedings of conciliation and the court of arbitration, respectively.



## Article 25: Conciliation

- (1) Conciliation proceedings shall be available with regard to
  - a) disputes arising out of international trade and forfaiting transactions falling within the scope of the Association; in such instances the Board may limit the availability of conciliation proceedings to disputes involving at least one member of the Association; and
  - b) disputes between a member and the Association in respect of matters arising out of the Association's statutes, by-laws, rules or recommendations; matters relating to article 5, section (2) to (5) of the statutes are not subject to conciliation proceedings.
- (2) Conciliation proceedings shall be conducted in such a way as to cause the minimum financial burden to the parties and to ensure a rapid conclusion. Parties may not be represented by professional counsel. During conciliation proceedings the conciliator(s) assigned to the case shall hear the parties and thereafter, if so requested by a party, make a recommendation in writing. Such recommendation, except for the possible allocation of costs, shall not be binding on the parties and shall be without prejudice to possible further proceedings between them.
- (3) Upon application by the parties for conciliation the Association shall assign one or more members of the panel of conciliators to the case.
- (4) The members of the panel of conciliators shall be persons of high integrity, with wide experience of the international trade and forfaiting business. They are appointed by the Board each year as soon as possible after the ordinary General Meeting and may be re-appointed indefinitely. The appointment of a particular member of the panel may not be terminated while such member is involved in pending conciliation proceedings.
- (5) Conciliators may not be associated in any way with either of the parties. In the case of the Association being a party, conciliators, except with the written approval of the other party, may not hold a position in the Association other than being a member of the panel of conciliators.
- (6) Conciliators shall be entitled to compensation for time spent and expenses incurred. Such compensation shall be advanced by the Association which shall, in turn, recover it from the parties together with any expenses incurred by it-self. In the absence of a different allocation by the conciliator(s) the costs of conciliation proceedings shall be borne in equal parts by the parties. The parties are obliged to make an advance payment on account of costs, failing which conciliation proceedings may be denied. The parties shall bear their own costs incurred in connection with the proceedings.



- (7) The place where conciliation proceedings are to be held shall be agreed upon between the parties failing which it shall be determined by the conciliator(s).

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## Article 26: Arbitration

- (1) Arbitration shall be available with regard to
  - a) disputes arising out of an international trade or forfeiting transaction falling within the scope of the Association; in such instances the Board may limit the availability of arbitration to disputes involving at least one member of the Association; and
  - b) disputes between a member and the Association in respect of matters arising out of Association's statutes, by-laws, rules or recommendations; matters relating to article 6, section (2) to (6) of the statutes are not subject to arbitration.
- (2) Arbitration relating to matters falling within section (1) a) of the present article shall not be available unless
  - a) both parties formally agree to submit their dispute to arbitration; and
  - b) the parties had previously submitted their dispute to conciliation proceedings.

Arbitration relating to matters falling within section (1) b) of the present article shall be mandatory.

- (3) Arbitration proceedings shall assure due process and efficient resolution of disputes by experts.

The court of arbitration shall hear the parties and render an award. Such award shall be final subject to mandatory provisions of applicable law.

The Court may in its discretion and according to the merits of the case, also award costs to one or more of the parties consisting of the expenses incurred in preparing for and attending the proceedings and shall in addition apportion for payment by the parties, according to the merits of the case, the costs of the arbitration proceedings including compensation paid to arbitrators.

- (4) The court of arbitration shall consist of two arbitrators and chairing arbitrator. The court may request the appointment of a secretary.
- (5) Upon application by the parties for arbitration the Association shall assign three members of the panel of arbitrators, including the chairing arbitrator, to the case. Members of the panel of arbitrators who served as conciliators in the respective proceedings between the parties shall not be eligible as arbitrators.



- (6) The members of the panel of arbitrators shall be persons of high integrity, with wide experience of the international trade and forfeiting business or with other relevant professional qualifications. They are appointed by the Board each year as soon as possible after the ordinary General Meeting and may be reappointed indefinitely. The appointment of a particular member of the panel may not be terminated while such member is involved in pending litigation as arbitrator.

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- (7) Arbitrators may not be associated in any way with either of the parties. In the case of the Association being a party, arbitrators may not hold a position in the Association other than being a member of the panel of arbitrators.
- (8) Arbitrators shall be entitled to compensation for time spent and expenses incurred. Such compensation shall be advanced by the Association and shall be drawn from payments by the parties made as advance payments or pursuant to the arbitration award. The parties are obliged to make an advance payment on account of costs failing which arbitration proceedings may be denied.
- (9) The seat of the court of arbitration shall be Zurich, Switzerland. The place where the court of arbitration shall hold its sessions shall be determined by the court. The court of arbitration shall apply the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the notice of arbitration is submitted in accordance with these Rules.  
The language of the arbitration shall be English.

## V. Miscellaneous Provisions

### Article 27: Subscriptions

Each member shall pay an annual subscription in an amount to be decided by the Board within the limits set by the General Meeting (article 13 (6)).

Such subscription shall become due and payable on February 1<sup>st</sup> of each year.

### Article 28: Financial Year, Final Accounts

The financial year of the Association corresponds with the calendar year. The final accounts are rendered in Swiss francs.

### Article 29: Dissolution and Liquidation

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- (1) A General Meeting at which at least three quarters of all votes are present may at any time decide to terminate the Association by two-thirds majority.
- (2) Any net surplus of funds remaining after the liquidation shall be distributed equally among the members.

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