

## **Report of the Board of Directors on the Revision to the Articles of Association**

### **A. Overview**

#### **1. Preliminary Remarks**

On March 3, 2013, the Swiss people have approved the “Minder” popular initiative and thereby amended the Swiss Federal Constitution by Article 95 para. 3. Implementing this provision, the Swiss Federal Council has enacted the Ordinance Against Excessive Compensation in Public Corporations (“Ordinance”). It came into force as of January 1, 2014, subject to certain transitional provisions.

The Ordinance extends the powers of the General Meeting in relation to elections. Further, the General Meeting must approve the compensation of the Board of Directors and the Executive Committee in a binding vote. In addition, the Ordinance requires, among other things, the Articles of Association to comprise provisions regarding the (i) basic principles of the powers and duties of the compensation committee, (ii) basic principles of the compensation of the members of the Board of Directors and the Executive Committee, (iii) the number of permissible mandates of members of the Board of Directors and the Executive Committee outside the Sulzer Group, (iv) the duration and termination of their employment or similar agreements as well as (v) the maximum amount of loans to the members of the Board of Directors and the Executive Committee, if any.

After the proposed revision to the Articles of Association did not pass the required supermajority of two thirds at the Annual General Meeting 2014, the Board of Directors again proposes to the Annual General Meeting 2015 a revision of the Articles of Association to implement the requirements of the Ordinance. The new proposal is taking into account the criticism raised at the last Annual General Meeting. In particular, it provides that:

- Sulzer is obliged to hold an additional annual advisory vote on the compensation report (Art. 29 para. 5 of the Articles of Association)
- variable compensation for non-executive members of the Board of Directors is excluded (Art. 31 paras. 1 and 6);
- non-compete undertakings after termination of an employment agreement (if any) are limited to a duration of one year (Art. 32 para. 3);
- the number of additional mandates in listed companies for members of the Board of Directors is limited to four mandates (Art. 33 para. 1); and
- loans to members of the Board of Directors and the Executive Committee are not permitted (Art. 34).

At the same time, two other provisions are proposed to be amended due to changes to accounting laws and to address today’s voting procedure during the General Meeting.

This overview explains the main amendments. It is followed by a comparison of the revised provisions of the Articles of Association as proposed and the current provisions of the Articles of Association of the Company. References in this overview refer to the renumbered Articles of Association as proposed by the Board of Directors.

#### **2. Elections of the Members of the Board of Directors, the Chairman of the Board of Directors, the Members of the Compensation Committee and the Independent Proxy**

The Ordinance requires the Annual General Meeting to elect the members of the Board of Directors, the Chairman of the Board of Directors, the members of the Compensation Committee and the independent proxy. The election of the members of the Board of Directors

and the Compensation Committee shall be held individually. The term of office is one year and extends until completion of the next Annual General Meeting, subject to resignation and removal. If the office of the Chairman is vacant, or there are vacancies on the Compensation Committee, the Board of Directors shall appoint substitutes for a term of office extending until completion of the next Annual General Meeting. If the Company does not have an independent proxy, the Board of Directors shall appoint one for the next General Meeting.

The proposed Art. 7 paras. 4 and 5, Art. 17 no. 2 as well as Arts. 18, 19 and 25 implement these requirements.

### **3. Representation of Shareholders at the General Meeting**

Representation by depository institutions such as banks and representation by the company proxy are no longer permitted under the Ordinance. Shareholders may be represented by their legal representative, another shareholder (by written proxy) or the independent proxy (by written proxy or by electronic means).

The proposed Art. 7 para. 2 implements these requirements.

### **4. Compensation Committee**

Pursuant to the Ordinance, the Articles of Association have to establish the main principles of the powers and duties of the Compensation Committee. The Board of Directors proposes in Art. 27 that the Compensation Committee shall continue to support the Board of Directors in establishing and reviewing the compensation strategy and in preparing the proposals of the Board of Directors regarding compensation to be submitted to the General Meeting. Further, the Board of Directors may, by means of a regulation, delegate to the Compensation Committee the task to determine the compensation and/or performance metrics and target levels of certain directors or Executive Committee members. The proposed Arts. 24 and 26 govern the number of members, the constitution and the organization of the Compensation Committee.

### **5. Compensation of the Board of Directors and the Executive Committee**

The shareholders are required to approve annually the compensation of the Board of Directors and the Executive Committee. According to the proposed Art. 29, the maximum amount of compensation for the Board of Directors shall be approved for their following term of office. This ensures that the compensation period and the term of office correlate. The maximum compensation of the Executive Committee shall be approved for the following financial year. This provides for appropriate planning certainty of both Sulzer and the executives. To the extent appropriate, the Board of Directors may submit deviating or additional proposals relating to the same or different periods for approval.

In the event the shareholders do not approve a proposed compensation amount, the Board of Directors shall, taking into account all relevant factors, reconsider its proposal, and submit a new proposal either at (i) an extraordinary General Meeting or (ii) the next Annual General Meeting. Instead of one new proposal, the Board of Directors may also submit several proposals relating to different compensation elements.

In addition, Art. 29 para. 5 provides that the Board of Directors shall submit the annual compensation report to an advisory vote of the General Meeting.

The Ordinance provides that the Articles of Association may determine a “reserve” amount for the compensation of each executive who joins the Executive Committee, or is being promoted within the Executive Committee, after the General Meeting has approved the maximum compensation. Out of this “reserve” amount, Sulzer may pay out the compensation of such Executive Committee members throughout the compensation period(s) already approved. The Board of Directors proposes in Art. 30 that the “reserve” amount shall be limited to a total maximum aggregate amount of up to 40% of the compensation for the executive management last approved by the General Meeting.

The Ordinance further requires that the main principles of performance- and share-based compensation are determined in the Articles of Association. The proposed Art. 31 allows Sulzer to continue to apply its performance-tied compensation system. At the same time, it allows the Company, within the limitations set forth in the Articles of Association, to adjust its

compensation system in view of evolving or new best practices. Non-executive directors are only paid a fixed compensation, taking into account position and level of responsibility of the recipient. Executives are paid fixed compensation elements (including the base salary) and a variable compensation. Variable compensation elements may comprise short- and long-term variable compensation. Short-term variable compensation elements shall be governed by performance metrics that take into account the performance of the Company, the group or parts thereof, targets in relation to the market, other companies or comparable benchmarks and/or individual targets. Achievement of the performance metrics is generally measured during a one-year period. Long-term variable compensation elements shall be governed by performance metrics that take into account Sulzer's strategic and/or financial objectives. Their achievement is generally measured during a period of several years. The total compensation of each executive shall take into account position and level of responsibility of the recipient.

As of the financial year 2014, the compensation actually paid within the maximum amounts approved by the General Meeting has to be disclosed in a compensation report governed by the Ordinance instead of in the notes to the annual accounts as today. The compensation report has to be prepared by the Board of Directors, be audited and made available to shareholders for inspection. The proposed amendment to Art. 21 no. 6 implements this requirement. Irrespective of the requirements of the Ordinance, Sulzer continues to be obliged to publish the Corporate Governance Report pursuant to the SIX Corporate Governance Directive. This report also comprises information on the compensation of the Board of Directors and the Executive Committee, and its determination. Finally, the compensation report shall be submitted to the Annual General Meeting for an advisory vote (Art. 29 para. 5).

Agreements relating to the compensation of members of the Board of Directors and the Executive Committee may be entered for a fixed term not exceeding one year or for an indefinite term with a termination notice period of no more than one year. The Articles of Association must determine the maximum term and the maximum termination notice period. The proposed Art. 32 implements this requirement. It ensures that Sulzer may continue to protect itself from abrupt terminations of Executive Committee members by means of adequate termination notice periods. The provision further allows Sulzer to enter into non-compete agreements of maximum one year against consideration of maximum the last total annual target compensation if such agreements are in the interest of the Company.

## **6. Mandates of Members of the Board of Directors and of the Executive Committee Outside the Sulzer Group**

The Ordinance further requires that the Articles of Association determine the maximum number of mandates a member of the Board of Directors or the Executive Committee may hold in the supreme governing bodies of legal entities which are required to be registered in the Swiss Commercial Register or a comparable foreign register. Mandates in companies controlled by Sulzer are exempt by law from these limitations.

The Board of Directors proposes in Art. 33 that directors may hold no more than ten additional external mandates of which no more than four may be in listed companies. The mandates of members of the Executive Committee are limited to five mandates of which only one mandate may be in a listed company. These limitations ensure that the members of the Board of Directors and the Executive Committee dedicate sufficient time for their office with Sulzer. Further, members of the Board of Directors and the Executive Committee may hold a limited number of mandates in companies at the request of Sulzer (e.g., in non-controlled joint ventures) or in charitable organizations, foundations, associations etc.

Irrespective of these limitations, any director or Executive Committee member is obliged by law and his or her employment or mandate agreement to perform his or her office with Sulzer with due care. This includes, among other things, the obligation to have sufficient time and resources available to dedicate to Sulzer.

## **7. Loans to Members of the Board of Directors and the Executive Committee**

The Ordinance requires that the Articles of Association determine the amount of loans, if any, to be granted to members of the Board of Directors and the Executive Committee. The Board of Directors proposes in Art. 34 that no loans may be granted to members of the Board of Directors and the Executive Committee.

## 8. Further Amendments

On January 1, 2013, revised accounting laws came into force. As of the financial year 2015, the Board of Directors will have to prepare a 'management report' instead of an 'annual report'. The proposed amendment to Art. 17 no. 3 implements this change of law.

The Board of Directors further proposes to revise Art. 15 para. 3 to address the repetition not only of elections or resolutions held openly, but also carried out by electronic means or in writing.

## B. Proposed Revised Provisions of the Articles of Association Compared with the Current Version

Current Version:

Version as proposed by the Board of Directors (changes in ***bold italics***):

### II. Corporate Capital

### II. Corporate Capital

Art. 7

(Art. 3-6a: Wording unchanged)

Art. 7

(para. 1: Wording unchanged)

A shareholder shall only be represented by his legal representative, another shareholder with the right to vote, corporate bodies (Organvertreter), independent proxies (unabhängige Stimmrechtsvertreter) or by a depositary (Depotvertreter). All shares held by one shareholder may be represented by only one representative.

A shareholder ***shall may*** only be represented by his legal representative, another shareholder with the right to vote ***or, corporate bodies (Organvertreter); the independent proxies (unabhängige Stimmrechtsvertreter) or by a depositary (Depotvertreter)***. All shares held by one shareholder may be represented by only one representative.

The Board of Directors shall issue procedural rules regarding participation in and representation at the General Meeting of Shareholders.

The Board of Directors shall issue procedural rules regarding participation in and representation at the ***General Meeting of Shareholders Meeting***.

***The Shareholders Meeting shall elect the independent proxy for a term of office extending until completion of the next ordinary Shareholders Meeting. Re-election is possible.***

***If the Company does not have an independent proxy, the Board of Directors shall appoint the independent proxy for the next Shareholders Meeting.***

Art. 8

***Art. 8***

Abrogated

***Abrogated***

Art. 8a

***Art. 8a***

Abrogated

***Abrogated***

Art. 9

***Art. 9***

Abrogated

***Abrogated***

Art. 10

***Art. 108***

(Wording unchanged)

### III. Organisation of the Company

Art. 11

#### A. The Shareholders Meeting

Art. 12

Art. 13

Art. 14

Art. 15

Art. 16

Art. 17

The chair of the Shareholders Meeting may at any time order that an election or resolution decided by a show of hands be repeated through a secret ballot if, in his view, the results of the vote are in doubt. In this case, the preceding decision by a show of hands shall be deemed to have not occurred.

Art. 18

Art. 19

The Shareholders Meeting is the supreme organ of the Company. It has the following non-transferable powers:

2. Election and recall the members of the Board of Directors and the Auditors of the Company;

3. to approve the annual report and the consolidated accounts;

5. to discharge the members of the Board of Directors;

6.

### III. Organisation of the Company

**Art. 119**

(Wording unchanged)

#### A. The Shareholders Meeting

**Art. 1210**

(Wording unchanged)

**Art. 1311**

(Wording unchanged)

**Art. 1412**

(Wording unchanged)

**Art. 1513**

(Wording unchanged)

**Art. 1614**

(Wording unchanged)

**Art. 1715**

(paras. 1 and 2: Wording unchanged)

The chair of the Shareholders Meeting may at any time order that an election or resolution ~~decided by a show of hands~~ be repeated ~~through a secret ballot~~ if, in his view, the results of the vote are in doubt. In this case, the preceding ~~decision by a show of hand-selection or resolution~~ shall be deemed to have not occurred.

(para. 4: Wording unchanged)

**Art. 1816**

(Wording unchanged)

**Art. 1917**

The Shareholders Meeting is the supreme organ of the Company. It has the following non-transferable powers:

(No. 1: Wording unchanged)

2. ~~Election and recall~~ **to elect and remove** the members of the Board of Directors, **the Chairman of the Board of Directors, the members of the Compensation Committee, and** the Auditors of the Company **and the independent proxy;**

3. to approve the ~~annual~~ **management** report and the consolidated accounts;

(No. 4: Wording unchanged)

**5. to approve the compensation of the Board of Directors and of the executive management pursuant to Article 29 of these Articles of Association;**

**56.**to discharge the members of the Board of Directors **and of the executive management;**

**67.**(Wording unchanged)

## B. The Board of Directors

### Art. 20

The members of the Board of Directors are elected by the Shareholders Meeting for a period of one year. One year is to be understood as comprising the timeframe between the election and the next ordinary Shareholders Meeting.

Members whose term of office is expiring are eligible for immediate reelection.

### Art. 21

The Board of Directors shall organise itself.

### Art. 22

### Art. 23

The Board of Directors has the following non-transferable and inalienable duties:

6. the preparation of the business report and the Shareholders Meeting and the carrying out of the resolutions adopted by the Shareholders Meeting;

### Art. 24

### Art. 25

### Art. 26

The members of the Board of Directors are entitled to appropriate remuneration for their activities and reimbursement for their outlays; the amount shall be fixed by the Board of Directors.

## B. The Board of Directors

### Art. 2018

(para. 1: Wording unchanged)

The members of the Board of Directors **and the Chairman of the Board of Directors** are **individually** elected by the Shareholders Meeting for a **period of one year term of office extending until completion of the next ordinary Shareholders Meeting. One year is to be understood as comprising the timeframe between the election and the next ordinary Shareholders Meeting.**

~~Members whose term of office is expiring are eligible for immediate reelection. Re-election is possible.~~

**If the office of the Chairman of the Board of Directors is vacant, the Board of Directors shall appoint a new Chairman from among its members for a term of office extending until completion of the next ordinary Shareholders Meeting.**

### Art. 2119

**Except for the election of the Chairman of the Board of Directors and the members of the Compensation Committee by the Shareholders Meeting, t**The Board of Directors shall organise itself.

(para. 2: Wording unchanged)

### Art. 2220

(Wording unchanged)

### Art. 2321

The Board of Directors has the following non-transferable and inalienable duties:

(Nos. 1-5: Wording unchanged)

6. the preparation of the business report and **the compensation report as well as** the Shareholders Meeting and the carrying out of the resolutions adopted by the Shareholders Meeting;

(No. 7: Wording unchanged)

### Art. 2422

(Wording unchanged)

### Art. 2523

(Wording unchanged)

### Art. 26

~~The members of the Board of Directors are entitled to appropriate remuneration for their activities and reimbursement for their outlays; the amount shall be fixed by the Board of Directors.~~

### **C. The Compensation Committee**

(New Article)

#### **Art. 24**

***The Compensation Committee consists of at least three members of the Board of Directors.***

(New Article)

#### **Art. 25**

***The members of the Compensation Committee are individually elected by the Shareholders Meeting for a term of office extending until completion of the next ordinary Shareholders Meeting.***

***Re-election is possible.***

***If there are vacancies on the Compensation Committee, the Board of Directors shall appoint substitute members from among its members for a term of office extending until completion of the next ordinary Shareholders Meeting.***

(New Article)

#### **Art. 26**

***The Compensation Committee shall organise itself. The Board of Directors shall elect its chairman.***

***The Board of Directors shall draw up regulations establishing the organisation and decision-making process of the Compensation Committee.***

(New Article)

#### **Art. 27**

***The Compensation Committee shall support the Board of Directors in establishing and reviewing the compensation strategy and guidelines and the performance objectives as well as in preparing the proposals to the Shareholders Meeting regarding the compensation of the Board of Directors and of the executive management, and may submit proposals to the Board of Directors in other compensation-related issues.***

***The Board of Directors shall determine in regulations for which positions of the Board of Directors and of the executive management the Compensation Committee shall submit proposals for the performance metrics, target levels and the compensation to the Board of Directors, and for which positions of the Board of Directors and the executive management it shall itself determine, in accordance with these Articles of Association and the compensation guidelines established by the Board of Directors, the performance metrics, target levels and the compensation.***

***The Board of Directors may delegate further tasks to the Compensation Committee that shall be determined in regulations.***

## **C. The Auditors**

Art. 27

(New Article)

## **GD. The Auditors**

**Art. 2728**

(Wording unchanged)

## **IV. Compensation of the Members of the Board of Directors and of the Executive Management**

**Art. 29**

*The Shareholders Meeting shall approve the proposals of the Board of Directors in relation to the maximum aggregate amounts of:*

- 1. compensation of the Board of Directors for the next term of office;*
- 2. compensation of the executive management for the following financial year.*

*The Board of Directors may submit for approval by the Shareholders Meeting deviating or additional proposals relating to the same or different periods.*

*In the event the Shareholders Meeting does not approve a proposal of the Board of Directors, the Board of Directors shall determine, taking into account all relevant factors, the respective (maximum) aggregate amount or (maximum) partial amounts, and submit the amount(s) so determined for approval by an extraordinary Shareholders Meeting or the next ordinary Shareholders Meeting.*

*The Company or companies controlled by it may pay out compensation prior to approval by the Shareholders Meeting subject to subsequent approval.*

*The Board of Directors shall submit the annual compensation report to an advisory vote of the Shareholders Meeting.*

**Art. 30**

*The Company or companies controlled by it shall be authorized to pay to each person who becomes a member of the executive management or is being promoted within the executive management after the Shareholders Meeting has approved the compensation a supplementary amount during the compensation period(s) already approved if the compensation already approved is not sufficient to cover his compensation. The supplementary amount per compensation period shall in total not exceed 40% of the maximum aggregate amount of compensation for the executive management last approved.*

(New Article)



**Art. 31**

***Non-executive members of the Board of Directors shall be paid a fixed compensation. Total compensation shall take into account position and level of responsibility of the recipient.***

***Compensation of the members of the executive management consists of fixed and variable compensation elements. Fixed compensation comprises the base salary and other compensation elements. Variable compensation may comprise short-term and long-term variable compensation elements. Total compensation shall take into account position and level of responsibility of the recipient.***

***Short-term variable compensation elements shall be governed by performance metrics that take into account the performance of the Company, the group or parts thereof, targets in relation to the market, other companies or comparable benchmarks and/or individual targets, and achievement of which is generally measured during a one-year period. Depending on achieved performance, the compensation may amount to a multiple of target level.***

***Long-term variable compensation elements shall be governed by performance metrics that take into account strategic and/or financial objectives, and achievement of which is generally measured during a perennial period. Depending on achieved performance, the compensation may amount to a multiple of target level.***

***The Board of Directors or, to the extent delegated to it, the Compensation Committee shall determine the performance metrics and target levels of the short- and long-term variable compensation elements, as well as their achievement.***

***Compensation may be paid in the form of cash, shares, in kind or in the form of services or other types of benefits; compensation of members of the executive management may also be paid or granted in the form of options, financial instruments or similar units. The Board of Directors or, to the extent delegated to it, the Compensation Committee shall determine grant, vesting, exercise and forfeiture conditions. In particular, they may provide for continuation, acceleration or removal of vesting and exercise conditions, for payment or grant of compensation based upon assumed target achievement, or for forfeiture, in each case***

*in the event of pre-determined events such as a change-of-control or termination of an employment or mandate agreement. The Company may procure the required shares through purchases in the market or by using conditional share capital.*

*Compensation may be paid by the Company or companies controlled by it.*

## **V. Agreements with Members of the Board of Directors and the Executive Management**

(New Article)

### **Art. 32**

*The Company or companies controlled by it may enter into agreements for a fixed term or for an indefinite term with members of the Board of Directors relating to their compensation. Duration and termination shall comply with the term of office and the law.*

*The Company or companies controlled by it may enter into employment agreements for a fixed term or for an indefinite term with members of the executive management. Employment agreements for a fixed term may have a maximum duration of one year. Renewal is possible. Employment agreements for an indefinite term may have a termination notice period not exceeding twelve months.*

*Non-compete agreements for the time after termination of an employment agreement are permissible. Their duration shall not exceed one year. Their consideration shall not exceed the last total annual target compensation such member was entitled to prior to termination.*

## **VI. Mandates Outside the Group, Loans**

(New Article)

### **Art. 33**

*No member of the Board of Directors may hold more than ten additional mandates of which no more than four may be in listed companies.*

*No member of the executive management may hold more than five mandates of which no more than one may be in listed companies.*

*Not subject to these limitations are:*

*(a) mandates in companies which are controlled by the Company or which control the Company;*

*(b) mandates held at the request of the Company or companies controlled by it. No member of the Board of Directors or of the executive management may hold more than ten such mandates;*

*(c) mandates in associations, charitable organizations, foundations, trusts and employee welfare foundations. No member of the Board of Directors or of the executive management may hold more than ten such mandates.*

*Mandates shall mean mandates in the supreme governing body of a legal entity which is required to be registered in the commercial register or a comparable foreign register. Mandates in different legal entities that are under joint control or same beneficial ownership are deemed one mandate.*

**Art. 34**

*The Company or companies controlled by it shall not grant loans to members of the Board of Directors or the executive management.*

(New Article)

**IV. Closing of Accounts**

Art. 28

Art. 29

**V. Dissolution and Liquidation**

Art. 30

**VI. Announcements and Notices**

Art. 31

**VII. Closing of Accounts**

**Art. 2835**

(Wording unchanged)

**Art. 2936**

(Wording unchanged)

**VIII. Dissolution and Liquidation**

**Art. 3037**

(Wording unchanged)

**VIX. Announcements and Notices**

**Art. 3138**

(Wording unchanged)

