

# **Articles of Association**

## **of the association**

### **IRF Interessengemeinschaft Radio und Fernsehen**

#### **based in Zurich**

#### **I. Name, registered office, term of the association**

Art. 1 Name, registered office, term of the association

The "IRF Interessengemeinschaft Radio und Fernsehen" with its registered domicile in Zurich is an association pursuant to Article 60 of the Swiss Civil Code ("hereinafter referred to as "IRF"). The continuity of the association is unlimited.

#### **II. Purpose of the association**

Art. 2 Purpose

<sup>1</sup> The purpose of the IRF is to safeguard domestic and foreign broadcasters' interests in Switzerland and the Principality of Liechtenstein, in particular vis-à-vis collecting societies and with regard to the process of establishing the respective political, legal and economic framework conditions.

<sup>2</sup> The IRF does not run a commercial business, does not strive to be making its own profit and is not a collecting society.

#### **III. Membership**

Art. 3 Conditions and requirements for membership

<sup>1</sup> In line with para. 3 and 4 below, membership is open to any domestic and foreign broadcasters which entrust the IRF with the representation of their copyright and neighbouring rights claims (hereinafter referred to as "Rights") vis-à-vis the Swiss collecting societies.

<sup>2</sup> As long as the Rights of their members have been granted to the IRF or to a Swiss collecting society, foreign collecting societies and associations of broadcasters hold an equal position to that of a broadcaster in the sense of para. 1 above. A group company of a broadcaster may also become members, as long as they assign the Rights to the IRF or a Swiss collecting society.

<sup>3</sup> Members assign their Rights directly to the IRF or a Swiss collecting society as far as the Rights belong to them originally or have been acquired by them, and as long as such Rights must be exclusively administered by Swiss collecting societies pursuant to the statutory provisions of the laws of Switzerland and Liechtenstein.

<sup>4</sup> A member shall be accepted if the preceding mandate to the IRF for a certain minimum duration has led to payments to the broadcaster. The Delegates' Assembly shall set the period and amount of these payments required for membership.

<sup>5</sup> Membership applications shall be in writing to general management which will decide on the membership. The applicant may lodge an appeal against the decision not to accept his membership application within 30 days with general management for the attention of the Delegates' Assembly. The decision of the Delegates' Assembly shall be final.

#### Art. 4 Termination of membership

<sup>1</sup> Membership of the association shall expire in cases of dissolution, insolvency or merger, and expulsion of the respective member of the association. Expulsion may be initiated by general management if the member no longer fulfils the membership conditions in line with Art. 3. The affected member may lodge an appeal against the exclusion in line with Art. 34.

<sup>2</sup> Membership of the association shall also expire in the case of withdrawal from the association. Membership can be terminated by giving notice adhering to the notice period of 6 months per the end of the year. Notices to terminate membership of the association must be addressed to general management in writing.

### **IV. Principles of the business activity**

#### Art. 5 Principles of the business activity

<sup>1</sup> Payments collected by the IRF from collecting societies shall be distributed based on a set of fixed rules after all costs related to the administration and any predetermined reserves have been deducted. The annual distributable amount shall be split into a domestic and a foreign share based on a ratio determined by the Delegates' Assembly. The foreign Distribution Committee shall decide on the distribution of the foreign share; the domestic Distribution Committee shall decide on the distribution of the domestic share.

<sup>2</sup> The distribution rules shall take the principles of equal treatment and proportionality into consideration, irrespective of whether a broadcaster is a member or not and irrespective of whether or not the members or the clients of the association are domestic or foreign.

<sup>3</sup> The distribution rules shall be determined by the Delegates in the Distribution Committees; different rules may be drawn up for the domestic and the foreign distribution. The distribution regulations of the ordinary partnership IRF in its last approved version shall be used until the distribution rules of the IRF have come into force.

### **V. Acquisition of assets and liabilities of the ordinary partnership IRF**

#### Art. 6 Acquisition of assets and liabilities of the ordinary partnership IRF

The IRF shall acquire all contracts, assets and liabilities as well as decisions recorded in the minutes of member assemblies of the ordinary partnership IRF, "Interessenverbund der Radio- und Fernsehanstalten".

## **VI. Organisation**

### **Art. 7 Bodies of the Association**

The governing bodies of the IRF are:

- Delegates' Assembly
- Board of Directors
- Distribution Committees
- General Management
- the Auditors

### **A. Delegates' Assembly**

#### **Art. 8 Supreme governing body**

The Delegates' Assembly is the supreme body of the association.

#### **Art. 9 Composition**

The Delegates' Assembly shall consist of a maximum of 14 foreign and 9 domestic broadcasters' delegates from the following categories:

##### **Foreign delegates:**

- a) 2 delegates from German public service broadcasters
- b) 2 delegates from German private broadcasters
- c) 1 delegate from Austrian public service broadcasters
- d) 1 delegate from Austrian private broadcasters
- e) 1 delegate from Italian public service broadcasters
- f) 1 delegate from Italian private broadcasters
- g) 1 delegate from French public service broadcasters
- h) 1 delegate from French private broadcasters
- i) 1 delegate from European broadcasters with focus on culture
- j) 1 delegate from other foreign broadcasters
- k) 1 delegate from public foreign radio broadcasters
- l) 1 delegate from private foreign radio broadcasters

##### **Domestic delegates:**

- m) 5 delegates from the SRG
- n) 1 delegate from associations of Swiss private TV broadcasters
- o) 1 delegate from associations of Swiss private radio broadcasters
- p) 2 delegates of private Swiss broadcasters not adhering to any of the associations mentioned under items n or o

## Art. 10 Delegates' elections

<sup>1</sup> Members of the association from each category shall propose nominations for their candidate(s) to general management. Only natural persons may be candidates. Term of office shall be 3 years and shall end on the day of the respective ordinary Delegates' Assembly, for the first time at the Delegates' Assembly in 2016. Candidate nominations shall be made prior to 31 March of the year in which the ordinary term of office of the incumbent delegates ends, for the first time per 31 March 2016. General management shall establish the adherence of a member of the association authoritatively to the respective category or categories. It shall also decide in unclear cases.

<sup>2</sup> Subject to any input provided by SRG, which is entitled to five seats, each member of the association may nominate one candidate in each category that it belongs to.

<sup>3</sup> Should the number of candidates nominated be the same as the number of seats available for the category in question, or if the number of candidates nominated is lower than the amount of seats available, the nominated candidate/s shall be deemed to be elected. In the case of a lack of nominations, general management may provide proposals for candidates. Seats that have not been filled shall remain vacant until the next ordinary election.

<sup>4</sup> Should the number of candidates nominated be higher than the number of seats available for this category, the candidate/s shall be deemed to be elected that has/have been nominated by the members of the association with the highest income in the respective category. Income shall be defined as IRF payments that a member of the association has received in the last three business years for its programmes in the respective category. Income from members of the association which have nominated the same candidate/s for the same category shall be added to this number.

<sup>5</sup> General management shall establish the appointment of the nominated candidates authoritatively and shall inform the delegates and members of the association that have nominated the candidate accordingly. The respective member of the association that has proposed a nomination may lodge an appeal in line with Art. 34.

<sup>6</sup> Should a delegate become permanently unavailable during his term of office due to retirement or incapacity for office, a substitute delegate shall be elected for the remainder of the term of office. General management shall invite members of the association of the relevant category to this election.

## Art. 11 Duties and responsibilities of the Delegates' Assembly

Duties and responsibilities of the Delegates' Assembly are as follows:

- a) Stipulating and amending the Articles of Association
- b) Setting and amending the distribution proportion between domestic and foreign broadcasters
- c) Electing and discharging members of the Board of Directors and general management
- d) Setting the period and level of payments required for membership
- e) Approving the conclusion, alteration or termination of agreements with collecting societies
- f) Electing and discharging the auditors
- g) Approving the annual accounts
- h) Supervising the activities of the other bodies of the association including giving the respective discharge. The Delegates' Assembly has an unrestricted right to obtain information and to examine all business transactions.
- i) Deciding on matters which are reserved to the highest body of the association by law or by the Articles of Association or which are passed on for resolution by the Board of Directors or general management as well as dealing with delegates' requests.

- j) Settling of appeals
- k) Dissolving and liquidating the IRF

#### Art. 12 Convocation

<sup>1</sup> The ordinary Delegates' Assembly shall take place once a year. General management shall send out invitations together with the agenda items and a list of motions subject to a minimum term of 20 calendar days before the assembly. Invitations may be sent out in writing by letter, fax or email. Each delegate shall have the right to request that an agenda item be added and to file a motion. These requests must be addressed to general management.

<sup>2</sup> Extraordinary Delegates' Assemblies shall be convoked upon request by the Board of Directors, general management, a delegate or a minimum of a fifth of the associations' members indicating the agenda items and motions. The request for an extraordinary Delegates' Assembly to be convoked shall be addressed to general management in writing, indicating the motions in question. General management shall send out invitations at least 20 calendar days before the date of the assembly. In cases of extreme urgency, convocation may be made subject to a shorter deadline, if necessary, by telephone or other means. Delegates may, if no objection is launched, also hold a Delegates' Assembly without adhering to the formal provisions mandatory for its convocation ("universal meeting").

#### Art. 13 Carrying out an assembly

Delegates' Assemblies may be carried out in the form of meetings between attendees being present in person, or as telephone or video conferences, respectively via any other electronic media as long as those delegates not present in person may be clearly identified, unless the majority of delegates requests a meeting with the attendees being present in person. Delegates may also adopt resolutions in writing, by letters, fax or email (circular resolution procedure), unless the majority of delegates request matters to be discussed verbally at a meeting.

#### Art. 14 Votes and elections

<sup>1</sup> Each delegate has one vote. Delegates may represent each other. Apart from that, any other form of representation shall be excluded.

<sup>2</sup> Votes and elections shall be held openly, unless the Delegates' Assembly decides to hold a secret ballot.

#### Art. 15 Quora

<sup>1</sup> The Delegates' Assembly shall adopt resolutions with a simple majority of the votes cast, unless the law or the Articles of Association stipulate a qualified quorum.

<sup>2</sup> For the purposes of adopting resolutions in line with Art. 11 a, b, c, l, j and k, a qualified majority of three quarters of the votes cast is required.

<sup>3</sup> Changes to the purpose of the association require the consent of all delegates.

## **B. Board of Directors**

### Art. 16 Composition of the Board of Directors

<sup>1</sup> The Board of Directors consists of a maximum of 9 natural persons.

<sup>2</sup> Members of the Board shall be elected by the Delegates' Assembly for a term of office of up to 3 years. Re-election is permitted. The Board shall be self-constituting. It appoints the President and, if necessary, a secretary. The secretary does not have to be a member of the Board.

<sup>3</sup> A Board member is authorised to sign collectively with another authorised signatory (collective signing of two authorised signatories).

### Art. 17 Duties and responsibilities of the Board of Directors

The Board shall have duties and responsibilities as reserved to it by these Articles of Association as well as those constituted as an absolute requirement by law. The Members of the Board shall be invited to the meetings of the Delegates and of the Distribution Committees and are entitled to participate in an advisory capacity.

### Art. 18 Voting

The Board shall adopt its resolutions with a simple majority of the votes cast. Each Board member shall have one vote. Board members may represent each other. Apart from that, any other form of representation shall be excluded.

## **C. Foreign Distribution Committee**

### Art. 19 Composition of the Foreign Distribution Committee

The foreign Distribution Committee shall consist of the delegates in office of the categories pursuant to Art. 9 a-l respectively.

### Art. 20 Duties and responsibilities

<sup>1</sup> The foreign Distribution Committee shall have the following duties and responsibilities:

- a) Distributing the foreign radio and TV share incl. creating and dissolving reserves
- b) Stipulating and amending the foreign distribution rules incl. the division between radio and tv
- c) Initiating the procedures before the arbitration committee pursuant to Art. 33
- d) Setting the procedure for and electing the president of the foreign Distribution Committee

<sup>2</sup> Resolutions according to a and b on the distribution among tv broadcasters (hereinafter „TV Resolutions“) shall only be taken by tv representatives (art. 9 a-j) and respective decisions on the distribution among radio broadcasters (hereinafter „Radio Resolutions“) shall be taken by the radio representatives (art. 9 k and l). The representative of public radio broadcasters (art. 9 k) shall seek the consent of the other public tv representatives and the private radio representative (art. 9 l) of the private tv representatives provided they are also representing radio rights. Resolutions according to lit. b on the division between radio and tv shall be resolved upon by all representatives (art. 9 a-l) as well as resolutions according to c and d.

#### Art. 21 Voting

Each member of the foreign Distribution Committee shall have one vote. Members of the foreign Distribution Committee may represent each other. Apart from that, any other form of representation shall be excluded.

#### Art. 22 Quora

<sup>1</sup> Resolutions according to Art. 20 c and shall be adopted by simple majority of the votes cast. TV Resolutions shall be adopted by simple majority of the votes cast, unless the Articles of Association stipulate a qualified quorum. Radio Resolutions shall be adopted unanimously.

<sup>2</sup> TV Resolutions pursuant to Art. 20 b as well as resolutions of all representatives (art. 9 a-l) on the division between radio and tv may only be adopted by a qualified majority of three quarters of the votes cast.

<sup>3</sup> In cases where not all 12 TV delegates' seats are filled (Art. 9 a – j), TV Resolutions as well as resolutions on the division between radio and tv shall be adopted with a qualified majority of two thirds of the votes cast.

#### Art. 23 Exchange among the Distribution Committees

The president of the domestic Distribution Committee shall generally be invited to the meetings of the foreign Distribution Committee where he attends in an advisory capacity.

### **D. Domestic Distribution Committee**

#### Art. 24 Composition of the Domestic Distribution Committee

The domestic Distribution Committee shall consist of the delegates in office of the categories pursuant to Art. 9 m-p respectively.

#### Art. 25 Duties and responsibilities

The domestic Distribution Committee shall have the following duties and responsibilities:

- a) Distributing the domestic share incl. creating and dissolving reserves
- b) Stipulating and amending the domestic distribution rules
- c) Initiating the procedures before the arbitration committee pursuant to Art. 33
- d) Setting the procedure for and electing the president of the domestic Distribution Committee

#### Art. 26 Voting

Each member of the domestic Distribution Committee shall have one vote. Members of the domestic Distribution Committee may represent each other. Apart from that, any other form of representation shall be excluded.

#### Art. 27 Quora

<sup>1</sup> The domestic Distribution Committee shall adopt its resolutions with a simple majority of the votes cast, unless the Articles of Association stipulate a qualified quorum.

<sup>2</sup> Resolutions pursuant to Art. 25 b may only be adopted by a qualified majority of three quarters of the votes cast.

<sup>3</sup> In cases where not all 9 delegates' seats are filled (Art. 9 m-p), resolutions of the foreign Distribution Committee shall always be adopted with a qualified majority of two thirds of the votes cast.

#### Art. 28 Exchange among the Distribution Committees

The president of the foreign Distribution Committee shall generally be invited to the meetings of the domestic Distribution Committee where he attends in an advisory capacity.

### **E. General Management**

#### Art. 29 Responsibilities

<sup>1</sup> General Management shall run IRF's business. It represents IRF towards third parties. It has all duties and responsibilities, unless these are reserved to another body by the Articles of Association or due to an absolute requirement by law.

<sup>2</sup> The General Manager – in the case of unavailability the Deputy General Manager – shall generally preside over the Delegates' Assemblies as well as the meetings of the Distribution Committees. He shall attend in an advisory capacity. He shall have the right to convoke, to add agenda items and file motions, but he shall not have any voting rights.

<sup>3</sup> The General Manager and his deputy are authorised to sign collectively with another authorised signatory (collective signing of two signatories).

### **F. Auditors**

#### Art. 30 Auditors

The IRF shall instruct accredited auditors with an annual review of its accounts.

### **VII. Members' contributions/ financial means /liability/expenses**

#### Art. 31 Members' contributions/financial means/liability/expenses

<sup>1</sup> There is no duty for members of the association to pay contributions. The associations' financial means are made up of the returns from association assets and the associations' activities.

<sup>2</sup> Liabilities of the IRF are limited to the associations' assets. Personal liability of members of the association is excluded.

<sup>3</sup> The IRF compensates members of the Delegates' Assembly, the Board and the Distribution Committees for their travel expenses. They do not receive any other expenses. Remuneration and payment of the general management shall be subject to the management contract which must be concluded with the Board.

<sup>4</sup> The IRF shall be entitled to adequately invoice parties filing applications with the amount relating to the effort and expenditure arising in cases of verifying rights.

## **VIII. Business year**

### Art. 32 Business year

The Board shall determine the business year.

## **IX. Settling differences**

### Art. 33 Arbitration committee

<sup>1</sup> Resolutions pursuant to Art. 11 b may be referred by both Distribution Committees to the arbitration committee which passes a final decision based on the principles agreed upon in these Articles of Association. The term for appeals shall expire after 60 calendar days. Decisions by the arbitration committee shall also be binding in any legal dispute pursuant to Art. 34 and Art. 35.

<sup>2</sup> The arbitration committee shall be made up of three members. Each Distribution Committee shall provide one member. Those decide jointly on the person presiding over the proceedings. If a consensus cannot be reached, the presiding person shall be determined by the High Court of the Canton Zurich. Furthermore, the arbitration committee shall be self-constituting and shall determine the type of proceedings that are applicable.

### Art. 34 Levels of appeal within the Association

Any association bodies' resolutions which infringe the law or any internal association rules including the distribution rules, may be brought to the Delegates' Assembly for appeal by the affected association's member, by any delegate as well as by general management. Any appeals must be filed with general management. The term within which the appeal must be filed shall be 30 calendar days. In the case of the appeal being granted, the contested resolutions shall be suspended. The appeal decision may be referred to the arbitration tribunal pursuant to art. 35 para. 2.

### Art. 35 Arbitration

<sup>1</sup> Disputes, disagreements or claims between the IRF and the members and/or principals of the association, as well as between members and principals of the association, or among members and/or among principals of the association arising from or in connection with these Articles of Association with regard to their validity, invalidity, infringement or termination shall exclusively be decided upon by arbitration proceedings pursuant to the Swiss Chambers of Commerce rules of international arbitration supplemented by the Zurich Chamber of Commerce for domestic arbitration cases.

<sup>2</sup> Resolutions of the Delegates' Assembly infringing the law or internal regulations of the association may be brought for appeal exclusively to the arbitration tribunal by any delegate as well as by general management (subject to the provisions of Art. 33). Furthermore, decisions of the Delegates' Assembly on appeals shall be referred to the arbitration tribunal exclusively. The term of appeal shall expire after 30 calendar days. The appeal tribunal may only be addressed if the internal appeal procedures have been exhausted. The sole instance for appeal within the association shall be the Delegates' Assembly. In cases where the action for annulment is confirmed by the arbitration tribunal the contested resolution shall be suspended. The decision of the arbitration tribunal shall be final.

<sup>3</sup> The proceedings shall be subject to the version of the rules of arbitration in force at the time notice of the initiation of proceedings was received. Applicability of provisions in chapter 12 of the Swiss Federal Code on International Private Law (IPRG) shall be excluded. The third part of the Swiss Code of Civil Procedure shall be applicable.

<sup>4</sup> The arbitration tribunal shall consist of three arbitrators. It shall have its headquarters at the place of domicile of the IRF. The language of the arbitration tribunal shall be German.

## **X. Dissolution of the IRF**

### Art. 36 Dissolution of the IRF

In the case of the IRF being dissolved the association's assets shall revert to the association's members and remaining principals proportional to their shares on the distributable amount over the last three business years before the dissolution of the IRF.

## **XI. Notifications**

### Art. 37 Notifications

<sup>1</sup> Notifications to members of the association shall be made in writing by letter, fax or email to the most recently known address of the member of the association or via publication in the Swiss Official Gazette of Commerce (SOGC).

<sup>2</sup> Public notifications shall be made via publication in the SOGC. The Board may also decide that notifications shall be made via other publication bodies.

## **XII. Applicable law**

### Art. 38 Applicable law

These Articles of Association shall be subject to Swiss Law exclusively, excluding any valid conflict rules.

## **XIII. Entering into force**

### Art. 39 Entering into force

These Articles of Association were approved at the inaugural meeting dated 3 December 2013 and entered into force on that date.

Revised, 5 November 2019