

# **ORGANISATIONAL RULES**

**(THE "BY-LAWS")**

**of**

**ACTELION LTD**

**(the "Company")**

## **I. GENERAL**

### **ARTICLE 1 BASIS**

1.1 The By-laws are adopted by the board of directors of Actelion Ltd. (the "Board of Directors" or "Board") pursuant to Article 20 of the Company's articles of association (the "Articles of Association").

1.2 The By-Laws and its annexes contain the rules on the functions and competences of the following corporate bodies and persons:

- the Board;
- the chairman (the "Chairman") and secretary ("the Secretary") of the Board;
- the chief executive officer (the "CEO") and the Actelion Executive Committee ("AEC")
- the standing committees of the Board (the "Committees"); and
- the scientific advisory board of the Company (the "Scientific Advisory Board");

and constitute at the same time the Company's fundamental organisational rules in the sense of Article 716b of the Swiss Code of Obligations ("CO").

### **ARTICLE 2 SCOPE**

The By-Laws shall ensure that the Company's business is guided, directed and managed according to clear and uniform principles.

## **II. THE BOARD OF DIRECTORS**

### **ARTICLE 3 FUNCTION AND COMPETENCES**

- 3.1 The Board is, with reservation of the legal and statutory duties and competences of the Company's shareholders meetings and the statutory auditors, the supreme executive authority of the Company.
- 3.2 The Board shall have the authority to perform all acts that the business objectives of the Company may entail.
- 3.3 The Board shall have the authority to pass resolutions in all matters of the Company, which are not reserved to the Shareholders Meeting by law or the Articles of Association (Articles 8 and 19 of the Articles of Association; Articles 698 and 716 CO).

### **ARTICLE 4 DUTIES**

- 4.1 The Board has the legal and statutory duty (Article 716a CO) to resolve on the following matters:
  1. the ultimate direction of the business of the Company and the issuance of the necessary directives;
  2. the determination of the organisation of the Company;
  3. the organisation and the administration of the accounting, the financial control and of the financial planning of the Company;
  4. the ultimate supervision of the persons entrusted with the management of the Company, namely in view of their compliance with the law, the Articles of Association and the By-Laws of the Company as well as with the directives of the Board;
  5. the preparation of the Annual Business Report (Article 662 CO) and of the Shareholders Meeting as well as the implementation of the resolutions adopted by the Shareholders Meeting (Article 702), including resolutions regarding the reduction of the share capital (Articles 732 et seq. CO);
  6. the notification of the court, if liabilities exceed assets (Article 725 CO);
  7. the decision to issue certificates for the shares as well as any decision regarding the transfer of shares according to Articles 3(2) and 5 of the Articles of Association;
  8. the increase of capital of the Company and the respective certifications to the extent that this matter is within the jurisdiction of the Board, according to the resolutions of the Shareholders Meeting and the provisions of the law as well as the adoption of the respective amendments of the Articles of Association (Articles 652g and 653g of CO) and the decisions regarding supplementary contribution for shares not fully paid-in (Article 634a CO);
  9. the examination of the necessary qualifications of the auditors;

10. the adoption and revision of the By-Laws of the Company and of its annexes.

4.2 In particular, the resolutions on the following matters shall be reserved to the Board:

1. the appointment, remuneration and dismissal of the CEO of the Company and of managers directly reporting to the CEO;
2. the approval of the Company's general compensation scheme for its employees, the decisions on possible exceptions there from as regards the hiring of the management as well as the remuneration of the employees reporting directly to the CEO;
3. the granting of the signatory powers to the persons charged with the representation of the Company and its subsidiaries (Articles 718 and 726 CO);
4. the adoption of the Company's stock option plans including the adoption of the respective allocation grid;
5. the formation, acquisition, merger, sale and liquidation of subsidiaries and branches of the Company;
6. the conclusion of merger agreements between the Company and another entity (Articles 748/749 CO) and the decision to wind up or liquidate the Company as well as decisions to propose to the Shareholders Meeting the merger, liquidation or winding-up of the Company (Articles 739 et seq. CO)
7. cooperations/alliances in research or marketing or license agreements, any of which exceed CHF 20'000'000 (based on a five year discounted payment);
8. financially critical contracts, such as Phase III clinical studies, exceeding CHF 20'000'000;
9. the approval of the Annual Group Budget;
10. the acquisition, sale and hypothecation of real estate exceeding CHF 3'000'000;
11. individual capital expenditure items/projects, including IT, over CHF 3'000'000 if these are not included in the annual capital budget, over CHF 5'000'000 if included in the annual capital budget. An aggregate variance of capital expenditure exceeding the budget by CHF 10'000'000 requires separated Board approval;
12. individual credit lines or indebtedness which in the aggregate (annual) group-wide amount exceed CHF 30'000'000. The approval of an aggregate amount of CHF 30'000'000 to CHF 50'000'000 is delegated to the Finance and Audit Committee;
13. the issuance of public bonds, debentures and similar instruments;
14. the acquisition and divestiture of Treasury shares;
15. the initiation and settlement of judicial and administrative proceedings and disputes exceeding CHF 10'000'000 dispute value.

## **ARTICLE 5 DELEGATION OF MANAGEMENT TO THE CEO**

- 5.1 The Board hereby delegates the management of the Company's business to the CEO.
- 5.2 The CEO may sub-delegate its functions and competences to the Company's other executive officers. The CEO shall inform the Board of Directors of any such sub-delegations unless it is for a particular matter only.
- 5.3 The CEO shall direct the activities of the other executive officers of the Company and issue the necessary directives.
- 5.4 The CEO shall be responsible for the reporting to the Board of Directors according to its directives and shall carry out the functions and responsibilities, which the Board of Directors or the Chairman may delegate to him.

## **ARTICLE 6 ORGANIZATION**

- 6.1 The Board shall consist of five to eleven persons, who must be shareholders, elected by the shareholders meeting for staggered terms of office of three years.
- 6.2 The Board shall constitute itself and shall appoint at least its Chairman, one or several Vice-Chairmen and the Secretary, who need not be a member of the Board. The Secretary shall be entitled to participate in the deliberations and debates of the Board, but shall not vote, unless he is a member of the Board.

## **ARTICLE 7 CONVENING**

- 7.1 The Board shall meet upon invitation of the Chairman (or, in his absence or incapacity, of the Vice-Chairman) regularly and as often as necessary, but in any event at least four times per year and on demand of one of its members or of the Statutory Auditors.
- 7.2 The convening shall take place in writing or telecommunicated form at least 10 days prior to the meeting. In urgent cases a meeting may be held on 48 hours notice.
- 7.3 If a member requests that a meeting be called, it shall submit the respective demand to the Chairman and indicate the grounds for such a request. In such event the Chairman shall convene the meeting within 14 days after receipt of the respective demand.
- 7.4 In the event that the Board is to resolve on the certification of a capital increase or on a supplementary contribution for shares not fully paid in as well as on the subsequent amendment the Articles of Association (Articles 652g and 634a CO), no invitations have to be sent out (cf. Article 18.2 of the Articles of

Association) and any of the Board Members shall be authorized to make the respective certifications before the notary public.

- 7.5 Board Meetings may also be held by telephone conference to which all Board Members were invited to attend.

## **ARTICLE 8 AGENDA**

- 8.1 The items on the agenda of the meetings of the Board shall be determined by the Chairman after consultation with the CEO.
- 8.2 The agenda of the meetings shall be communicated to the individual directors, together with the convening notice and shall be accompanied by the materials belonging to the items on the agenda.
- 8.3 Each member of the Board is entitled to request that further items be added to the agenda provided that such items are submitted to the Chairman not later than 5 days before the meeting. In such event, the Chairman shall communicate the additional items on the agenda to other members before the beginning of the meeting.
- 8.4 No resolution shall be taken on items, which were not on the agenda of the meeting, unless all members consent to putting additional items to the agenda. Absent members can give such consent, by telephone or in writing, subsequently to the meeting.

## **ARTICLE 9 PRESENCE AND QUORUM**

- 9.1 A meeting of the Board constitutes a quorum, if more than half of its members are present. The presence of one member only is sufficient, in the event that the Board is to resolve on the certification of a capital increase or of supplementary contributions for shares not fully paid and the subsequent amendment of the Articles of Association (Article 20.1 of the Articles of Association and 634a CO).
- 9.2 The members of the Board may only vote in person, but not by proxy.
- 9.3 The Chairman, in his absence the Vice-Chairman or another member of the Board specifically designated by the majority of the other members present at the meeting, shall direct the debate during the meeting and determine the persons who may attend the meetings as such or the deliberation of particular items on its agenda as guests.
- 9.4 The CEO shall be entitled to attend every meeting of the Board and to participate in its debates and deliberations with the exception of executive sessions. However, he shall not be entitled to vote, unless he is a member of the Board.

## **ARTICLE 10 RESOLUTIONS**

- 10.1 The adoption of the resolutions and elections of the Board requires a majority of votes cast. The Chairman is also entitled to vote and shall have in addition the casting vote in the event of a tie vote.
- 10.2 Resolutions on any given motion by written or telecommunicated (telefax, telex, telegram or e-mail) votes shall be permissible, but need to be properly recorded. Resolutions may also be passed by written consent to a motion unless a member of the Board requests oral deliberation.
- 10.3 Minutes shall be kept of the deliberations and resolutions of the Board. The minutes shall be distributed as drafts by E-Mail and shall be formally approved by the Board in the course of its next meeting.

## **ARTICLE 11 INFORMATION**

- 11.1 Each member of the Board is entitled to request information concerning all affairs of the Company. In the meetings, all members of the Board and all persons entrusted with the management of the Company's business, including but not limited to the CEO and the other executives attending the meetings of the Board are obligated to furnish the requested information.
- 11.2 Outside the meetings of the Board, each member may request information from the persons entrusted with the management of the Company's business concerning the course of business and, upon authorization by the Chairman, concerning particular aspects thereof.
- 11.3 To the extent necessary to fulfil his duties, each member of the Board may request that the Chairman authorize the inspection of the books and records of the Company. If the Chairman rejects a request for information, hearing or inspection, the Board shall decide whether to grant such request.
- 11.4 Notwithstanding the foregoing, individual resolutions of the Board may confer upon its members additional rights to request information and inspection.

## **ARTICLE 12 COMPENSATION**

- 12.1 The members of the Board who are not employed by the Company are entitled to adequate remuneration corresponding to their activities as well as to reimbursement of their expenses incurred in the interest of the Company.
- 12.2 The Board may decide that, instead of or in addition to cash compensation, stock options and/or share grants shall be made available to the non-executive directors and may determine the number of stock options available to such board members as well as the conditions of their exercise.

### **III. THE CHAIRMAN AND THE SECRETARY OF THE BOARD**

#### **ARTICLE 13 CHAIRMAN**

13.1 The Chairman of the Board shall have the following duties:

1. to plan and direct the activities of the Board upon consultations, reports and motions of the CEO;
2. to convene and chair the meetings of the Board and to determine their agenda;
3. to ensure the information of the Board regarding the items of and according to Article 11.3 of the By-Laws;
4. to ensure the reporting by the CEO according to the directives of the Board.

#### **ARTICLE 14 SECRETARY**

14.1 The Secretary of the Board shall keep the minutes of the Board.

14.2 The Secretary shall also coordinate the taking of decisions on certifications regarding changes of the registered share capital and the there-with connected amendments to the Articles of Association.

### **IV. THE STANDING COMMITTEES OF THE BOARD AND THE SCIENTIFIC ADVISORY BOARD**

#### **ARTICLE 15 FUNCTIONS**

15.1 The Board may appoint at any time one or more standing committees, each consisting of three or more of its members, who shall advise the Board or, as the case may be, the CEO and the AEC, on specific matters relating to the functions of the Board and the AEC.

15.2 The Board may also, on the basis of a special resolution or of an executive regulation issued by the Board, delegate to such committees particular matters for decision, implementation or supervision.

#### **ARTICLE 16 STANDING COMMITTEES**

16.1 The standing committees of the Company shall be:

- a committee dealing with all matters relating to compensation of the executives of the Company (the "Compensation Committee"); and
- a committee dealing with the review of the internal control of the accounts, finances and risks of the Company (the "Finance and Audit Committee"); and

- a committee dealing with the nomination of board members and with governance policies and principles for the Company (the "Nominating & Governance Committee")

Their functions and duties shall be as determined by the Board from time to time and in particular by the regulations attached to the By-laws (**Annexes 1, 2 and 3**).

16.2 The committees shall be appointed by the Board and shall ensure that the committees meet as often as necessary and report to the Board on their activities at regular intervals.

## **ARTICLE 17 THE SCIENTIFIC ADVISORY BOARD**

17.1 The Executive Management may appoint at any time a Scientific Advisory Board, consisting of three or more scientists of high standing in the fields of chemistry, physiology and medicine.

17.2 The Scientific Advisory Board shall have the following functions:

- Review the Company's progress in research and clinical development.
- Evaluate new scientific perspectives alongside the Company's management.

17.3 The members of the Scientific Advisory Board are entitled to adequate remuneration corresponding to their activities as well as to reimbursement of their expenses incurred in the interest of the Company.

## **V. THE ACTELION EXECUTIVE COMMITTEE (AEC)**

### **ARTICLE 18 ORGANIZATION AND FUNCTIONS**

18.1 The AEC shall consist of the CEO, as President, and members of the management appointed by the Board of Directors upon proposal by the CEO.

18.2 The AEC may adopt internal rules of organization if it deems necessary.

18.3 All important matters relating to the business of the company are submitted to and discussed by the AEC.

18.4 The AEC shall meet regularly, in principle, at least once every quarter. Ad-hoc meetings can be organised for urgent matters.

18.5 The members of the AEC shall make proposals to the CEO who will take the final executive decision.

## **ARTICLE 19 EXTENDED AEC**

19.1 The Extended AEC consists of the AEC and additional members of the management appointed by the Board of Directors upon proposal of the CEO. The Extended AEC deals with such matters of the business of the Company that require the support of the functions represented by the additional management members.

## **VI. MISCELLANEOUS**

### **ARTICLE 20 REPORTING**

20.1 The CEO shall deliver to every board member the following financial reports:

- monthly within 15 days from month end a summary report covering the commercial and financial developments of the preceding month (the monthly flash report);
- for the first three quarters of the fiscal year, quarterly within 45 days from quarter-end and at least 2 days prior to their release to the public, un-audited quarterly financial statements as proposed for public release;
- annually, within 60 days from year-end and at least 5 days before the board meeting to which they are submitted for approval, audited financial statements, including footnotes and the proposed auditor's opinion.

### **ARTICLE 21 CONFIDENTIALITY**

21.1 The members of the Board and of the Executive Management shall keep confidential the facts, which come to their knowledge during and in connection with exercise of their functions.

21.2 All business files must be returned to the Company at the expiry of the term of office.

### **ARTICLE 22 DIRECTORS' AND OFFICERS' LIABILITY ISSUANCE**

22.1 The Company shall provide at its own expense for Directors' and Officers' Liability Insurance with a coverage limit of at least CHF 10 million during the tenure of the individual board members.

### **ARTICLE 23 FINAL PROVISIONS**

23.1 The By-Laws shall enter into force immediately and shall replace the previous By-Laws.

23.2 The revision of the By-Laws requires a majority of votes cast. The Chairman shall have the casting vote in the event of a tie vote.

23.3 The Board and the CEO are entitled to issue executive regulations to the By-Laws.

Allschwil, this 27th day of September 2011

For the Board of Directors:

The Chairman:

sig. Dr. Jean-Pierre Garnier

The Secretary:

sig. Dr. Marian Borovsky

Annexes    1. Regulations of Compensation Committee  
              2. Regulations of Finance and Audit Committee  
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## Annex 1

### Charter of the Compensation Committee

#### I. COMPOSITION OF THE COMPENSATION COMMITTEE

The Board of Directors designates from its ranks not less than three independent Directors as members of the Compensation Committee. The Committee designates its Chairman.

#### II. TASKS AND DUTIES

The Compensation Committee shall have the following tasks and duties:

To review and approve the Company compensation philosophy and components

To determine the compensation of the CEO, review and approve the CEO's compensation recommendations for employees reporting directly to him as well as review matters related to the compensation of other top managers, as well as the general employee compensation, benefit policies and HR practices of the Company.

To review and recommend to the Board the CEO's objectives and and global incentive plans and evaluate performance against these.

To review and approve the compensation to be proposed to anyone who, upon being hired, will be reporting directly to the CEO.

The management keeps the Compensation Committee informed of other global HR projects and policies, which are being implemented or considered.

#### III. ORGANIZATION

##### A. Meetings

Meetings of the Committee are called by its chairman or upon request of one of its members. The Committee meets at least twice a year.

##### B. Participants

The chairman, at his discretion, can invite any person to attend the meetings. The compensation of the CEO is not discussed in his presence.

**C. Authority**

- The Committee may request information directly or indirectly from all employees of the Actelion group and all employees are requested to cooperate.
- The Committee may hire external advisors, at the Company expenses if it deems that to be useful.

**D. Information of the Board**

The Committee shall record its resolutions. The minutes shall be made available to all members of the Board.

## Annex 2

### Charter of the Finance and Audit Committee

#### I. COMPOSITION OF THE FINANCE AND AUDIT COMMITTEE

The Committee shall be composed of non-executive and preferably independent members of the Board of Directors.

A majority of members, including the Chairman should have experience of finance and accountancy.

#### II. TASKS AND DUTIES

The Finance and Audit Committee shall have the following tasks and duties:

##### A. Financial planning

Evaluate management's principles and proposals for, and formulate recommendations to the full Board in regards to:

- financial planning (capital structure, management of resources, inter-company financing)
- dividend policy
- accounting, reporting and disclosure
- 
- capital market relations

##### B. Budget process and financial objectives

Review proposed concepts of financial objectives:

- cost of capital
- enhancement of shareholders' value
- group and divisional objectives
- project objectives (capital expenditures and M&A projects)

##### C. Finance policy , operations and risk management framework

Review finance policy, operations and risk management framework in the following areas:

- treasury
- controlling
- insurance
- taxes
- investments and acquisitions

##### D. Periodic accounts

- Review the US GAAP and statutory financial statements prior to release
- Submit the annual financial statements to the Board of Directors for presentation to the General Meeting of Shareholders.

**E. Audit process**

- Supervise the activity of the company's Internal Audit (IA) function: appoint the Head of the IA department, discuss and approve annual mission plans, review IA's resource requirement proposals, budget and financial discipline, review IA's cooperation with External Auditors.
- Discuss IA's reports and assure the implementation of their recommendations
- Select, evaluate and propose to the Board the External Auditors (EA) to be nominated for approval by the annual Shareholder's meeting
- Review the terms of engagement of the external auditors, including their compensation and review their performance
- Evaluate independence of the auditors and review all other relationships between the auditors and the company
- Review the audit process, the results of audits, and make an independent assessment of the quality of external auditors and internal control mechanism as well as the annual financial statements
- Discuss with the external auditors the results of their audits, any unusual items or disclosures contained in the audits, and the matters required by Statement on Auditing Standards no 61, as revised, including the following:
  - the initial selection of and changes in significant accounting policies
  - the methods used to account for significant or unusual transactions and the effects of significant accounting policies in controversial or emerging areas
  - the process utilized by management to formulate significant accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of these estimates
  - audit findings and recommendations, including audit adjustments that either individually or in the aggregate have a significant effect on the audit
  - the auditor's responsibility for other information presented with the audit results, such as a management report on financial status
  - any disagreements with management, whether or not satisfactorily resolved, concerning matters that individually or in the aggregate may be significant to the Company's financial status or the auditor's report
  - significant issues discussed with management with regard to the initial or recurring retention of the auditor
  - any serious difficulties encountered in dealing with management during the performance of the audit
- assess the effectiveness of the external auditors and internal control mechanism as well as how the two bodies cooperate

**F. Compliance**

- Oversee in material respect the Company's compliance with applicable financial and securities laws

- Supervise procedures implemented to ensure compliance with the applicable financial and securities laws

### **III. ORGANIZATION**

#### **A. Meetings**

The Committee is called by its chairman or upon request of one of its members. It meets at least four times a year in person or by telephone.

#### **B. Participants**

The chairman, at his discretion, can invite any person to attend the meetings. At least once a year, a meeting shall be held with the external auditor without the presence of the CFO, the Head of IA or the CEO.

#### **C. Authority**

- The Committee may request information directly or indirectly from all employees of the Actelion group and all employees are requested to cooperate.
- The Committee may hire external advisors if it deems useful. Thereby the Committee shall insure the coordination and support by the internal resources.

#### **D. Information of the Board**

The Committee shall record its resolutions. Minutes shall be kept by the Head of IA, in his absence by a member of the IA team. The minutes shall be sent to all members of the Board.

## Annex 3

### Charter of the Nominating and Governance Committee

#### I. COMPOSITION

The Board of Directors designates from its ranks not less than three members of the Committee. The Committee shall designate its chairman.

#### II. TASKS AND DUTIES

The Nominating and Governance Committee shall have the following tasks and duties:

1. Review considerations relating to board composition, including size of the board and the criteria for membership on the Board of Directors. The considerations relating to director qualifications shall include diversity, independence, experience, expertise and skills, as well as any other factors set forth in the Committee's policies regarding evaluation of director candidates.
2. Identify qualified candidates to serve as members of the Company's Board of Directors in consultation with the CEO.
3. Review and consider candidates (in consultation with the CEO) who may be suggested by any director or executive officer of the Company, or by any shareholder if made in accordance with applicable law.
4. Recommend to the Company's Board qualified candidates for new or vacant positions on the Company's Board of Directors.
5. Recommend, after reviewing their qualifications, directors to serve as members of the various committees of the Board of Directors.
6. Review directorships and consulting agreements of Board members for conflicts of interest. All members of the Board are required to report directorships and consulting agreements as well as any changes in directorships or consultant ships and when there is a change in their principal employment to the general counsel, who will report this to the Committee.
7. Review and recommend corporate governance policies and principles for the Company, including those relating to the structure and operations of the Board of Directors and its committees.
8. Annually oversee an evaluation of the Board of Directors of the Company, assess the Board's contribution to the Company and consider whether additional powers and responsibilities of the Board are needed to allow it more effectively to oversee the business and affairs of the Company.
9. Maintain an orientation program for new Board members and an ongoing education program for existing Board members.
10. Make such recommendations to the Board of Directors as the Committee may consider appropriate and consistent with its purpose, and take such other actions and perform such services as may be referred to it from time

to time by the Board of Directors, including the engagement of any outside advisor, at the Company's expense, it may deem necessary or appropriate.

### **III. ORGANIZATION**

#### **A. Meetings**

Meetings of the Committee are called by its chairman or upon request of one of its members. The Committee meets at least twice a year.

#### **B. Participants**

The chairman, at his discretion, can invite any person to attend the meetings.

#### **C. Authority**

- The Committee may request information directly or indirectly from all employees of the Actelion group and all employees are requested to cooperate
- The Committee may hire external advisors, at the Company expenses, if it deems that to be useful.

#### **D. Information of the Board**

The Committee shall record its resolutions. The minutes shall be made available to all members of the Board.

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