No. 21A80

IN THE

Supreme Court of the United States

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,

Applicants,

v.

LUXSHARE, LTD.,

Respondent.

REPLY IN SUPPORT OF APPLICATION
DIRECTED TO THE HONORABLE BRETT M. KAVANAUGH
FOR STAY AND REQUEST FOR IMMEDIATE ADMINISTRATIVE STAY

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October 22, 2021

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioner ZF Automotive US Inc. hereby states that it is not a publicly traded company, it is owned by a parent company ZF Friedrichshafen AG, and no publicly held corporation owns 10% or more of its stock, nor does any publicly held corporation own 10% or more of the stock of ZF Friedrichshafen AG.

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INTRODUCTION

Last week, Applicants filed this stay application to protect the Court's ability to grant certiorari and resolve an important question of federal law that has divided the courts of appeals—and to protect their own right not to be forced to provide one-sided discovery that has not been authorized by Congress. Since then, the case for a stay has only gotten stronger. Most importantly, Luxshare has confirmed that it does not oppose entry of judgment by the Sixth Circuit in its favor. CA6 ECF No. 33 at 4. That ensures that the Sixth Circuit's judgment will issue in short order. As a result, all of the lead arguments Luxshare advanced in the brief in opposition to certiorari that it filed last week have now lost force. This case is an ideal candidate for conclusively resolving the circuit split over the meaning of 28 U.S.C. § 1782.

Luxshare's opposition to the stay application—and, by extension, to certiorari—offers no persuasive argument to the contrary.

First, Luxshare has no meaningful response to Applicants' explanation for why the Court should grant certiorari in this case. Luxshare does not deny that the question presented in Applicants' petition is certworthy—nor could it, given that this Court recently granted review of that same question in *Servotronics* and nothing has changed to resolve the 3-2 split among the courts of appeals. Although Luxshare continues to harp on the certiorari-before-judgment posture of this case, it ignores the obvious point that the Sixth Circuit will surely issue the judgment, *as Luxshare itself has now agreed it should do*. And although Luxshare threatens it will try to moot the case by filing its arbitration by the end of 2021 based on a purported concern about

the statute of limitations, that is an empty threat. Luxshare's stated concerns about the limitations period are baseless (as confirmed by additional declarations, filed with this reply, that satisfy even Luxshare's view of German law). In any event, if a stay is granted this case will *not* become moot, even if Luxshare insists on needlessly filing the arbitration early. Finally, Luxshare's charges of "procedural gamesmanship" are entirely unwarranted: Applicants have been candid and forthright at every level, and have consistently asked for nothing more than a fair chance to have their Section 1782 argument adjudicated by an impartial court unconstrained by erroneous Sixth Circuit precedent. The prospects for certiorari and reversal are strong.

Second, Luxshare has no good answer to Applicants' arguments for irreparable harm. Luxshare does not deny that if this Court rejects a stay, Luxshare will immediately seek to use any discovery produced by Applicants to their detriment in the foreign arbitration proceedings. Indeed, Luxshare boasts that it will file the arbitration as soon as possible and drive it to a speedy resolution before this Court is able to issue a decision, thereby rendering this case moot just like *Servotronics* before it. There is accordingly a near-certainty that denying a stay will inflict irreparable harm both to Applicants' interests and to this Court's ability to resolve the Section 1782 question in an appropriate vehicle.

Finally, Luxshare is wrong as to the equities. The public interest favors resolving the Section 1782 issue as soon as possible, with this case offering the Court by far the best opportunity to do so. And while granting a stay will prevent irreparable harm to Applicants and to this Court's ability to promptly resolve the

Servotronics issue, it will not harm Luxshare in the slightest. To be clear: Luxshare can take advantage of Applicants' ironclad offer to toll the statute of limitations *or* can file its arbitration early; either way, it will be able to receive and make use of Section 1782 discovery in that proceeding if this Court concludes such discovery is warranted.

Applicants respectfully request that this Court grant a stay so that it may consider their petition for certiorari before the district court's deadline for producing discovery on October 27, 2021.

ARGUMENT

THIS COURT SHOULD STAY THE DISTRICT COURT'S JUDGMENT PENDING RESOLUTION OF APPLICANTS' PETITION FOR CERTIORARI

A. There Is A Reasonable Probability That This Court Will Grant Certiorari And Reverse

On October 14, Luxshare filed its brief opposing Applicants' petition for certiorari, on multiple grounds. Nearly all of those arguments have now fallen away, due to (1) Applicants' unopposed motion for summary affirmance of the district court's decision in the Sixth Circuit, and (2) Applicants' irrevocable commitment to toll the statute of limitations to initiate arbitration if this Court grants a stay. And Luxshare's remaining arguments against certiorari and reversal do not withstand scrutiny.[1]

[1] Luxshare is wrong that a heightened standard applies to the grant of a stay in this case under the All Writs Act. Stay Opp. 12-13. Applicants' stay application invoked both the All Writs Act, 28 U.S.C. § 1651, and Supreme Court Rule 23. Appl. 1. Rule 23.1 authorizes any stay "permitted by law," and cross-references 28 U.S.C. § 2101(f), which in turn allows any Justice to grant a stay "[i]n any case in which the final judgment or decree of any court is subject to review by the Supreme Court on

1. Luxshare has never disputed the existence of a circuit split, nor that the question of whether foreign private arbitrations are Section 1782 "tribunals" warrants this Court's review. Nor could it, given that the Court granted certiorari on that exact question in *Servotronics*. And although Luxshare dismissively refers to the Section 1782 issue as an "esoteric question of civil procedure," Stay Opp. 22, that characterization falls flat in light of its obvious and wide-ranging importance to the many, many entities that engage in foreign arbitration every year. There is a reason that a host of top-flight amici—including the United States, the Chamber of Commerce, the International Court of Arbitration of the International Chamber of Commerce, the Institute of International Bankers, and a number of academics—filed briefs in *Servotronics*. The Section 1782 question has big-league significance and requires this Court's urgent attention.

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writ of certiorari," for "a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court." *See* Sup. Ct. R. 23.1, 23.2; 28 U.S.C. § 2101(f). Rule 23's authorization of stays allowed by Section 2101(f) obviates any need for Applicants to rely on the All Writs Act, because Applicants are seeking certiorari of the "final judgment" of the district court, as authorized by 28 U.S.C. § 1254(1). In any event, Luxshare is wrong to invoke (at 13) the heightened standard for obtaining an injunction under the All Writs Act, discussed in *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Commission*, 479 U.S. 1312 (1986) (Scalia, J., in chambers). As *Ohio Citizens* makes clear, that higher standard governs requests for *injunctions*, because an injunction "does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts." *Id.* at 1312 (refusing to grant an "original writ of injunction . . . against full-power operation of the powerplant"). Here, Applicants are seeking a *stay*—which would merely suspend the district court's alteration of the status quo—not an injunction. *See Nken v. Holder*, 556 U.S. 418, 428-29 (2009) (explaining differences between a "stay pending appeal" and an "injunction"). The heightened standard does not apply.

Instead of arguing that the Section 1782 issue is inherently unworthy of review, Luxshare's principal arguments have rested on the case-specific circumstance that the Sixth Circuit (although undeniably bound on the Section 1782 issue by *Abdul Latif Jameel Transp. Co. v. FedEx Corp.* (*In re Application to Obtain Discovery for Use in Foreign Proceedings)* ("*Abdul Latif*"), 939 F.3d 710, 730 (6th Cir. 2019)) has not yet entered judgment. Cert Opp. 9-17; Stay Opp. 21-23. That objection no longer holds water. Both parties to this case now *agree* that the Sixth Circuit appeal is effectively over, and that the court should now enter judgment in Luxshare's favor pursuant to *Abdul Latif*. *See* CA6 ECF No. 33 at 4 ("Luxshare does not oppose entry of summary affirmance in its favor."). Given that agreement, there is no reason for the Sixth Circuit to delay entering judgment, which it will inevitably do without further briefing or argument—most likely before this Court considers Applicants' petition for certiorari next month at its November 19 conference. This case accordingly offers a clean vehicle for review.

In any event, this case would be certworthy even without a Sixth Circuit judgment, for the reasons Applicants have already explained. Pet. for Cert. 13-19 (Sept. 10, 2021); Appl. 18-19. After all, this case came to the Court two days after the parties in *Servotronics* indicated that their case was likely to be dismissed, and this Court has previously granted certiorari before judgment "when a similar or identical question of constitutional or other importance was before the Court in another case," and when granting review in the second case would facilitate review of the question presented. Stephen M. Shapiro et al., *Supreme Court Practice* § 4.20 (11th ed. 2019,

online) (citing examples). In at least one case, the Court appears to have granted certiorari before judgment to protect against the possibility that an earlier-granted case presenting the same issue could be moot. *See Porter v. Dicken*, 328 U.S. 252, 254 (1946) (discussed at Appl. 19).[2] And here, there has never been an especially good reason to wait for a Sixth Circuit ruling on the Section 1782 issue, because that court's binding ruling in *Abdul Latif* preordained the result.

2. Luxshare's primary argument against certiorari is that this case is a bad vehicle because Luxshare plans to render the discovery dispute moot by filing its arbitration before December 31, 2021, purportedly to avoid expiration of the statute of limitations. Stay Opp. 22-23. That argument should be given no credence by this Court, because (1) there will be *no* statute of limitations problem if this Court grants a stay, and (2) the discovery dispute will *not* become moot even if Luxshare carries out its threat to needlessly file by the end of the year.

a. Applicants have already filed a declaration from Michael J. Way, a corporate officer of ZF Automotive US Inc. ("ZF US"), irrevocably committing that ZF US will not invoke the statute of limitations if a stay is granted, until at least four months

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[2] Luxshare argues that the grant of certiorari before judgment in *Dickens* was based on the "close relationship of the important question raised to the question presented in [*Lee*]." Stay Opp. 24-25 (alteration in original) (citation omitted). But this case presents precisely the *same* important question raised in *Servotronics*, rendering Luxshare's purported distinction from *Dicken* and *Lee* meaningless. Just as with *Dicken* and *Lee*, certiorari before judgment is appropriate here as a backstop for the possibility (and now the reality) that *Servotronics* is moot. *See* Opp. to Cert. 17 n.8, *Windsor v. United States,* No. 12-63, 2012 WL 3838176 (Aug. 31, 2012) (describing *Dicken* as involving a grant of certiorari before judgment motivated by mootness concerns).

after proceedings in this Court conclude. *See* Appl. Ex. F ¶ 8. That tolling commitment is valid, legitimate, and enforceable under German law, as explained in the initial stay application and now again in the attached declaration of Christoph Baus. *See* Appl. 31 & n.6; Stay Reply Ex. 1 (Baus Decl.). There is accordingly no statute-of-limitations reason forcing Luxshare to file its arbitration by the end of this year: Luxshare will suffer no prejudice from allowing this Court to resolve the Section 1782 issue in this case.

Notably, Luxshare's own German-law expert agrees with Applicants that the statute of limitations is an affirmative defense that must be affirmatively invoked by a party appearing before the DIS panel. *See* Stay Appl. 31 & n.6; Stay Appl. Ex. G (German law translations); Stay Opp. Ex. 1 ¶¶ 29, 32 (Luxshare's expert conceding these points). That is, Luxshare does not suggest that the arbitrators could *themselves* invoke the statute of limitations or hold *sua sponte* that the case must be dismissed on that basis. Instead, Luxshare's purported concern rests on the extraordinary notion that Applicants—having promised this Court not to invoke the statute of limitations and obtained a stay on that basis—would then break that promise, invoke the statute of limitations, deny the validity of their own declaration, and persuade the German arbitral panel to enforce the time limit. That is not a plausible chain of events.

Luxshare's stay opposition challenges Mr. Way's declaration on two highly technical—and entirely unpersuasive—grounds. First, Luxshare declares that it is exercising an option under German law to *reject* the declaration (which makes a

unilateral promise in Luxshare's favor) based on a purported concern that Mr. Way—contrary to his sworn declaration offered under "penalty of perjury"—is not actually authorized to bind ZF US. Stay Opp. 33 (stating "Luxshare's rejection of the proffered waiver due to the absence of proof of authority"); Stay Opp. Ex. 1 ¶¶ 37-42 (asserting that due to insufficient proof of authorization, "Luxshare as the addressee of the Declaration had a right to reject the Declaration without undue delay").[3] Again, this argument is absurd: ZF US is a major and respected company represented by experienced counsel; the suggestion that either would commit fraud on this Court by submitting a false declaration does not warrant a response.

In any event, Applicants will resolve Luxshare's purported concern by submitting additional documentation along with this reply, including (1) a new declaration from Mr. Way reaffirming ZF US's tolling commitment, and (2) a duly enacted resolution of ZF US's Board of Directors formally authorizing Mr. Way to bind the company through his initial and supplemental declarations in this case. Stay Reply Ex. 2 (Way Decl.); Stay Reply Ex. 3 (certified copy of ZF US resolutions). Surely, Luxshare can now rest easy that Mr. Way is who he says he is—and speaks for the company.

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[3] At one point, Luxshare appears to suggest that insufficient proof of authorization renders Applicants' commitment "not effective." Stay Opp. 33. But Luxshare's statements elsewhere, the actual testimony of Luxshare's German law expert, and Luxshare's total failure to offer any authority for this proposition shows that is wrong; instead, at most, lack of authorization would give Luxshare the *option* of rejecting Applicants' unilateral promise. *See, e.g.*, Stay Opp. Ex. 1 ¶¶ 37-42. It is unclear what legitimate reason Luxshare would have for rejecting Applicants' tolling commitment—the purpose of which is to protect *Luxshare* from prejudice—other than to throw up an impediment to this Court's review.

Second, Luxshare challenges Mr. Way's original declaration because the tolling commitment is conditioned on a future uncertain event (this Court's grant of a stay), purportedly rendering it unenforceable against Applicants under German law. Stay Opp. 33. That criticism lacks merit. As Mr. Baus's declaration and supporting caselaw make clear, German law allows an entity to make legally enforceable commitments subject to conditions—including future legal rulings. *See* Stay Reply Ex. 1 ¶ 5; Stay Reply Exs. 1.C, 1.D.

In any event, to avoid any doubt on this score, Mr. Way's supplemental declaration explains that, if and when this Court grants a stay, he will then execute—within five business days of the stay ruling—an unconditional and irrevocable unilateral commitment on behalf of ZF US not to invoke the applicable statute of limitations until four months after the Supreme Court resolves this case. *See* Stay Reply Ex. 2 ¶¶ 4, 6. Because that commitment will be *unconditional*, there is no doubt it will be valid and enforceable even under Luxshare's view of German law. *See* Stay Opp. 33; Stay Opp. Ex. 1 ¶¶ 17, 29-36. And to shut down further complaints by Luxshare, Mr. Way's supplemental declaration makes clear that—if for some reason he fails to execute the promised commitment following the stay grant—that would be a valid basis for this Court to then *vacate* the stay. Stay Reply Ex. 2 ¶ 6.

b. For the reasons noted, this Court should reject Luxshare's strained efforts to manufacture a statute-of-limitations problem in order to threaten mootness. Applicants' unambiguous and enforceable commitments will freeze the status quo and allow this Court to resolve the Section 1782 issue while protecting the rights of

all parties. But even if Luxshare goes ahead and files its arbitration before December 31, 2021, the discovery dispute in this case would *still* not become moot.

Luxshare argues that mootness is inevitable if it files the arbitration by the end of this year based on the Supplementary DIS Rules on Expedited Proceedings, under which arbitral panels are generally instructed to make final awards within six months after an initial case management conference. Stay Reply Ex. 1.B at 44. According to Luxshare, that six-month deadline will prejudice Luxshare if it is unable to receive the Section 1782 discovery until after this Court hears argument and issues a decision in the spring of 2022. Stay Opp. 6, 31-32.

Once again, Luxshare is mistaken. The express premise of Luxshare's argument is that if the arbitration is filed by December 31, 2021, ZF US would insist on sticking to the six-month timeline in an effort to prejudice Luxshare's right to obtain discovery if it wins in this Court. *See id.* at 23 ("Doubtless, Applicants would oppose any request to extend the six-month deadline to wait for the § 1782(a) discovery…."); *id.* at 31 (same). But that premise is not correct. As Mr. Way makes clear in his supplemental declaration, if this Court grants a stay and Luxshare nonetheless files its arbitration by December 31, 2021, ZF US will *itself* "ask the arbitral panel to extend the six month target deadline for rendering a decision, for whatever reasonable amount of time the arbitral panel believes is necessary" to allow Luxshare to obtain and use any discovery this Court determines it should receive. Stay Reply Ex. 2 ¶¶ 8-9.

Notably, Luxshare does not contend that the arbitral panel *must* issue an order within six months, or lacks authority to extend that timeline—particularly where, as here, both parties would endorse such an extension. On the contrary, as Mr. Baus's declaration explains, the six-month timeline is not a hard-and-fast rule. Article II of the Rules makes clear that "[w]hen establishing the procedure for the arbitration, and in particular when setting time limits, the arbitral tribunal shall at all times take into account *the parties' specific interest* in accelerating the proceedings." Stay Reply Ex. 1.B at 44. And Article 5 then states that "[i]f the final award cannot be made within the time limit set in Article 1," the result is that the arbitral panel shall "inform the parties and the DIS in writing of the reasons therefor." *Id.* Indeed, Article 5 is emphatic that the timeline is ultimately aspirational: "If such time limit is exceeded, the arbitral tribunal shall not for that reason cease to have jurisdiction, and the final award shall be made as soon as possible." *Id.*

In short, the DIS Rules authorize the arbitral panel to take account of the parties' timing preferences and extend the timeline for decision when good reasons exist for doing so—as they surely would here. Luxshare's mootness argument lacks merit.

3. Luxshare also argues that a stay and certiorari are unwarranted because Applicants have engaged in "procedural gamesmanship" by moving for summary affirmance in their Sixth Circuit appeal following that court's denial of their stay motion, mainly by "belatedly" conceding that the Sixth Circuit's *Abdul Latif* decision

foreclosed their ability to prevail there. Stay Opp. 27-28 & n.20; *see also id.* at 9-10. That is wrong on multiple levels.

At every stage of this litigation, from the very start, Applicants have been fully candid that the Sixth Circuit's binding precedent in *Abdul Latif* foreclosed their core threshold argument that a foreign private arbitration is not a Section 1782 "tribunal". They have also been clear that Applicants' ultimate goal was to hope for this Court to overturn *Abdul Latif*, either in *Servotronics* (initially) or in this case (once it became clear *Servotronics* would be dismissed). Indeed, Applicants repeatedly made these points to the district court, the Sixth Circuit, and this Court.[4] Those statements

[4] *See* Dkt. No. 6 at 11 n.4 (Dec. 4, 2020) ("Respondents are aware of and acknowledge the Sixth Circuit's decision in [*Abdul Latif*], which held that a private arbitral body empowered to issue binding decisions qualifies as a Section 1782 'tribunal.'"); Dkt. No. 24 at 7:15-8:5 (Feb. 24, 2021) (Applicants' counsel stating: "Judge, you obviously are aware and we acknowledge this, the binding Sixth Circuit precedent in Footnote 4 of page 11 of our brief. We raised the issue both because we think that the Sixth Circuit wrongly decided and the more well-reasoned decisions come from The Second, The Fifth and The 11th. And given the pendency, at least, of a writ for certiorari there is a possibility that that would be granted and overturn the Sixth Circuit precedent. We don't want to do anything that would waive our rights to make that argument. And so I don't mean to suggest that we were looking to hide. We cited the Sixth Circuit precedent. I believe you're bound by it. But there is a possibility that an even higher court would say that that was wrongly decided and we would like to have the ability to come back and not have waived that argument."); Dkt. No. 27 at 25 n.7 (June 10, 2021) ("Respondents acknowledge the Sixth Circuit's decision in [*Abdul Latif*], which held that a private arbitral body empowered to issue binding decisions qualifies as a § 1782 'tribunal.'"); Dkt. No. 30 at 8 n.2 (July 16, 2021) ("[In *Abdul Latif*], the Sixth Circuit held that foreign private arbitrations are § 1782 tribunals."); CA6 ECF No. 8 at 6 (July 23, 2021) (seeking stay pending a ruling in *Servotronics* and acknowledging Sixth Circuit's holding in *Abdul Latif* that "a private arbitration body qualifies as a Section 1782 tribunal"); CA6 ECF No. 12 at 4 (July 30, 2021) (same); Pet. for Cert. 17-18 ("As Luxshare and the district court have both (correctly) emphasized, the Sixth Circuit's binding decision in *Abdul Latif*, 939 F.3d at 730-31, unequivocally holds that district courts are authorized to grant discovery for use in foreign arbitration proceedings, on the theory that foreign arbitral panels

are compiled (and highlighted) at Exhibit 4 to this Reply. Luxshare's suggestion that Applicants only "belatedly" conceded *Abdul Latif*'s binding effect last week, in connection with its motion for summary affirmance, is simply false.

Luxshare's assertion (at 27-28) that Applicants somehow "adopted a strategy of running out the clock" and should simply have moved for summary affirmance as soon as they filed their notice of appeal is equally meritless. It would have made no sense for Applicants to move for summary affirmance at the outset, given that (1) this Court had granted certiorari in *Servotronics* and appeared likely to resolve the Section 1782 issue in that case, and (2) Applicants at that point still had alternative arguments for reversal based on the district court's misapplication of the discretionary factors governing Section 1782 discovery set forth in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258, 264-66 (2004). CA6 ECF No. 31-2 at 3.

More generally, Applicants have always recognized that a victory on the Section 1782 issue would need to come through a decision by this Court. Initially, Applicants hoped that that decision would come in *Servotronics*—which is why they sought a stay of the district court's order, pending this Court's decision in *Servotronics* and resolution of their own appeal, in both the district court and Sixth Circuit. Dkt. No. 30 at 6-8; CA6 ECF No. 8 at 10-12. Once Applicants identified the mootness risk

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do count as 'proceeding[s] in a foreign or international tribunal' under Section 1782. Petitioners will inevitably lose on that issue if forced to litigate it in the Sixth Circuit." (internal citations omitted)); CA6 ECF No. 32 at 1 (Oct. 14, 2021) ("[Applicants] concede that their core argument on appeal is foreclosed by this Court's binding decision in *Abdul Latif*.").

in *Servotronics*, they began planning a petition for certiorari before judgment. Applicants then filed that petition on September 10, 2021, just *two days* after the *Servotronics* petitioners unexpectedly notified the Court of their intention to voluntarily dismiss that case, one month before oral argument. *See Servotronics* Letter of Petitioner of Intention To File a Rule 46 Motion to Dismiss (Sept. 8, 2021).

Applicants similarly filed their motion for summary affirmance just *one day* after the Sixth Circuit denied the motion for a stay. The Sixth Circuit's stay denial made clear that court did not believe that Applicants had "shown the requisite likelihood of success on the merits of [their] appeal"—not merely on their threshold Section 1782 argument (which had always been foreclosed by *Abdul Latif*), but also on their alternative arguments based on the *Intel* discretionary factors. CA6 ECF No. 31-2 at 3. That ruling confirmed that Applicants had little chance of success of winning in the Sixth Circuit on *any* of their challenges to the district court's ruling.

Given those developments, and the imminent approach of the discovery production deadline that threatened to obstruct this Court's review absent a stay, Applicants reasonably (but reluctantly) decided to abandon their discretionary-factor arguments so as to make this case a cleaner vehicle for the Court's review of the core *Servotronics* question. And Applicants clearly said as much both to this Court and the Sixth Circuit. *See* Appl. 12; CA6 ECF No. 32 at 2.

There is nothing untoward in any of this. Applicants are simply doing everything they can to obtain a fair adjudication of their argument that Section 1782 does not apply from the only court available to them that is not bound by Sixth Circuit

precedent—this Court. And Luxshare's suggestion (at 28) that Applicants are somehow trying to "run[] out the clock" on the arbitration is directly at odds with Applicants' repeated offers to *stop* that clock, by voluntarily tolling the statute of limitations pending this Court's review. *See supra* at 6-11. Luxshare's "gamesmanship" arguments do not add up.[5]

4. Luxshare also asserts in passing that neither certiorari nor a stay is a warranted because of the recently filed petition for certiorari in *AlixPartners, LLP v. Fund for Protection of Investor Rights in Foreign States*, No. 21-518 (docketed Oct. 7, 2021). Stay Opp. 23-24. As Applicants previously explained (Appl. 20 n.3) that is wrong, because *AlixPartners* does not squarely present the *Servotronics* issue and will not necessarily resolve the existing circuit split regarding the status of private arbitration.

Whereas Applicants' case (like *Servotronics*) involves foreign *private* arbitrations, *AlixPartners* concerns whether Section 1782 applies to an investor-state arbitration "that takes place before an arbitral panel established by a bilateral

[5] If there has been any "procedural gamesmanship" in this litigation, it has been by Luxshare. Not only has Luxshare made heroic efforts to avoid accepting Applicants' commonsense solution to the statute-of-limitations issue, but it also now appears to be asking the Sixth Circuit to delay entry of judgment to frustrate this Court's review of their petition for certiorari. Although Luxshare has told the Sixth Circuit that it "does not oppose entry of summary affirmance in its favor," it has also affirmatively asked that court *not* to issue an order expeditiously. *See* CA6 ECF No. 33 at 4-5 (opposing "an expedited ruling that ZF US seeks for no other purpose than to make its motion for a stay in the Supreme Court less onerous"); *see generally id.* at 3-6. We do not expect the Sixth Circuit to delay its ruling on that basis, and this Court should not countenance Luxshare's extraordinary effort to frustrate this Court's review either.

investment treaty to which that foreign State is a party." *In re Application of the Fund for Prot. of Investor Rights in Foreign States v. AlixPartners, LLP*, 5 F.4th 216, 220 (2d Cir. 2021), *petition for cert. filed* (U.S. Oct. 5, 2021) (No. 21-518) (emphasis added); *see also id.* at 225, 228 (reaffirming holding that "'international arbitral panels created exclusively by private parties' or 'arbitral bod[ies] established by private parties' [a]re not 'foreign or international tribunals' for the purposes of § 1782," but holding that "this arbitration between Lithuania and the Fund, taking place before an arbitral panel convened pursuant to the Treaty, a bilateral investment treaty to which Lithuania is a party, qualifies as a 'foreign or international tribunal' under § 1782" (alteration in original) (citation omitted)). Nothing would require this Court to resolve the private-party issue if it grants certiorari in *AlixPartners*. Indeed, if this Court agrees with the Second Circuit's approach, the circuit split that prompted the certiorari grant in *Servotronics*—and that is squarely implicated by this case—will remain unresolved.

Even if Luxshare were right that this Court might consider granting review of *AlixPartners*, that would still counsel in favor of a stay, so that the Court can consider both petitions when they are fully briefed. At that time, the Court could determine whether to grant review here, in *AlixPartners*, or both. The petition in *AlixPartners*—to which no response has yet been filed—is certainly not a reason to deny Applicants' stay request here.

5. Finally, Luxshare closes with a short argument on the merits, largely recycling the Sixth Circuit's opinion in *Abdul Latif*. Stay Opp. 28-30. Applicants and

Luxshare will have the opportunity to lay out their views in detail if and when this Court grants certiorari. For present purposes, it simply bears noting that Luxshare fails to acknowledge—much less refute—the persuasive reasoning of the Second, Fifth, and Seventh Circuits, all of which would hold that Section 1782 has no application here. *See id.*; *see also* Appl. 15 (citing cases). Nor does Luxshare acknowledge the persuasive amicus briefing of the United States in *Servotronics*, which (1) explained that "when properly construed as part of the broader phrase 'foreign or international tribunal,' in light of the statutory context and history, [the statutory text] does not extend to private commercial arbitration," and (2) emphasized that the Sixth Circuit's interpretation "would also create significant tension between [Section 1782] and the" Federal Arbitration Act. *Servotronics* United States Amicus Br. 14-15 (June 28, 2021). Luxshare has not refuted the "fair prospect" that this Court will reverse the district court's order if certiorari is granted. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

B. Irreparable Harm Will Result From Denial Of A Stay

1. Luxshare fails to meaningfully grapple with the most obvious irreparable harm identified by Applicants: Absent a stay, this case risks being mooted and this Court again will be deprived of the opportunity to resolve the key *Servotronics* question. Failure to grant a stay thus risks "foreclos[ing] . . . certiorari review by this Court," which itself constitutes "irreparable harm." *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers); *Chafin v. Chafin*, 568 U.S. 165, 178 (2013).

Luxshare does not deny that it will immediately seek to use any discovery from this case before the DIS panel—and further insists that the DIS panel should issue a final award within six months. Stay Opp. 30-32. Those facts raise far more than a mere "possibility of mootness," and Luxshare never explains how this Court could possibly "mitigate any harms from the discovery as the circumstances allow" if a final arbitral award has already been issued. *Id.* at 18-19 (citations omitted). Indeed, those are the precise circumstances that led to the dismissal of *Servotronics*. There is no reason that this Court, if it believes that there is a reasonable probability that it will grant certiorari, must deny a stay that would forestall the probability that this case will be mooted by expedited arbitration proceedings.

Luxshare appears to suggest that this Court does not consider the possibility of mootness to constitute irreparable injury warranting a stay. That position cannot be squared with decisions such as *Chafin*, however, in which this Court declined to hold that a particular class of cases was moot precisely because such a ruling would make courts "more likely to grant stays as a matter of course, to prevent the loss of any right to appeal," and approvingly cited several stay decisions explaining that when "'the normal course of appellate review might otherwise cause the case to become moot, issuance of a stay is warranted.'" 568 U.S. at 178 (quoting *Garrison*, 468 U.S. at 1302); *see also John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers) (granting stay and holding that "[t]he fact that

disclosure would moot that part of the Court of Appeals' decision requiring disclosure of the *Vaughn* index would also create an irreparable injury").[6]

Luxshare a handful of cases in which courts denied stays in the Section 1782 context. Stay Opp. 15 nn. 6 & 7. In several of those cases, however, the Section 1782 applicant would *itself* have suffered irreparable harm from a stay, because the foreign proceedings had already commenced or would soon commence, and delay would likely have made any evidence obtained ultimately unusable.[7] That risk is obviated here, however, given Applicants' tolling commitment. And in other cases, stays were denied because there were no substantial legal questions on appeal—a flaw that is clearly not present here given the *Servotronics* issue. *See, e.g.*, *JSC MCC EuroChem*, 2018 WL 9650037, at *1-2.[8] Finally, Luxshare has no real answer to the various cases

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[6] Luxshare's charge that the current possibility of mootness "is a self-inflicted and therefore non-cognizable injury" resulting from Applicants "delay tactics" makes no sense. Stay Opp. 19. Because of *Abdul Latif*, Applicants have always recognized that any relief on the Section 1782 issue would have to come from this Court, and they have made every effort to obtain that relief as expeditiously as possible (either through *Servotronics* or by seeking certiorari before judgment here). Moreover, as noted, Applicants' repeated offers to toll the statute of limitations so as to eliminate any prejudice from a stay belie Luxshare's assertion that Applicants are somehow trying to "run[] out the clock." *Id.* at 28; *see supra* at 6-11.

[7] *See* Appellee's Resp. to Mot. to Stay Discovery Pending Appeal at 18-19, *Rothe v. Aballi*, No. 20-12543 (11th Cir.); Petitioner-Appellee Porsche Automobil Holding SE's Opp. to Mot. for a Stay at 16-18, *In re ex Porsche Automobil Holding SE v. John Hancock Life Ins. Co.*, No. 20-1239 (1st Cir.)*;* Appellee's Opp. to Emergency Mot. for a Stay Pending Appeal at 21, *Mangouras v. Squire Patton Boggs,* No. 17-3633 (2d Cir.), ECF No. 25*;* Applicants-Appellees' Opp. to Mot. for a Stay Pending Appeal at 20-21, *Dep't of Caldas v. Diageo PLC*, No. 17-15267 (11th Cir.); *JSC MCC EuroChem v. Chauhan*, 2018 WL 9650037, at *2 (6th Cir. Sept. 14, 2018).

[8] Luxshare suggests that this Court "recently declined to stay" a Section 1782 order. Stay Opp. 15 (citing *In re Servotronics, Inc.*, No. 21-1305 (4th Cir. Apr. 15, 2021)). In that case—which, notably, is *not* the same as the Seventh Circuit decision on which this Court granted review—the Fourth Circuit had granted a writ of

that Applicants cited in which stays of Section 1782 discovery were granted, *see* Appl. 27, except to complain that many of those stays were granted "without explanation," Stay Opp. 15.

2. Luxshare also fails to meaningfully rebut the irreparable harm that Applicants will suffer absent a stay.[9] Luxshare seeks to analogize this case to an ordinary order requiring parties to produce discovery—which generally will not cause irreparable harm. Stay Opp. 14-15. But that ignores the crucial difference between this case and ordinary discovery that was discussed in the stay application. In ordinary civil litigation, harm from disclosure is not irreparable precisely because numerous remedies exist if a reviewing court later determines that production was improper—such as excluding particular documents or even vacating a judgment tainted by misbegotten evidence. *See* Appl. 28. But here, this Court cannot force the foreign arbitrators to exclude the sought-after evidence once Luxshare uses it—and even the persuasive value of this Court's opinion will be irrelevant if the foreign arbitrators issue a final award before this Court is able to rule. *See* Stay Opp. 32

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mandamus requiring the district court to compel Rolls-Royce to produce discovery. Crucially, the Fourth Circuit had explained in granting mandamus that immediate discovery was necessary because the foreign London arbitration "remain[ed] scheduled to begin" in just weeks, and "to stay proceedings" could thus "render moot our decision" and inflict harm on the Section 1782 applicant. Order at 2, *In re Servotronics, Inc.*, No. 21-1305 (4th Cir. Apr. 15, 2021), (ECF No. 22) Servotronics Fourth Circuit Op. 2 (Apr. 15, 2021), ECF No. 22. Here, the opposite is true: No foreign proceedings have yet commenced, and—given Applicants' agreement to toll the statute of limitations—Luxshare will suffer no harm if the stay is granted.

[9] Luxshare (at 15) appears to have misunderstood the stay application, which expressly stated that Applicants "are *not* arguing that the mere cost of producing documents and sitting for a deposition alone justifies a stay." Appl. 27 (emphasis in original).

("[I]t is not likely that this Court will be able to render a decision on the question presented in time for the § 1782 discovery to be used before the arbitral tribunal.").[10]

That is why, as Applicants explained, the voluminous precedent establishing that the disclosure of confidential or privileged materials constitutes irreparable harm applies fully here. *See, e.g.*, *In re Professionals Direct Ins. Co.*, 578 F.3d 432, 438 (6th Cir. 2009); *von Bulow ex rel. Auersperg v. von Bulow* (*In re von Bulow)*, 828 F.2d 94, 98 (2d Cir. 1987); *Barclaysamerican Corp. v. Kane*, 746 F.2d 653, 655 (10th Cir. 1984); *United States v. Amlani*, 169 F.3d 1189, 1194 (9th Cir. 1999). Luxshare seeks to dismiss these cases by noting that they involved privileged or confidential information. Stay Opp. 17. But that is precisely the point. Just like when a party is forced to disclose privileged or confidential information, in the Section 1782 context the normal judicial mechanisms that would remedy harm stemming from improper production are unavailable.[11]

Additionally, Applicants will be harmed because the district court's order orders one-sided discovery only from them, without entitling Applicants to receive discovery from Luxshare in turn. The DIS Rules ordinarily do not provide for Applicants to receive the sort of wide-ranging discovery that Luxshare seeks here.

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[10] This fundamental distinction also disposes of Luxshare's reliance (at 19 n.11) on *Church of Scientology of California v. United States*, 506 U.S. 9, 12-13 (1992), where the Court held that compliance with an IRS summons did not moot an appeal because courts could order the return of the documents: Unlike with a federal agency, U.S. courts cannot "order" the DIS panel to do anything.

[11] Indeed, contrary to the Sixth Circuit's assumption, much of the information that Luxshare seeks in this case *is* sensitive and confidential business information—and all the more so in the context of the limited discovery ordinarily available in Germany.

See Appl. Ex. B at 19 (noting that DIS rules "do[] not *expressly permit*" discovery). By allowing Luxshare to conduct a one-sided fishing expedition for use in the foreign arbitration proceedings, the district court's order further harms Applicants.

Finally, Luxshare suggests that no harm is likely to occur from production, because Applicants can simply "ask the arbitral tribunal to ignore the discovery" if Applicants ultimately prevail before this Court. Stay Opp. 19. But once again, that suggestion cannot be squared with Luxshare's insistence that it will file its arbitration by December 31, 2021, and the arbitrators will issue a final award within six months. This Court should disregard Luxshare's empty promise.

C. The Equities Favor A Stay

The balance of equities also strongly favors a stay. Whereas "[r]efusing a stay may visit an irreversible harm on applicants," granting it will "do no permanent injury to respondents," *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1305 (2010).

On the one hand, the public interest strongly favors a stay because denying a stay would likely deprive this Court of the only vehicle at hand for resolving the circuit split over Section 1782 that this Court planned to address in *Servotronics*. Absent this Court's intervention, litigants will be subject to entirely different regimes depending upon the circuit in which their Section 1782 petition is filed—and parties across the world will remain uncertain whether they can enlist the United States courts to obtain discovery for private arbitrations. The public interest would be well served by the consistency and clarity that only this Court can provide. *See* Appl. 30.

On the other hand, Luxshare itself will suffer no harm from a stay, given the various commitments described above. *See supra* at 6-11. As previously explained,

Luxshare is simply wrong to argue a "stay is likely to preclude Luxshare from making any use of the § 1782(a) discovery," even if Luxshare prevails before this Court. Stay Opp. 32. To the contrary, Applicants have gone out of their way to offer multiple, overlapping commitments to protect Luxshare's right to obtain the discovery if it ultimately prevails in this Court on the merits. *See supra* at 6-11. Luxshare faces no realistic prospect of harm from a stay.

Similarly, Luxshare's suggestion that granting a stay would somehow "[i]mmunize" alleged fraud makes little sense. Stay Opp. 33. Putting aside that Luxshare simply assumes that fraud occurred in the sale of a billion-dollar company—something that Luxshare essentially admits it has no evidence of—a stay would not "immunize" anything. If Luxshare is ultimately entitled to this discovery, Applicants' tolling commitment ensures that Luxshare will be able to use it in the foreign arbitration proceeding. *Cf. John Doe Agency*, 488 U.S. at 1309 (delay in nonmovant's receipt of information under Freedom of Information Act did not justify denial of stay). And if Luxshare is *not* entitled to discovery, because Section 1782 does not extend to private arbitrations, then Luxshare has nothing to complain about.

Given the lopsided balance of harms, the strong public interest in resolution of the Section 1782 issue, and the very real likelihood that this Court will grant certiorari and ultimately rule in Applicants' favor, a stay is appropriate to prevent this case from becoming moot and to forestall irreparable harm to Applicants.

CONCLUSION

This Court should stay the district court's order holding that Luxshare is entitled to discovery. Applicants further request an immediate administrative stay pending resolution of this application, if the Court is not able to resolve this application in advance of the October 27, 2021 deadline for document production.

October 22, 2021

Respectfully submitted,

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Counsel for Applicants

ADDENDUM

Addendum to Reply in Support of Application For Stay and Request For Immediate Administrative Stay

Exhibit	Description
1	Declaration of Christoph A. Baus in Support of ZF Automotive US Inc.'s Application for Stay and Request for Immediate Stay Exhibit A: Master Purchase Agreement Related to Project Montreux Exhibit B: 2018 DIS Arbitration Rules Exhibit C: Certified English Translation of German Federal Court of Justice, May 15, 1998, V ZR 89-97, marginal number 11 Exhibit D: Certified English Translation of German Federal Court of Justice, September 26, 1996, I ZR 194/95, marginal number 24
2	Declaration of Michael J. Way in Support of ZF Automotive US Inc.'s Application for Stay and Request for Immediate Stay
3	Resolutions adopted by the Board of ZF Automotive U.S. Inc. on October 21, 2021, certified by Scott Relf
4	Compilation of References to Abdul Latif Litigation in Filings in Eastern District of Michigan, Sixth Circuit and Supreme Court (excerpts)

EXHIBIT 1

DECLARATION OF CHRISTOPH A. BAUS IN SUPPORT OF ZF AUTOMOTIVE US INC.'S APPLICATION FOR STAY AND REQUEST FOR IMMEDIATE STAY

I, Christoph A. Baus, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney [*Rechtsanwalt*] with the law firm Latham & Watkins LLP, and am licensed to practice law in Germany. I am counsel for Respondent ZF Automotive US Inc. ("ZF US"), and I make this Declaration in support of ZF US's application for a stay. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

I. BACKGROUND

2. Luxhare Ltd. ("Luxshare") and ZF US signed a Master Purchase Agreement ("MPA") in August 2017 whereby Luxshare purchased one of ZF US' business units.[1] The MPA is governed by German law, and any disputes are to be resolved under the rules of the German Arbitration Institute ("DIS"), including its Supplementary Rules for Expedited Proceedings.[2]

3. Since October 2020, the parties have been litigating over Luxshare's application to take certain discovery of ZF US pursuant to 28 U.S.C. § 1782. In this dispute, Luxshare indicated its intent to commence a DIS arbitration in Germany against ZF US regarding alleged claims arising from ZF US's sale of its BCS business unit by December 31, 2021 to avoid the statute of limitations running out.

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[1] The relevant excerpts of the MPA are submitted to this Court as Exhibit **1.A**.

[2] The DIS Rules including its Supplementary Rules for Expedited Proceedings are submitted to this Court as Exhibit **1.B**.

4. In an effort to ensure that the parties are able to obtain appellate review of the important issues in this case, and permit the Supreme Court to use this vehicle to decide the threshold question of the applicability of Section 1782 on which it had granted review in *Servotronics, Inc. v. Rolls-Royce PLC*, Case No. 19-1847—while ensuring that Luxshare is not prejudiced with respect to the running of any statute of limitations on its claims against ZF US—ZF US has now submitted two declarations from Michael J. Way, Assistant Secretary at ZF US, dated October 13, 2021, and October 22, 2021, respectively. *See* **Exhibit F** of ZF US' application for a stay; **Exhibit 3** of ZF US' reply in support of its application for a stay.

II. VALID WAIVER OF THE STATUTE OF LIMITATIONS DEFENSE

5. Michael J. Way's statement in his October 13 and October 22 affidavits both constitute valid waivers of the statute of limitations defense ("*Verjährungsverzicht*") under the applicable German law, which a prospective DIS arbitration panel must respect and enforce. In particular:

a. **Under German law, the invocation of the statute of limitations is an affirmative defense that can be waived by a defendant** (*See* FCJ, March 16, 2009, II ZR 32/08, marginal number 22; Dec. 17, 2015, IX ZR 61/14, marginal number 42-43; Nov. 10, 2020, VI ZR 285/19, marginal number 15[3]; *see also* Exhibit 1 of Luxshare's response to ZF US' application for a stay at p. 12 (¶ 29), p. 13-14 (¶ 32).

[3] Collectively available at https://www.bundesgerichtshof.de/DE/Entscheidungen/entscheidungen_node.html). Certified English translations of relevant excerpts were submitted to this Court as **Exhibit G** of ZF US' application for a stay.

b. **German law allows legal conditions.** Legal declarations can generally be subject to legal conditions that do not create unacceptable uncertainty. For example, the German Federal Court of Justice has considered the approval from an authority as an admissible legal condition to legal declarations (*See* FCJ, May 15, 1998, V ZR 89-97, marginal number 11[4]). Likewise, the German Federal Court of Justice has held that a condition under which a higher court abandons a particular case law or denies a particular question of law is permissible (*See* FCJ, September 26, 1996, I ZR 194/95, marginal number 24[5]). These cases are comparable to the condition that the Supreme Court grants a stay of this case.

III. DIS ARBITRATION PANEL CAN TAKE THE TIME IT NEEDS FOR DISCOVERY EVEN UNDER EXPEDITED RULES

6. After the commencement of an arbitration under the Supplemental DIS Rules for Expedited Proceedings, a final award is generally unlikely to be made before eight months or more after the commencement of the arbitration, and a DIS arbitration panel is free to take any additional time needed for discovery or other purposes. In particular:

a. **A final award is unlikely to be made before eight months or more after the commencement of the arbitration**. Pursuant to Art. 1 of the Supplemental DIS Rules for Expedited Proceedings, the final award shall be made at the latest six months after the conclusion of an initial case management conference. *See* **Exhibit 1.B** at p. 44. (Annex 4, Art. 1). Pursuant to Art. 27.2 of the DIS Rules,

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[4] Submitted as **Exhibit 1.C**. A certified English translation of the relevant excerpt is submitted as **Exhibit 1.C**.

[5] Submitted as **Exhibit 1.D**. A certified English translation of the relevant excerpt is submitted as **Exhibit 1.D**.

this case management conference shall take place as soon as possible after the constitution of the arbitral tribunal, in principle within 21 days. *See id.* at p. 23. The constitution of the arbitral tribunal takes place after the commencement of the arbitration by filing the request for arbitration and may take several weeks. *See id.* at p. 11 (Art. 6 et seqq.).

b. **The DIS arbitration panel has full discretion to take any additional time it needs for any discovery or other procedural steps it wishes to allow**. Although Art. 1 indicates that the final award shall ordinarily be made within six months of the initial case management conference, that deadline is not binding and can be extended in appropriate circumstances, including upon consent of the parties. **Exhibit 1.B** at p. 44 (Annex 4, Art. 1). For example, Art. 2 makes clear that "[w]hen establishing the procedure for the arbitration, and in particular when setting time limits, the arbitral tribunal shall at all times take into account the parties' specific interest in accelerating the proceedings." *Id.* at p. 44 (Annex 4, Art. 2). And Art. 5 makes clear that "[i]f the final award cannot be made within the time limit set in Article 1 of this Annex," the arbitral panel shall merely "inform the parties and the DIS in writing of the reasons therefor. *Id.* at p. 44 (Annex 4, Art. 5). If such time limit is exceeded, the arbitral tribunal shall not for that reason cease to have jurisdiction, and the final award shall be made as soon as possible." *Id.* The provisions would easily accommodate a circumstance in which the parties request an extension of the six month deadline in order to await a ruling from the Supreme Court on whether to grant Luxshare's discovery request.

Executed in Hamburg, Germany, on October 22, 2021.

CHRISTOPH A. BAUS

EXHIBIT 1.A

Attachment I

MASTER PURCHASE AGREEMENT

related to

PROJECT MONTREUX

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Exhibit 6.1.1(ii)	Sample Purchase Price Calculation
Exhibit 6.1.1(e)	Lump Sum Deduction Items
Exhibit 6.1.2(e)	Sample calculation of Business Working Capital based on Trial Balance Accounts
Exhibit 6.3.1(b)	Adjusted Purchase Price Statement
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Exhibit 18.7.1	List of Seller's Commitments
Exhibit 18.9	List of Insurance Policies Terminating on the Closing Date

THIS MASTER PURCHASE AGREEMENT is made

BETWEEN

(1) **TRW Automotive Inc.**, a corporation incorporated under the laws of Delaware, registered with the Secretary of State in the State of Delaware under file number 3589359 and with its principal office in Livonia, Michigan, USA,

- the "**Seller**"-

and

(2) **Luxshare Limited** 立訊有限公司 (company number: 686629), a limited liability company incorporated in Hong Kong and under the laws of Hong Kong, registered under the Business Registration Ordinance of Hong Kong and holding the Business Registration Certificate No. 30393885-000-08-17-5 with registered office at Room 1904, 19/F., Tung Wai Commercial Building, 109-111 Gloucester Road, Wan Chai, Hong Kong,

- the "**Purchaser**"-,

(the Seller and the Purchaser collectively referred to as the "**Parties**", and each of them as a "**Party**").

20.10 Governing Law; Jurisdiction; Agent for Service of Process

20.10.1 Governing Law. This Agreement shall be governed by German law, excluding the German conflict of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

20.10.2 Arbitration. All disputes arising under or in connection with this Agreement (including any disputes in connection with its validity) shall be exclusively and finally settled by three (3) arbitrators in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS), including the Supplementary Rules for Expedited Proceedings, as applicable from time to time without recourse to the ordinary courts of law. The place of the arbitration shall be Munich, Germany. The language of the arbitral proceedings shall be English. Documents in the German language shall be translated into the English language.

20.10.3 Agent for Service of Process.

(a) The Purchaser hereby appoints SuK Kunststofftechnik GmbH, Am Funkenhof 10, 58566 Kierspe (registered with the commercial register at the local court in Iserlohn under HRB 7148) as agent for service of process (*Zustellungsbevollmächtigter*) for all legal proceedings and disputes involving the Purchaser, under or in connection with this Agreement. Such appointment shall only terminate upon the appointment of another agent for service of process domiciled in Germany, provided that his or her appointment has been notified to and approved in writing by the Seller, such approval not to be unreasonably withheld. The Purchaser shall promptly after the Signing Date and upon the appointment of any new agent for service of process, as the case may be, issue to the agent for service of process a written power of attorney (*Vollmachtsurkunde*) and shall irrevocably instruct the agent for service of process to submit such written power of attorney (*Vollmachtsurkunde*) in connection with any service of process under this Agreement.

(b) The Seller hereby appoints the German Share Selling Affiliate as agent for service of process (*Zustellungsbevollmächtigter*) for all legal proceedings and disputes involving the Seller, under or in connection with this Agreement. Such appointment shall only terminate upon the appointment of another agent for service of process domiciled in Germany, provided that his or her appointment has been notified to and approved in writing by the Purchaser, such approval not to be unreasonably withheld. The Seller shall promptly after the Signing Date and upon the appointment of any new agent for service of process, as the case may be, issue to the agent for service of process a written power of attorney (*Vollmachtsurkunde*) and shall irrevocably instruct the agent for service of process to submit such written power of attorney (*Vollmachtsurkunde*) in connection with any service of process under this Agreement.

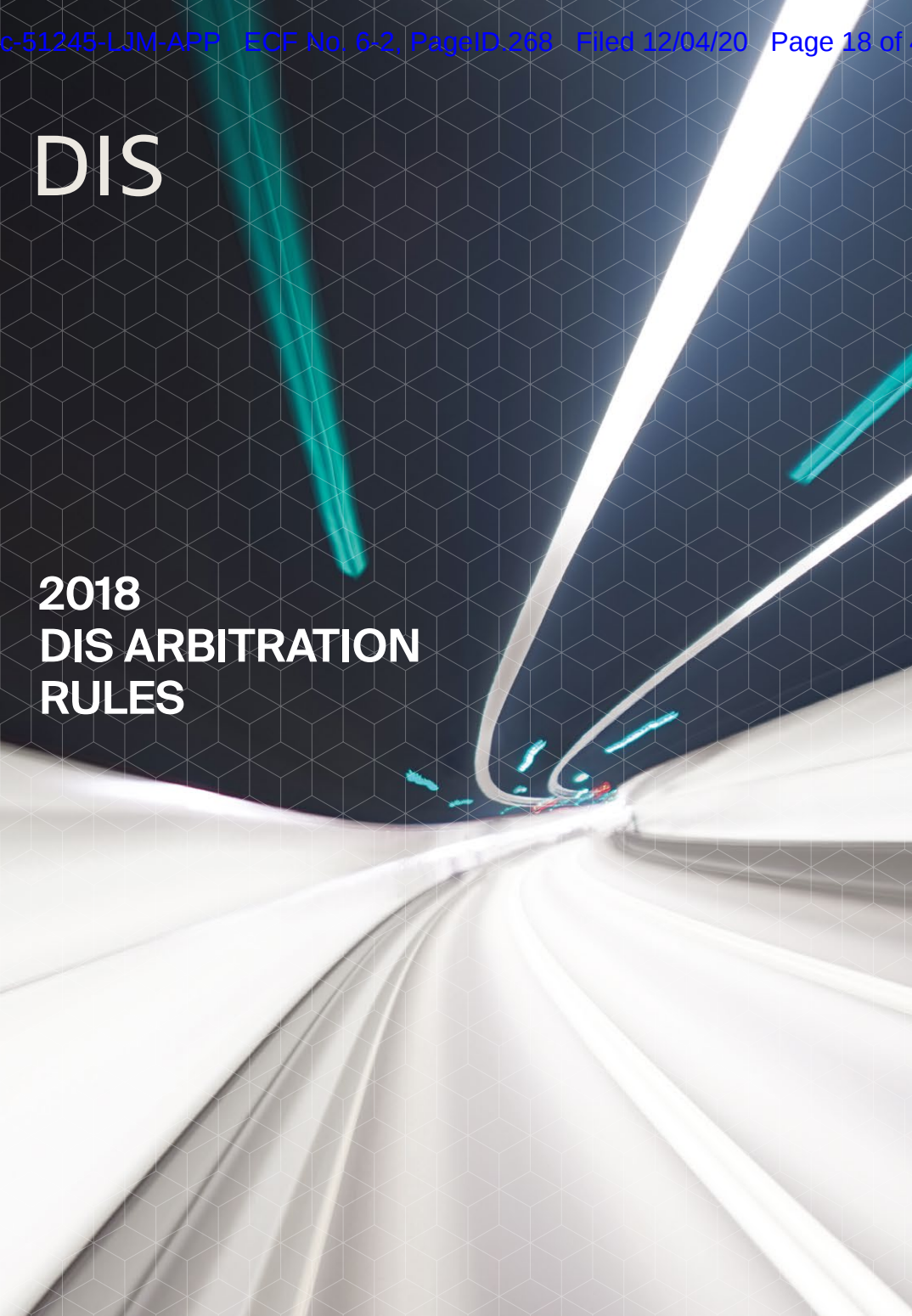
20.11 Severability

If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to have been replaced by a valid, enforceable and fair provision which comes as close as possible to the intentions of the Parties hereto at the time of the conclusion of this Agreement. It is the express intent of the Parties that the validity and enforceability of all other provisions of this Agreement shall be maintained and that this Section 20.11 shall not

EXHIBIT 1.B

DIS

2018 DIS ARBITRATION RULES



2018
DIS ARBITRATION RULES

Effective as of 1 March 2018

Introduction

The German Arbitration Institute (DIS) is Germany's leading institution for alternative dispute resolution and arbitration. With roots in the 1920s, the DIS has a long tradition of administering commercial disputes between companies, having successfully administered thousands of arbitrations.

The 2018 DIS Arbitration Rules are equally suitable for companies of all sizes and industries, and for arbitrations seated in Germany and abroad. The Rules have been revised to account for developments in domestic and international arbitration as well as practical experience with the previous version of the rules. The Rules were developed and drafted by leading German and international arbitration experts as well as representatives from companies and academia with many years of experience in domestic and international arbitration.

The Rules provide a well-structured procedure and institutional framework to ensure that arbitrations are conducted with integrity, efficiency, and fairness. Parties around the world resorting to a DIS arbitration benefit from the Institute's administrative know-how, its many years of experience, and its specialized expertise.

The DIS recognizes that companies are distracted by disputes and litigation matters. That is why the 2018 DIS Arbitration Rules place a particular focus on early dispute resolution as well as on efficiency and speed. The new Rules continue to emphasize a German and continental European element that distinguishes them from other institutional rules: the promotion of amicable settlements, provided all parties agree thereto. This feature also inspires the Dispute Management Rules, which the DIS has offered since 2010. In 2018, these rules were significantly streamlined and included in Annex 6 to the DIS Arbitration Rules.

The DIS Arbitration Rules provide a solid procedural framework allowing parties to adapt the proceedings to their particular needs. Article 27 of the 2018 DIS Rules calls for the arbitral tribunal to conduct an early case management conference with the parties in order to develop a plan that is tailored to resolve the specific dispute in a time- and cost-efficient manner.

In addition to the 2018 Arbitration Rules, the DIS offers rules for the entire spectrum of alternative dispute resolution proceedings: conciliation, mediation, expertise, expert determination, and adjudication. The DIS Sports Arbitration Rules are specifically available for sports-related disputes. The DIS thus services the entire breadth of alternative dispute resolution.

Berlin / Cologne, March 2018

DIS Model Clauses

The DIS recommends all parties wishing to make reference to the 2018 DIS Arbitration Rules to use the following arbitration clauses:

(1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

(2) The arbitral tribunal shall be comprised of *[please enter "a sole arbitrator" or "three arbitrators"]*.

(3) The seat of the arbitration shall be *[please enter city and country]*.

(4) The language of the arbitration shall be *[please enter language of the arbitration]*.

(5) The law applicable to the merits shall be *[please enter law or rules of law]*.

Model Clause for Expedited Arbitration

(1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

(2) The arbitral tribunal shall be comprised of *[please enter "a sole arbitrator" or "three arbitrators"]*.

(3) The seat of the arbitration shall be *[please enter city and country]*.

(4) The language of the arbitration shall be *[please enter language of the arbitration]*.

(5) The law applicable to the merits shall be *[please enter law or rules of law]*.

(6) The Parties agree that the arbitration shall be conducted as Expedited Proceedings and that Annex 4 of the DIS Arbitration Rules shall apply.

2018 Arbitration Rules

Introductory Provisions

Article 1 Scope of Application

1.1
These rules apply to international and domestic arbitrations in which disputes are to be settled pursuant to the Arbitration Rules of the German Arbitration Institute (DIS) (the "Rules").

1.2
With respect to any arbitration, the version of the Rules in force on the date of its commencement pursuant to Article 6 shall apply.

1.3
The following Annexes constitute an integral part of the Rules:

– Annex 1 (Internal Rules)
– Annex 2 (Schedule of Costs)
– Annex 3 (Measures for Increasing Procedural Efficiency)
– Annex 4 (Expedited Proceedings)
– Annex 5 (Supplementary Rules for Corporate Disputes)
– Annex 6 (Dispute Management Rules).

1.4
The Rules shall be applied, *mutatis mutandis*, with respect to Annex 4 (Expedited Proceedings) or Annex 5 (Supplementary Rules for Corporate Disputes) when the parties have agreed to apply such Annexes.

Article 2 Role of the DIS

2.1
The DIS administers arbitrations under the Rules and provides support to the parties and the arbitral tribunal for the efficient conduct of the arbitration. It does not resolve disputes itself.

2.2
The DIS appoints Dispute Managers pursuant to Dispute Management Rules (Annex 6) when one or more of the parties so request and none of the parties object thereto. Dispute Managers advise and assist the parties in selecting the dispute resolution mechanism best suited for resolving their dispute. Any party, or the parties jointly, may request the appointment of a Dispute Manager, either prior to the filing of a Request for Arbitration or at any time during the course of the arbitration.

Article 3 Definitions

3.1
In the Rules, "Claimant", "Respondent", "Party", "Additional Party" and other nouns shall, as required by the context, refer to the singular or the plural.

3.2
"Submissions" as used in the Rules refer to all communications in writing exchanged between or among the parties, the arbitral tribunal and the DIS, including the Request for Arbitration, the Answer, any counterclaims, any additional claims, any Request against an Additional Party, any and all pleadings filed in the course of the arbitration, along with the respective attachments thereto.

3.3
"Address" as used in the Rules refers to both postal and electronic addresses.

3.4
References to persons are gender-neutral.

Article 4 Submissions, Time Periods, and Time Limits

4.1
Subject to Articles 4.2 and 4.3, all Submissions of the parties and the arbitral tribunal to the DIS shall be sent electronically, by email, or on a portable storage device, or by any other means of electronic transmission that has been authorized by the DIS. If electronic transmission is not possible, the Submission shall be sent in paper form.

4.2
Requests for Arbitration pursuant to Article 5 and Article 19 shall be sent to the DIS in paper form as well as in electronic form. The following number of copies shall be filed:

(i) paper form: one copy of the Request for Arbitration for each party, as well as any attachments thereto, and one copy for the DIS without attachments;

and

(ii) electronic form: one copy of the Request for Arbitration for each party and for the DIS, as well as any attachments thereto.

The DIS may at any time request further copies of the Request for Arbitration as well as any attachments thereto.

4.3
A party filing a counterclaim or any additional claims prior to the constitution of the arbitral tribunal shall send to the DIS, for transmission to each party, one paper copy thereof, as well as any attachments thereto, in addition to the electronic copy required by Article 4.1. The DIS may at any time request further copies of such documents as well as any attachments thereto.

4.4
The arbitral tribunal shall determine the form of transmission of Submissions between the parties and the arbitral tribunal.

4.5
Subject to Article 4.2 and Article 25, all Submissions from any party to the arbitral tribunal or to the DIS shall be sent simultaneously to the other party.

4.6
All Submissions shall be sent to the last address provided by the addressee or by the other party. Submissions in paper form shall be sent by delivery against receipt, registered mail, courier, facsimile, or by any other means that provides a record of receipt.

4.7
The date of transmission of any Submission shall be deemed to be the date of actual receipt by the party itself or by its designated counsel. If a Submission in paper form has been properly sent pursuant to Article 4.6 but has not been received by the party itself or by its designated counsel, such Submission shall be deemed to have been received on the date on which it would have been received in the ordinary course of the process of transmission.

4.8
Time periods pursuant to the Rules shall commence on the first business day at the place of receipt after the deemed date of transmission pursuant to Article 4.7. In case of electronic transmission, time periods shall commence on the first business day after the date of transmission to the electronic address pursuant to Article 4.6. Public holidays and non-business days at the place of receipt that fall within a time period shall be included in the calculation of the time period. If the last day of a time period is a public holiday or a non-business day at the place of receipt, the time period shall expire at the end of the first subsequent business day.

4.9
The DIS may, in its discretion, extend any time limit referred to in the Rules or fixed by the DIS pursuant to the Rules, except for time limits fixed by the arbitral tribunal.

Request for Arbitration, Answer, Counterclaims and Consolidation of Proceedings

Article 5 Request for Arbitration, Transmission to Respondent, Administrative Fee

5.1
A party wishing to commence an arbitration under the Rules shall file a Request for Arbitration (the “Request”) with the DIS.

5.2
The Request shall contain:
(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the Claimant in the arbitration;
(iii) a statement of the specific relief sought;
(iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims;
(v) a description of the facts and circumstances on which the claims are based;
(vi) the arbitration agreement(s) on which the Claimant relies;
(vii) the nomination of an arbitrator if required under the Rules;

and

(viii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits.

5.3
Within a time limit set by the DIS, the Claimant shall pay to the DIS an administrative fee in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within such time limit, the DIS may terminate the arbitration pursuant to Article 42.5.

5.4
If the Claimant has not filed the Request or the attachments thereto in the number of copies required by Article 4.2, or if the DIS considers that the Request does not sufficiently comply with the requirements of Article 5.2, the DIS may set a time limit for the Claimant to supplement the filing. If the Claimant fails to submit the required number of copies or to supplement the filing with respect to Article 5.2 *(ii)*, *(iv)*, *(vii)* and *(viii)* within such time limit, the DIS may terminate the arbitration pursuant to Article 42.6. Article 6.2 shall apply to supplementing the filing with respect to Article 5.2 *(i)*, *(iii)*, *(v)* and *(vi)*.

5.5
The DIS shall transmit the Request to the Respondent. If the requirements of Article 5.3 or Article 5.4 are not met, the DIS may withhold the transmission.

Article 6 Commencement of the Arbitration

6.1
The arbitration shall commence on the date on which the Request, with or without the attachments thereto, is filed with the DIS in at least one of the forms required by Article 4.2, provided that it includes at least the items listed in Article 5.2 *(i)*, *(iii)*, *(v)* and *(vi)*.

6.2
If the Claimant fails to supplement the filing with respect to Article 5.2 *(i)*, *(iii)*, *(v)* and *(vi)*, within the time limit pursuant to Article 5.4, the DIS may take the administrative decision to close the file without prejudice to the Claimant’s right to resubmit its claims in a new proceeding.

Article 7 Respondent's Notification, Answer and Counterclaim

7.1
Within 21 days after the date of transmission of the Request, the Respondent shall notify in writing to the DIS:

(i) the nomination of an arbitrator, if required under the Rules;
(ii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits;

and

(iii) any request pursuant to Article 7.2 for an extension of the time limit to file an Answer to the Request (the "Answer").

7.2
The Respondent shall file its Answer to the Request within 45 days following the date of transmission of the Request. The DIS, upon a request by the Respondent, shall extend the time limit up to a maximum of 30 additional days.

7.3
If the Respondent maintains that due to exceptional circumstances a total of 75 days is insufficient for filing the Answer, the arbitral tribunal may grant a longer time limit. If the arbitral tribunal is not yet constituted, the DIS shall grant a preliminary extension of the time limit that shall be valid until the arbitral tribunal decides upon the request for an extension.

7.4
The Answer shall contain:

(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the Respondent in the arbitration;
(iii) a description of the facts and circumstances on which the Answer is based;
(iv) a statement of the specific relief sought;

and

(v) any relevant particulars regarding the arbitration agreement, the jurisdiction of the arbitral tribunal, and the amount in dispute.

7.5
Any counterclaim shall, when possible, be filed together with the Answer. Article 5.2 shall apply, *mutatis mutandis*. The counterclaim shall be filed with the DIS.

7.6
The Respondent shall pay to the DIS an administrative fee for the counterclaim in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within a time limit set by the DIS, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.5.

7.7
If the Respondent has not filed the counterclaim or the attachments thereto in the number of copies required by Article 4.3, or if the DIS considers that the counterclaim does not sufficiently comply with the requirements of Article 7.5, the DIS may set a time limit for the Respondent to supplement the filing. If the Respondent fails to submit the required number of copies or to supplement the filing within such time limit, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.6.

7.8
The DIS shall transmit the counterclaim to the Claimant and the arbitral tribunal if the Respondent has not already done so. If the requirements of Article 7.6 or Article 7.7 are not met, the DIS may withhold the transmission of the counterclaim.

7.9
The arbitral tribunal shall set a reasonable time limit for the Answer to the counterclaim.

Article 8 Consolidation of Arbitrations

8.1
Upon the request of one or more parties, the DIS may consolidate two or more arbitrations conducted under the Rules into a single arbitration if all parties to all of the arbitrations consent to the consolidation. Such consolidation is without prejudice to any decisions of the arbitral tribunal pursuant to Articles 17 to 19.

8.2
Any consolidation of arbitrations shall be into the arbitration that was first commenced, unless the parties have agreed otherwise.

The Arbitral Tribunal

Article 9 Impartiality and Independence of the Arbitrators, Duties of Disclosure

9.1
Every arbitrator shall be impartial and independent of the parties throughout the entire arbitration and shall have all of the qualifications, if any, that have been agreed upon by the parties.

9.2
Subject to Article 9.1, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

9.3
Every prospective arbitrator shall declare in writing whether they accept to act as arbitrator.

9.4
In case of acceptance, the prospective arbitrators shall sign a declaration in which they shall state that they are impartial and independent of the parties, that they have all of the qualifications, if any, that have been agreed upon by the parties, and that they will be available throughout the arbitration. In addition, each prospective arbitrator shall disclose any facts or circumstances that could cause a reasonable person in the position of a party to have doubts as to the arbitrator's impartiality and independence.

9.5
The DIS shall send each prospective arbitrator's declaration and any disclosures pursuant to Articles 9.3 and 9.4 to the parties and shall set a time limit for the parties to provide any comments regarding the appointment of the prospective arbitrator.

9.6
Every arbitrator shall have a continuing obligation throughout the entire arbitration to promptly disclose in writing to the parties, the other arbitrators and the DIS any facts or circumstances in the sense of Article 9.4.

9.7
Subject to the provisions of this Article 9, Articles 10 to 13 and 20 shall apply to the constitution of the arbitral tribunal, unless the parties have agreed otherwise.

Article 10 Number of Arbitrators

10.1
The parties may agree that the arbitral tribunal shall be comprised of a sole arbitrator, of three arbitrators, or of any other odd number of arbitrators. Article 16.4 shall apply notwithstanding any such agreement.

10.2
If the parties have not agreed upon the number of arbitrators, any party may submit a request to the DIS that the arbitral tribunal be comprised of a sole arbitrator. The Arbitration Council of the DIS (the "Arbitration Council") shall decide on such request after consultation with the other party. If no request for the appointment of a sole arbitrator has been made, or if a request has been made but not granted, the arbitral tribunal shall be comprised of three arbitrators.

Article 11 Sole Arbitrator

If the arbitral tribunal is comprised of a sole arbitrator, the parties may jointly nominate the sole arbitrator. If the parties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS (the "Appointing Committee") shall select and appoint the sole arbitrator pursuant to Article 13.2. In such case, the sole arbitrator shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 12 Three-Member Arbitral Tribunal

12.1
If the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee and appointed pursuant to Article 13.2.

12.2
The co-arbitrators shall jointly nominate the president of the arbitral tribunal (the "President") within 21 days after being requested to do so by the DIS. Each co-arbitrator nominated by or appointed on behalf of a party may consult with such party regarding the selection of the President.

12.3
If the co-arbitrators do not nominate the President within the time limit provided in Article 12.2, the Appointing Committee shall select and appoint the President pursuant to Article 13.2. In such case, the President shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 13 Appointment of the Arbitrators

13.1
Every arbitrator shall be appointed by the DIS even when such arbitrator has been nominated by a party or by the co-arbitrators.

13.2
The Appointing Committee decides on the appointment of arbitrators, except as provided in Article 13.3.

13.3
The appointment of an arbitrator may also be decided upon by the Secretary General of the DIS if no party has objected to the appointment of the prospective arbitrator within the time limit fixed pursuant to Article 9.5.

13.4
The arbitral tribunal is constituted once all of the arbitrators have been appointed.

13.5
Until all payments requested by the DIS have been made in full, the DIS may postpone the constitution of the tribunal or the appointment of any arbitrator.

Article 14 Conduct of the Arbitration by the Arbitral Tribunal

14.1
Once the arbitral tribunal has been constituted pursuant to Article 13.4, the DIS shall inform the arbitral tribunal and the parties that the arbitration shall henceforth be conducted by the arbitral tribunal.

14.2
In an arbitration having more than one arbitrator, every decision by the arbitral tribunal that is not made unanimously shall be made by majority vote, unless the parties agree otherwise. In the absence of a majority vote, the President shall decide alone.

14.3
The President may, in exceptional circumstances, rule on individual procedural issues alone, as long as he or she has been authorized to do so by the other members of the arbitral tribunal.

Article 15 Challenge of an Arbitrator

15.1
Any party who seeks to challenge an arbitrator, on the grounds that the arbitrator has failed to comply with one or more of the requirements of Article 9.1, shall file a request for challenge ("Challenge") pursuant to Article 15.2.

15.2
The Challenge shall describe the facts and circumstances on which it is based and shall specify when the party filing the Challenge first obtained knowledge of the same. The Challenge shall be filed with the DIS no later than 14 days after the party filing the Challenge first obtained knowledge of the facts and circumstances on which it is based.

15.3
The DIS shall transmit the Challenge to the challenged arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

15.4
The Arbitration Council shall decide upon the Challenge.

15.5
The arbitral tribunal may proceed with the arbitration, unless and until the Challenge is accepted.

Article 16 Termination of an Arbitrator's Mandate

16.1
An arbitrator's mandate shall terminate on the date on which:
(i) the Arbitration Council accepts the Challenge of such arbitrator;
(ii) the Arbitration Council accepts the resignation of such arbitrator;
(iii) the arbitrator dies;
(iv) the Arbitration Council removes the arbitrator from office pursuant to Article 16.2;

or

(v) all of the parties notify the DIS that they have agreed to terminate such arbitrator's mandate.

16.2
The Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future. The procedure for removal from office is set forth in Article 9 of the Internal Rules (Annex 1).

16.3
If an arbitrator's mandate is terminated, a replacement arbitrator shall be appointed pursuant to Article 16.5, except as provided in Article 16.4.

16.4
The Arbitration Council may decide that an arbitrator whose mandate has been terminated shall not be replaced if all of the parties and the remaining arbitrators so agree and after taking into account all of the circumstances. If the Arbitration Council so decides, then the arbitration shall continue with the remaining arbitrators only.

16.5
When an arbitrator is to be replaced, the same process that was used for the initial appointment of the replaced arbitrator shall be followed; provided, however, that, after consultation with the parties and the remaining arbitrators and having taken into account any circumstances that it considers to be relevant, the Arbitration Council may determine that a different process pursuant to the Rules shall apply.

16.6
The arbitral tribunal, once reconstituted, shall continue the proceedings without repeating any part thereof, unless the parties agree otherwise or the arbitral tribunal considers, after consultation with the parties, that repeating any part of the proceedings is necessary.

Multi-Contract Arbitration, Multi-Party Arbitration, Joinder

Article 17 Multi-Contract Arbitration

17.1
Claims arising out of or in connection with more than one contract may be decided in a single arbitration ("Multi-Contract Arbitration"), provided that all of the parties to the arbitration have agreed thereto. Any dispute as to whether all of the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

17.2
When claims are made in reliance on more than one arbitration agreement, they may be decided in a single arbitration, provided that, in addition to the requirement set forth in Article 17.1, such arbitration agreements are compatible. Any dispute as to whether the arbitration agreements are compatible shall be decided by the arbitral tribunal, subject to Article 17.3.

17.3
When Article 17.2 applies and the DIS considers that an incompatibility of the arbitration agreements with respect to their provisions on the constitution of an arbitral tribunal prevents the constitution of an arbitral tribunal under the Rules, Article 42.4 *(ii)* shall apply.

17.4
When there are multiple parties in a Multi-Contract Arbitration, the provisions of Article 18 (Multi-Party Arbitration) shall apply in addition to the provisions of this Article 17.

Article 18 Multi-Party Arbitration

18.1
Claims made in an arbitration with multiple parties ("Multi-Party Arbitration") may be decided in that arbitration if there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner. Any dispute as to whether the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

18.2
When claims arising out of or in connection with more than one contract are made in a Multi-Party Arbitration, the provisions of Article 17 (Multi-Contract Arbitration) shall apply in addition to the provisions of this Article 18.

Article 19 Joinder of Additional Parties

19.1
Prior to the appointment of any arbitrator, any party who wishes to join an additional party to the arbitration may file with the DIS a Request for Arbitration against such additional party (the "Request against an Additional Party").

19.2
The Request against an Additional Party shall contain:
(i) the case reference of the pending arbitration;
(ii) the names and addresses of the parties, including the additional party;
(iii) a statement of the specific relief sought against the additional party;
(iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims against the additional party;
(v) a description of the facts and circumstances on which the claims against the additional party are based;

and

(vi) the arbitration agreement(s) on which the party filing the Request against an Additional Party relies.

The remaining provisions of Articles 5 and 6 shall apply, *mutatis mutandis*, to the Request against an Additional Party.

19.3
Within a time limit set by the DIS, the additional party shall:
(i) provide its comments regarding the constitution of the arbitral tribunal;

and

(ii) file an Answer in accordance, *mutatis mutandis*, with the requirements of Article 7.4.

19.4
In the Answer, the additional party may make claims against any other party in the arbitration. The requirements of Articles 7.5 to 7.9 shall apply, *mutatis mutandis*, to any such claims.

19.5
The arbitral tribunal shall decide any dispute as to whether claims made by or against the additional party may be resolved in the pending arbitration. The arbitral tribunal, in making its decision, shall apply the provisions of Article 18 (Multi-Party Arbitration) and, when claims are made under more than one contract, the arbitral tribunal shall also apply the provisions of Article 17 (Multi-Contract Arbitration).

Article 20 Three-Member Arbitral Tribunal in Multi-Party Arbitrations

20.1
In a Multi-Party Arbitration (Article 18), the co-arbitrators shall be appointed as follows:
(i) the Claimant, or the Claimants jointly, shall nominate one co-arbitrator;

and

(ii) the Respondent, or the Respondents jointly, shall nominate the other co-arbitrator.

20.2
When in a Multi-Party Arbitration a single Claimant or a single Respondent does not nominate a co-arbitrator, such co-arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2.

20.3
In the absence of a joint nomination by either the Claimants or the Respondents, the Appointing Committee may, in its discretion, after consultation with the parties:
(i) select and appoint pursuant to Article 13.2 a co-arbitrator for the parties who have not jointly nominated a co-arbitrator and appoint the co-arbitrator nominated by the opposing side;

or

(ii) select and appoint pursuant to Article 13.2 a co-arbitrator both for the parties who have not jointly nominated a co-arbitrator and for the opposing side, in which case any prior party nomination shall be deemed void.

20.4
Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President.

20.5
Where an additional party has been joined pursuant to Article 19, the additional party, with respect to the nomination of co-arbitrators, may nominate an arbitrator only either jointly with the Claimant(s) or jointly with the Respondent(s). In the absence of a joint nomination, the Appointing Committee may, in its discretion, after consultation with the parties:
(i) apply, *mutatis mutandis*, Article 20.3 *(i)* for the co-arbitrators;
(ii) apply, *mutatis mutandis*, Article 20.3 *(ii)* for the co-arbitrators;

or

(iii) select and appoint the co-arbitrators as well as the President pursuant to Article 13.2.

When Article 20.5 *(i)* and *(ii)* apply, Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President. When Article 20.5 *(ii)* and *(iii)* apply, and when an appointment is made by the Appointing Committee, any prior party nomination shall be deemed void.

The Proceedings before the Arbitral Tribunal

Article 21 Rules of Procedure

21.1
The parties shall be treated equally. Each party shall have a right to be heard.

21.2
The Rules shall apply to the proceedings before the arbitral tribunal except to the extent that the parties have agreed otherwise.

21.3
When the Rules are silent as to the procedure to be applied in the proceedings before the arbitral tribunal, such procedure shall be determined by agreement of the parties, in the absence of which the arbitral tribunal in its discretion shall decide upon the procedure, after consultation with the parties.

21.4
The arbitral tribunal shall apply all mandatory provisions of the arbitration law applicable at the seat of the pending arbitration.

Article 22 Seat of the Arbitration

22.1
If the parties have not agreed upon the seat of the arbitration, then it shall be fixed by the arbitral tribunal.

22.2
Unless the parties have agreed otherwise, the arbitral tribunal may decide to undertake any or all acts in the proceedings at a location other than the seat of the arbitration.

Article 23 Language of the Arbitration

If the parties have not agreed upon the language of the arbitration, the arbitral tribunal shall fix the language of the arbitration.

Article 24 Rules of Law Applicable to the Merits

24.1
The parties may agree upon the rules of law to be applied to the merits of the dispute.

24.2
If the parties have not agreed upon the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the rules of law that it deems to be appropriate.

24.3
The arbitral tribunal shall decide on the merits in accordance with the provisions of the contract between the parties, if any, and shall take into account any relevant trade usages.

24.4
The arbitral tribunal may not decide *ex aequo et bono* or act as an *amiable compositeur*, unless the parties have expressly agreed thereto.

Article 25 Interim Relief

25.1
Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

25.2
In exceptional circumstances, the arbitral tribunal may rule on a request pursuant to Article 25.1 without giving prior notice to or receiving comments from the other party, if otherwise it would risk frustrating the purpose of the measure. In such case, the arbitral tribunal shall notify the other party of the request, at the latest, when ordering the measure. The arbitral tribunal shall promptly grant the other party a right to be heard. Thereafter, the arbitral tribunal shall confirm, amend, suspend, or revoke the measure.

25.3
The parties may request interim or conservatory measures from any competent court at any time.

Article 26 Encouraging Amicable Settlements

Unless any party objects thereto, the arbitral tribunal shall, at every stage of the arbitration, seek to encourage an amicable settlement of the dispute or of individual disputed issues.

Article 27 Efficient Conduct of the Proceedings

27.1
The arbitral tribunal and the parties shall conduct the proceedings in a time- and cost-efficient manner, taking into account the complexity and economic importance of the dispute.

27.2
The arbitral tribunal shall hold a case management conference as soon as possible after its constitution, in principle within 21 days.

27.3
When the parties are represented by outside counsel, they are also encouraged to attend the case management conference in person or with an in-house party representative, together with such outside counsel. Any Dispute Manager who has been duly appointed pursuant to Article 2.2 of the Rules may, with the authorization of the arbitral tribunal, attend the case management conference.

27.4
During the case management conference, the arbitral tribunal shall discuss with the parties the procedural rules to be applied in the proceedings pursuant to Article 21, as well as the procedural timetable.

With a view to increasing procedural efficiency, the arbitral tribunal shall specifically discuss the following with the parties:
(i) each of the measures set forth in Annex 3 (Measures for Increasing Procedural Efficiency) in order to determine whether any of them should be applied;
(ii) the provisions of Annex 4 (Expedited Proceedings) in order to determine whether they should be applied;
(iii) the possibility of using mediation or any other method of amicable dispute resolution to seek the amicable settlement of the dispute or of individual disputed issues.

27.5
During, or as soon as possible after, the case management conference, the arbitral tribunal shall issue a procedural order and a procedural timetable.

27.6
The arbitral tribunal may hold additional case management conferences as needed and may issue additional procedural orders or amend the procedural timetable as needed.

27.7
In the first case management conference or, if necessary, in additional case management conferences, the arbitral tribunal shall discuss with the parties whether to employ experts and, if so, how to conduct the expert procedure efficiently.

27.8
The arbitral tribunal shall also transmit to the DIS a copy of each procedural order and the procedural timetable, as well as any amendments thereto.

Article 28 Establishing the Facts, Tribunal-Appointed Expert

28.1
The arbitral tribunal shall establish the facts of the case that are relevant and material for deciding the dispute.

28.2
For this purpose, the arbitral tribunal may, *inter alia*, on its own initiative, appoint experts, examine fact witnesses other than those called by the parties, and order any party to produce or make available any documents or electronically stored data. The arbitral tribunal shall not be limited to admit only evidence offered by the parties.

28.3
The arbitral tribunal shall consult with the parties before appointing an expert. Any expert appointed by the arbitral tribunal shall be impartial and independent of the parties. The arbitral tribunal shall apply the provisions of Article 9 and Article 15, *mutatis mutandis*, to any tribunal-appointed expert, provided, however, that the arbitral tribunal shall assume with respect to the expert the function that the DIS has with respect to the arbitral tribunal.

Article 29 Oral Hearing

29.1
The arbitral tribunal shall hold an oral hearing if:
(i) all of the parties have so agreed;

or

(ii) any party so requests, unless all of the parties have agreed not to hold oral hearings.

In all other cases, the arbitral tribunal shall hold an oral hearing when it determines in its discretion, after consultation with the parties, that an oral hearing is necessary.

29.2
A record shall be kept of all oral hearings using appropriate means, which may include verbatim transcripts.

Article 30 Default of a Respondent

In the event of a default of a Respondent, the arbitral tribunal shall proceed with the arbitration. The factual allegations of the Claimant shall not be considered as having been admitted by the Respondent as a result of its default.

Article 31 Closing of Proceedings

After the last hearing or the last admitted Submission, whichever is later, the arbitral tribunal shall close the proceedings by a procedural order that shall also be sent to the DIS. No evidence or Submissions may be filed after the closing of the proceedings, except with the prior leave of the arbitral tribunal.

Costs

Article 32 Costs of the Arbitration

The costs of the arbitration shall include:
(i) the arbitrators' fees and expenses;
(ii) the fees and expenses of any expert appointed by the arbitral tribunal;
(iii) the reasonable costs of the parties that were incurred in connection with the arbitration, including legal fees, fees of experts and expenses of any witnesses;

and

(iv) the Administrative Fees.

Article 33 Arbitral Tribunal's Costs Decisions

33.1
The arbitral tribunal may make decisions, including interim decisions, concerning the costs of the arbitration at any time during the course of the arbitration. Only the DIS may make decisions pursuant to Article 32 *(i)* and *(iv)*.

33.2
The arbitral tribunal shall decide on the allocation of the costs of the arbitration between the parties.

33.3
The arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion. In so doing, it shall take into account all circumstances that it considers to be relevant. Such circumstances may include the outcome of the arbitration and the extent to which the parties have conducted the arbitration efficiently.

Article 34 Arbitrators' Fees and Expenses

34.1
The arbitrators shall be entitled to fees and reimbursement of their expenses, except as otherwise provided in the Rules.

34.2
The arbitrators' fees and expenses shall be calculated pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration, except as provided in Article 34.4; provided, however, that the Arbitration Council may reduce the fees of any arbitrator pursuant to Article 37. No separate fee agreements between the parties and the arbitrators shall be made or performed. The expenses of the arbitrators shall be reimbursed to the extent and in the amount provided in the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

34.3
The DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration. At the arbitral tribunal's request, the Arbitration Council may grant an advance on the arbitrators' fees in an amount that it considers to be appropriate in view of the stage of the proceedings. Any fees, expenses or advances on the arbitrators' fees shall be paid by the DIS out of the Deposit pursuant to Article 35.1.

34.4
When the arbitration has been terminated prior to the making of a final award or by an award by consent, the Arbitration Council shall, in its discretion, and after consultation with the parties and the arbitral tribunal, fix the arbitrators' fees. In so doing, it shall take into consideration, *inter alia*, the stage of the proceedings at the time of the termination and the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute.

34.5
When the mandate of an arbitrator has been terminated pursuant to Article 16.1, the Arbitration Council shall, in its discretion, determine whether to pay any fees or reimburse any expenses of the arbitrator whose mandate was terminated, and, if so, in what amount. In making such determination, the Arbitration Council shall take into account the reasons for the premature termination of the mandate and the circumstances of the arbitration.

Article 35 Deposit for Fees and Expenses of the Arbitral Tribunal

35.1
The parties shall provide a security for the fees and expenses of the arbitrators by paying an amount that the DIS shall calculate on the basis of Article 36 and shall fix during the course of the arbitration (the "Deposit").

35.2
Before constitution of the arbitral tribunal, the DIS shall fix the amount of an initial deposit and set a time limit for payment by the parties. The DIS may, in its discretion, request both parties or only one party to pay the initial deposit.

35.3
At a later point in time, the DIS shall fix the amount of the Deposit and shall set a time limit for payment by the parties. The Deposit shall be paid by the Claimant and the Respondent in equal shares. Any initial deposit already paid by the parties shall be deducted. The amount of the Deposit may be equal to the amount of the initial deposit.

35.4
If a party fails to pay its share of the initial deposit or the Deposit, any other party may substitute such payment without prejudice to the decision of the arbitral tribunal pursuant to Article 33.2 on the allocation of the costs of the arbitration between the parties.

35.5
If the parties have not paid the initial deposit or the Deposit in full, the DIS may terminate the proceedings pursuant to Article 42.5.

35.6
The DIS may increase or decrease the amount of the initial deposit or the Deposit at any time.

35.7
In a Multi-Party Arbitration (Article 18), the Arbitration Council may fix the share of the initial deposit and the Deposit for each party separately and in different amounts, or it may fix several deposits.

Article 36 Basis for Calculation of Deposits and Administrative Fees

36.1
The initial deposit, the Deposit and the Administrative Fees, as well as any later increases or decreases thereto, shall be calculated on the basis of the amount in dispute pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

36.2
The arbitral tribunal shall determine the amount in dispute after consultation with the parties.

36.3
Within 14 days after the determination of the amount in dispute by the arbitral tribunal pursuant to Article 36.2, any party may request the Arbitration Council to reconsider the arbitral tribunal's determination. The Arbitration Council may either confirm or modify the amount in dispute determined by the arbitral tribunal. Any such confirmation or modification by the Arbitration Council shall be solely for the purpose of calculating the amounts of the initial deposit, the Deposit and the Administrative Fees.

Termination of the Arbitration by Award or Otherwise

Article 37 Time Limit for the Final Award

The arbitral tribunal shall send the final award to the DIS for review pursuant to Article 39.3, in principle within three months after the last hearing or the last authorized Submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the arbitral tribunal and take into consideration the circumstances of the case.

Article 38 Effect of the Arbitral Award

Each arbitral award shall be final and binding on the parties.

Article 39 Content, Form and Transmission of the Arbitral Award

39.1
Each arbitral award shall be made in writing and shall state:
(i) the names and addresses of the parties, of any designated counsel representing a party in the arbitration, and of the arbitrators;
(ii) the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent pursuant to Article 41;
(iii) the seat of the arbitration;

and

(iv) the date of the award.

39.2
In the final award, the arbitral tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties pursuant to Article 33. The DIS shall communicate to the arbitral tribunal the amount of the costs pursuant to Article 32 *(i)* and *(iv)*.

39.3
The arbitral tribunal shall send a draft of the award to the DIS for review. The DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal. The arbitral tribunal shall remain exclusively responsible for the content of the award.

39.4
The award shall be signed by the arbitral tribunal. If an arbitrator does not sign the award, the reason therefor shall be explained in the award.

39.5
The arbitral tribunal shall transmit to the DIS as many originals of the signed award as are needed in order to provide an original to each party and the DIS.

39.6
The DIS shall transmit one original of the award to each party, provided that all Deposits and Administrative Fees have been paid in full. Articles 4.6 and 4.7 shall apply, *mutatis mutandis*.

39.7
The award shall be deemed to have been made on the date and at the seat of the arbitration stated in the award.

Article 40 Correction of the Arbitral Award

40.1
The arbitral tribunal shall, upon the request of any party:
(i) correct clerical, typographical or computation errors, and any other errors of a similar nature;

and

(ii) render a supplementary award upon any claims that were made in the arbitration but were not decided in the arbitral award.

40.2
The arbitral tribunal may, upon the request of any party, interpret the arbitral award and clarify the dispositive section thereof.

40.3
A request by a party pursuant to Article 40.1 or Article 40.2 shall be submitted to the DIS within 30 days after the date of transmission of the arbitral award. The DIS shall promptly transmit any such request to the arbitral tribunal.

40.4
The arbitral tribunal shall consult the other party and shall decide upon the request within 30 days after the receipt of the request by the President of the arbitral tribunal.

40.5
After consultation with the parties, the arbitral tribunal may also make corrections pursuant to Article 40.1 on its own initiative. The corrections shall be made within 60 days after the date on which the award was made pursuant to Article 39.7.

40.6
Articles 38 and 39 shall apply, *mutatis mutandis*, to any decision to correct the arbitral award pursuant to this Article 40.

Article 41 Award by Consent

41.1
At the request of the parties, the arbitral tribunal may record a settlement in an award by consent, unless it considers that there are serious grounds not to do so.

41.2
At the request of all of the parties, the arbitral tribunal may record in the form of an award by consent a settlement agreement or a decision arising out of proceedings pursuant to:

– the DIS Mediation Rules,
– the DIS Conciliation Rules,
– the DIS Rules on Adjudication,

– the DIS Rules on Expertise, or
– the DIS Rules on Expert Determination,

unless it considers that there are serious grounds not to do so.

41.3
The provisions of Articles 38 to 40 shall apply, *mutatis mutandis*, to awards by consent.

Article 42 Termination of the Arbitration before the Making of a Final Award

42.1
The arbitration may be terminated before the arbitral tribunal makes its final award, either by the arbitral tribunal pursuant to Article 42.2, or by the DIS pursuant to Articles 42.4, 42.5 or 42.6.

42.2
The arbitral tribunal shall terminate the arbitration by way of a termination order:
(i) if all of the parties agree to terminate the arbitration;
(ii) if one of the parties requests a termination order and none of the other parties objects, or, if there is an objection, the arbitral tribunal considers that the objecting party has no legitimate interest in the continuation of the arbitration;
(iii) if the parties fail to pursue the arbitration even after being requested to do so by the arbitral tribunal;

or

(iv) if the arbitral tribunal considers that, for any other reason, the arbitration cannot be continued.

42.3
Any termination order issued by the arbitral tribunal is without prejudice to a party's right to resubmit its claims in a new proceeding.

42.4
Prior to the constitution of the arbitral tribunal, the Arbitration Council may, after consultation with the parties, decide to terminate the arbitration:
(i) if the parties have agreed that the arbitration be terminated;
(ii) if the DIS considers that it is not possible to constitute the arbitral tribunal pursuant to the Rules;
(iii) if the parties fail to pursue the arbitration even after being requested to do so by the DIS;

or

(iv) if the DIS considers that, for any other reason, the arbitration cannot be continued.

42.5
Prior to or after the constitution of the arbitral tribunal, the Arbitration Council may decide to terminate the arbitration if the parties fail within the set time limit to pay in full any initial deposits, Deposits or Administrative Fees requested by the DIS pursuant to the Rules. If the arbitral tribunal is already constituted, the arbitral tribunal may, upon consultation with the DIS, suspend its work prior to the termination by the Arbitration Council.

42.6
The DIS may, subject to the provision set forth in the second sentence of Article 5.4, terminate the arbitration at any time if a party has failed to comply with the request of the DIS to supplement a filing pursuant to Articles 5, 7 or 19 within the time limit set by the DIS.

42.7
A termination of the arbitration in whole or in part pursuant to Articles 42.4, 42.5 or 42.6 is without prejudice to a party's right to resubmit its claims in a new proceeding.

Miscellaneous

Article 43 Waiver of Right to Object

If a party does not raise an objection with respect to any failure to comply with the Rules or with any other provisions applicable to the arbitration promptly after it first becomes aware of such failure, such party shall be deemed to have waived its right to object.

Article 44 Confidentiality

44.1
Unless the parties agree otherwise, the parties and their outside counsel, the arbitrators, the DIS employees, and any other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including in particular the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available.

44.2
Disclosures may nonetheless be made to the extent required by applicable law, by other legal duties, or for purposes of the recognition and enforcement or annulment of an arbitral award.

44.3
The DIS may publish statistical data or other general information concerning arbitral proceedings, provided that no party is identified by name and that no particular arbitration is

identifiable on the basis of such information. The DIS may publish an arbitral award only with the prior written consent of all of the parties.

Article 45 Limitation of Liability

45.1
An arbitrator shall not be liable to any person for any acts or omissions in connection with such arbitrator's decision-making in the arbitration, except in case of an intentional breach of duty.

45.2
For any other acts or omissions in connection with the arbitration, an arbitrator, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the arbitration shall not be liable, except in case of an intentional breach of duty or gross negligence.

Annex 1
Internal Rules

Article 1 Scope of Application

These internal rules for administering arbitrations under the Rules (the "Internal Rules") shall govern the work of the Arbitration Council, the Appointing Committee, and the DIS Secretariat (the "Secretariat").

Article 2 Powers of the Arbitration Council, the Appointing Committee, and the Secretariat

2.1
The Arbitration Council and the Appointing Committee shall render such decisions and exercise such powers and activities as are specifically assigned to them in the Rules. They shall be assisted in their work by the Secretariat.

2.2
The Secretariat, under the direction of its Secretary General (the "Secretary General"), shall render such decisions and exercise such powers and activities as the Rules assign to the DIS, or as the DIS considers appropriate for the proper administration of an arbitration. The Secretariat may at any time consult the Arbitration Council, the Case Committee designated pursuant to Article 4.2 of these Internal Rules, or the Appointing Committee.

Article 3 The Arbitration Council

3.1
The Arbitration Council shall consist of at least fifteen members (each member, a "Council Member"). The Council Members shall be nationals of at least five different countries and shall have practical experience in domestic and international arbitration. The provisions of Section 6 of the DIS Integrity Principles shall apply to Council Members.

3.2
Council Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, members of the Appointing Committee, and staff of the Secretariat may not be Council Members.

3.3
A Council Member's term of office shall be four years and may be renewed once.

3.4
The Arbitration Council shall hold plenary sessions at least once annually to discuss and take decisions in respect of subjects of general importance to the practice of the Arbitration Council. The Secretariat shall attend all plenary sessions and may invite the members of the Appointing Committee to attend a plenary session. A plenary session may be attended in person or by any suitable means of communication.

3.5
The Council Members shall elect from their members a President and up to two Vice Presidents. The President, or, in the President's absence, one of the Vice Presidents, shall call and preside over plenary sessions.

3.6
All decisions to be taken by the Arbitration Council under the Rules shall be exercised, with respect to any specific arbitration, exclusively by the Case Committee to which such arbitration has been assigned pursuant to Article 4.2 of these Internal Rules. The Arbitration Council shall not have the power to review, alter, or vacate decisions rendered by a Case Committee.

3.7
The Arbitration Council may, after consultation with the Secretariat, issue internal guidelines that all Case Committees shall observe.

Article 4 The Case Committees

4.1
The Secretariat shall create at least five Case Committees to supervise DIS arbitrations (each committee, a "Case Committee"), each consisting of three Council Members.

4.2
Upon receipt of a Request for Arbitration, the Secretariat shall assign supervision of the arbitration to a Case Committee. The Secretariat may at any time during the arbitration reassign supervision of an arbitration from one Case Committee to another Case Committee, or replace any Council Member on a Case Committee by another Council Member. The Secretariat, in its discretion, may take any decision pursuant to this Article 4.2 of these Internal Rules, taking into account in particular the workload, any conflicts of interest, and any other reasons affecting the availability of a Council Member.

4.3
A Council Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Council Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Council Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

4.4
Decisions by a Case Committee require a quorum of two of its members and a majority of such Case Committee.

4.5
As a basis for any decision of the Case Committees, the Secretariat shall prepare a written statement, which shall advise of any existing practice of other Case Committees in comparable cases and may contain non-binding recommendations.

Article 5 Specialized Case Committees

5.1
All arbitrations administered by the DIS pursuant to the rules of a chamber of commerce and industry referring to the Rules shall be assigned to the same Case Committee.

5.2
The DIS may at any time create additional specialized Case Committees, for example for specific geographic regions or certain types of arbitrations.

Article 6 The Appointing Committee

6.1
The Appointing Committee shall consist of three main members and three alternate members (together the "Appointing Committee Members"). The Appointing Committee Members shall have practical experience in domestic and international arbitration. The provisions of Section 3 of the DIS Integrity Principles shall apply to Appointing Committee Members.

6.2
Appointing Committee Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, Council Members, and staff of the Secretariat may not be Appointing Committee Members.

6.3
The Appointing Committee Members' terms of office shall be three years and may be renewed once.

6.4
An Appointing Committee Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Appointing Committee Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Appointing Committee Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

6.5
The Appointing Committee's decisions are taken by the main members. If a main member cannot act due to a conflict of interest or otherwise, an alternate member designated by the Secretariat shall act in lieu of such main member.

6.6
Decisions by the Appointing Committee require a majority vote.

6.7
As a basis for any decision of the Appointing Committee, the Secretariat shall prepare a written statement, which shall advise of any existing practice of the Appointing Committees in comparable cases and may contain non-binding recommendations.

Article 7 The Secretariat

7.1
Within the Secretariat, arbitrations are administered by the Case Management Team under the direction of the Deputy Secretary General.

7.2
The Secretary General may, when absent or otherwise, authorize the Deputy Secretary General or another staff member of the Secretariat to decide upon the appointment of an arbitrator pursuant to Article 13.3 of the Rules.

7.3
The Secretariat may issue notes and other documents for the information of the parties and the arbitrators or, as necessary, for the proper conduct of the arbitral proceedings.

Article 8 Submissions and Notifications, Reasons, Confidentiality

8.1
All Submissions that are to be sent to the DIS under the Rules, and any communication addressed to the Arbitration Council, a Case Committee, or the Appointing Committee, shall be sent to the Secretariat.

8.2
All notifications from, and communications of decisions by, the Appointing Committee or any Case Committees to the parties or arbitrators concerning any arbitration shall be sent exclusively by the Secretariat.

8.3
The reasons for decisions of the Appointing Committee and the Case Committees shall not be communicated.

8.4
Information and documentation relating to any arbitration, as well as to the work of the Appointing Committee, the Arbitration Council, a Case Committee, and the Secretariat, shall be confidential, unless otherwise provided in Article 44 of the Rules.

Article 9 Removal of an Arbitrator from Office Pursuant to Article 16.2 of the Rules

9.1
Any party who considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, may file a request for removal ("Request for Removal") pursuant to Article 9.2 of these Internal Rules.

9.2
The Request for Removal shall describe the facts and circumstances on which it is based and shall specify when the party filing the Request for Removal first obtained knowledge of the same. The Request for Removal shall be filed with the DIS no later than 14 days after the party filing the Request for Removal first obtained knowledge of the facts and circumstances on which it is based.

9.3
The DIS shall transmit the Request for Removal to the concerned arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

9.4
The Case Committee to which the arbitration has been assigned pursuant to Article 4.2 shall decide upon the Request for Removal.

9.5
If the Case Committee to which the arbitration has been assigned pursuant to Article 4.2 considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, such Case Committee may, after consultation with the parties and all arbitrators, remove such arbitrator from office even in the absence of a Request for Removal.

Article 10 Transitional Provision

Until such time as the DIS Statutes have been amended, Section 14 of the DIS Statutes regarding the DIS Appointing Committee shall supersede the provisions of Article 6 of these Internal Rules.

Annex 2
Schedule of Costs

Paragraph 1 Introductory Provisions

1.1 With respect to the entire arbitration, the version of this Annex in force on the date of its commencement pursuant to Article 6 of the Rules shall apply.

1.2 The arbitrators' fees and the Administrative Fees of the DIS shall, pursuant to Paragraphs 2 and 3 of this Annex 2, be calculated on the basis of the amount in dispute. If the amount in dispute is not quantified or not estimated, the DIS shall set a time limit for the parties to do so. If the parties do not do so within the time limit set by the DIS, Paragraphs 2.3 and 3.3 of this Annex 2 shall apply.

1.3 The parties are jointly and severally liable for the costs of the arbitration within the meaning of Article 32 *(i)*, *(ii)* and *(iv)* of the Rules, without prejudice to any claims for reimbursement of costs between or among the parties.

Paragraph 2 Arbitrators' Fees

2.1 The arbitrators' fees shall be calculated on the basis of the amount in dispute pursuant to the following table:

Amount in Dispute	**Fee for each Co-Arbitrator**	**Fees for President / Sole Arbitrator**
Up to 5.000 €	770 €	1.000 €
From 5.000,01 € to 20.000 €	1.150 €	1.500 €
From 20.000,01 € to 50.000 €	2.300 €	3.000 €
From 50.000,01 € to 70.000 €	3.000 €	4.000 €
From 70.000,01 € to 100.000 €	3.800 €	5.000 €
From 100.000,01 € to 500.000 €	4.450 € plus 2 % of the amount exceeding 100.000 €	Fee of a co-arbitrator plus 30 %
From 500.000,01 € to 1.000.000 €	12.450 € plus 1,4 % of the amount exceeding 500.000 €	Fee of a co-arbitrator plus 30 %
From 1.000.000,01 € to 2.000.000 €	19.450 € plus 1 % of the amount exceeding 1.000.000 €	Fee of a co-arbitrator plus 30 %
From 2.000.000,01 € to 5.000.000 €	29.450 € plus 0,5 % of the amount exceeding 2.000.000 €	Fee of a co-arbitrator plus 30 %
From 5.000.000,01 € to 10.000.000 €	44.450 € plus 0,3 % of the amount exceeding 5.000.000 €	Fee of a co-arbitrator plus 30 %
From 10.000.000,01 € to 50.000.000 €	59.450 € plus 0,1 % of the amount exceeding 10.000.000 €	Fee of a co-arbitrator plus 30 %
From 50.000.000,01 € to 100.000.000 €	99.450 € plus 0,06 % of the amount exceeding 50.000.000 €	Fee of a co-arbitrator plus 30 %
above 100.000.000 €	129.450 € plus 0,05 % of the amount exceeding 100.000.000 € up to 650.000.000 €; above 750.000.000.01 €, increases in the amount in dispute shall not further increase the fee	Fee of a co-arbitrator plus 30 %

2.2 In case of a counterclaim or a Request against an Additional Party, the sum of the amounts in dispute of the Request, the counterclaim, and the Request against an Additional Party shall serve as the basis for the calculation of the fees.

2.3 If information on the amount in dispute is missing from the Request, the counterclaim, or the Request against an Additional Party, or if the DIS considers that the amount of any quantified claim has been manifestly undervalued, the DIS may initially calculate the arbitrators' fees on the basis of an amount in dispute determined by the DIS in its discretion, which shall apply until a determination of the amount in dispute pursuant to Article 36 of the Rules.

2.4 If there are more than two parties to the arbitration, the fees set forth in Paragraph 2.1 above shall be increased respectively by 10 percent for each additional party, not to exceed 50 percent overall.

2.5 In cases of particular legal or factual complexity, at the request of the arbitral tribunal and after consultation with the parties, the Arbitration Council may in its discretion determine an increase in the fees calculated pursuant to Paragraphs 2.1 and 2.4 above, not to exceed 50 percent. In deciding on any such increase in fees, the Arbitration Council shall take into account in particular the amount of time spent, the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute, as well as the arbitral tribunal's contribution to encouraging an amicable settlement of the dispute.

2.6 A decision on an application for interim relief pursuant to Article 25 of the Rules shall constitute a case of particular complexity within the meaning of Paragraph 2.5 above.

2.7 If a replacement arbitrator is appointed pursuant to Article 16 of the Rules, the Arbitration Council shall in its discretion determine the amount of the fees of the replacement arbitrator.

2.8 If the proceedings are terminated prior to the constitution of the arbitral tribunal, no arbitrator who has already been appointed shall be entitled to any fees or expenses.

Paragraph 3 Administrative Fees of the DIS

3.1 The Administrative Fees of the DIS for the filing of a Request shall amount to:

Amount in Dispute	Administrative Fees of the DIS
up to 50.000 €	2 % of the amount in dispute, minimum 750 €
from 50.000,01 € to 1.000.000 €	1.000 € plus 1 % of the amount exceeding 50.000 €
above 1.000.000 €	10.500 € plus 0,5 % of the amount exceeding 1.000.000, maximum 40.000 €

3.2 In case of a counterclaim or a Request against an Additional Party, Paragraph 3.1 of this Annex 2 shall apply to the Administrative Fees, *mutatis mutandis*. In such cases, the Administrative Fees of the DIS shall amount to the sum of the Administrative Fees pursuant to Paragraphs 3.1 and 3.2 of this Annex 2.

3.3 If the Request, the counterclaim, or the Request against an Additional Party does not contain any quantification of claims, or if the DIS considers that the amount of any quantified claim has been manifestly undervalued, the DIS may initially calculate the Administrative Fees on the basis of an amount in dispute determined by the DIS in its discretion, which shall apply until a determination of the amount in dispute pursuant to Article 36 of the Rules.

3.4 If there are more than two parties to the arbitration, the Administrative Fees pursuant to Paragraphs 3.1 and 3.2 of this Annex 2 shall be increased respectively by 10 percent for each additional party. The increase shall not exceed, respectively, 20.000 € overall.

3.5 If the proceedings are terminated prior to the constitution of the arbitral tribunal, the DIS may reduce its Administrative Fees by up to 50 percent.

3.6 In case of a consolidation of two or more arbitrations, the amounts in dispute of the claims of a party in the respective arbitrations shall be added together and the new Administrative Fee for each party shall be calculated on the basis of the sum of these amounts in dispute. Any amounts already paid by the parties shall be deducted.

3.7 If a Submission within the meaning of Article 3.2 of the Rules is filed with the DIS in a language other than German or English, the DIS may charge the costs of a translation in addition to the Administrative Fees.

3.8 If proceedings are conducted prior to the commencement of the arbitration pursuant to
- the DIS Mediation Rules,
- the DIS Conciliation Rules,
- the DIS Rules on Adjudication,
- the DIS Rules on Expertise, or
- the DIS Rules on Expert Determination,

any DIS Administrative Fees already paid by the parties for such proceedings shall be deducted from the Administrative Fees for the arbitration. If any such proceedings are instituted after the arbitration has been commenced, no additional DIS Administrative Fees for such proceedings shall be charged.

Paragraph 4 Initial Deposit and Deposit

4.1 The total amount of the Deposits to be provided by the parties pursuant to Article 35 of the Rules shall correspond to the sum of the anticipated fees of the arbitrators pursuant to Paragraph 2, the anticipated expenses of the arbitrators pursuant to Paragraph 5, and any supplement pursuant to Paragraph 6 of this Annex 2.

4.2 The DIS shall fix the amount of the initial deposit and of the Deposit. When calculating the initial deposit, the DIS may take into consideration the fees of the arbitral tribunal as a whole or initially only in part. In the latter case, the remaining fees shall be taken into consideration when calculating the Deposit.

4.3 In case a counterclaim or a Request against an Additional Party is filed, at the request of a party and after consultation with the arbitral tribunal the Arbitration Council may decide that for the respective claims separate initial deposits or Deposits shall be paid.

4.4 The DIS may increase or decrease the initial deposit and the Deposit during the course of the proceedings.

4.5 The DIS shall administer the initial deposit and the Deposit until they have been paid out to the arbitral tribunal. Prior to the termination of the arbitration, the DIS shall bear any negative interest, and shall be entitled to any positive interest, on the Deposits.

Paragraph 5 Expenses of the Arbitral Tribunal

For the reimbursement of expenses pursuant to Article 34.1 of the Rules, the version of the respective guidelines of the DIS in force on the date of the commencement of the arbitration shall apply.

Paragraph 6 Value Added Tax

6.1 The fees paid by the DIS to the arbitrators are not inclusive of value added tax or any comparable taxes or charges to which the fees of arbitrators may be subject.

6.2 It is the obligation of the parties to reimburse the arbitrators for value added tax or any comparable taxes or charges. The reimbursement of such taxes and charges shall exclusively occur between the parties and the arbitrators. To facilitate the process of reimbursement, in calculating the initial deposit and the Deposit, the DIS in principle shall charge a supplement in an amount up to 20 percent of the fees, which may be used to

reimburse any such taxes or charges upon presentation of a corresponding invoice by an arbitrator to one or more parties.

6.3 The Administrative Fees of the DIS may be subject to value added tax or similar other taxes or charges. The parties shall pay such taxes or charges in addition to paying the Administrative Fees pursuant to Paragraph 3 of this Annex 2.

Annex 3
Measures for Increasing Procedural Efficiency

During the case management conference, the arbitral tribunal shall discuss with the parties the following measures for increasing procedural efficiency:

A. Limiting the length or the number of Submissions, of any written fact witness statements, and of any expert reports provided by the parties.
B. Conducting only one oral hearing, including any taking of evidence.
C. Dividing the proceedings into multiple phases.
D. Rendering one or more partial awards or procedural orders on specific issues.
E. Regulating whether the production of documents can be requested from a party that does not bear the burden of proof, as well as possibly limiting document production requests generally.
F. Providing the parties with a preliminary non-binding assessment of factual or legal issues in the arbitration, provided all of the parties consent thereto.
G. Making use of information technology.

To the extent that the parties disagree as to whether to apply one or more of the above measures, the arbitral tribunal shall, during or as soon as possible after the case management conference, decide in its discretion whether to apply such measures.

Annex 4
Expedited Proceedings

Article 1

The final award shall be made at the latest six months after conclusion of the case management conference held pursuant to Article 27.2.

Article 2

When establishing the procedure for the arbitration, and in particular when setting time limits, the arbitral tribunal shall at all times take into account the parties' specific interest in accelerating the proceedings.

Article 3

In addition to the Request pursuant to Article 5.1 of the Rules and the Answer pursuant to Article 7.2 of the Rules, each party may file only one further written Submission. In the case of a counterclaim pursuant to Article 7.5, one further written Submission in reply to the counterclaim may be filed.

Article 4

The arbitral tribunal shall hold only one oral hearing, including for the taking of evidence. An oral hearing may be dispensed with if all parties so agree.

Article 5

If the final award cannot be made within the time limit set in Article 1 of this Annex, the arbitral tribunal shall inform the parties and the DIS in writing of the reasons therefor. If such time limit is exceeded, the arbitral tribunal shall not for that reason cease to have jurisdiction, and the final award shall be made as soon as possible.

Annex 5
Supplementary Rules for Corporate Disputes

Article 1 Scope of Application

1.1
The Supplementary Rules for Corporate Disputes ("DIS-CDR") set forth herein shall apply if the parties have referred to them in their arbitration agreement, either within or outside the articles of incorporation, or have otherwise agreed to their application.

1.2
With respect to any arbitration, the version of the DIS-CDR in force on the date of its commencement pursuant to Article 6 of the Rules shall apply.

Article 2 Inclusion of Concerned Others

2.1
In disputes requiring a uniform decision binding all shareholders and the corporation, and in which a party intends to extend the effects of an arbitral award to any shareholder or the corporation who are not named parties to the arbitration ("Concerned Others"), the Concerned Others shall be granted the opportunity to join the arbitration pursuant to these DIS-CDR as a party or compulsory intervenor in the sense of Section 69 of the German Code of Civil Procedure ("Intervenor"). This applies, *mutatis mutandis*, to disputes that can be decided only by a uniform decision binding specific shareholders or the corporation.

2.2
In its Request, the Claimant shall designate, in addition to the Respondent, any Concerned Others, providing the names and addresses of any shareholders or of the corporation itself to which the effects of the arbitral award shall extend, and shall request the DIS to also transmit the Request to the Concerned Others. In addition to what is required in Article 4.2 of the Rules, a number of copies of the Request sufficient for the designated Concerned Others shall be filed with the DIS in paper form as well as in electronic form.

2.3
Concerned Others designated after expiry of the time limits provided in these DIS-CDR for designating Concerned Others may join the arbitration pursuant to Article 4.3 of these DIS-CDR.

Article 3 Transmission of the Request and Invitation to Join the Proceedings

3.1
The DIS shall deliver the Request to the Respondent and the designated Concerned Others pursuant to Article 5.5 of the Rules. The DIS shall request the Concerned Others to inform the DIS in writing within one month following transmission of the Request whether they wish to join the arbitration on the Claimant's or on the Respondent's side, either as a party or as an Intervenor. The DIS shall inform the parties and all Concerned Others designated pursuant to Articles 2.2 or 9.4 of these DIS-CDR of any effected joinder.

3.2
Within one month following the date of transmission of the Request, the Respondent may designate additional Concerned Others, providing their addresses and requesting the DIS to transmit the Request to such additional Concerned Others. With its request, the Respondent shall file the number of copies of the Request in paper form as well as in electronic form required by Article 4.2 of the Rules. Article 3.1 of these DIS-CDR shall apply to any additional Concerned Others.

Article 4 Joinder

4.1
If Concerned Others join the arbitration as a party within the time limit provided for in Article 3 or Article 9.4 of these DIS-CDR, they shall become a party to the arbitration with all rights and duties pertaining thereto as of the date on which their declaration of joinder is filed with the DIS. If they join as an Intervenor, they shall be entitled to the rights of a compulsory Intervenor as provided for in Section 69 of the German Code of Civil Procedure. Upon their joinder, Concerned Others are entitled to designate additional Concerned Others. Article 3.2 of these DIS-CDR shall apply, *mutatis mutandis*, with regard to any such additional designated Concerned Others.

4.2
If a designated Concerned Other does not join the arbitration within the provided time limit, such Concerned Others shall be deemed to have waived participation in the arbitration, without prejudice to the right to join the arbitration at a later point in time pursuant to Article 4.3 of these DIS-CDR.

4.3
Designated Concerned Others may join the arbitration at any time, provided that they do not raise objections to the composition of the arbitral tribunal, and either

(i) such Concerned Others accept the arbitration as it stands at the time of their joinder,

or

(ii) the arbitral tribunal in its discretion decides to approve the joinder of such Concerned Others.

In addition, the first and second sentences of Article 4.1 of these DIS-CDR shall apply, *mutatis mutandis*.

Article 5 Continuous Information of Concerned Others

5.1
Unless Concerned Others have expressly waived in writing their right thereto, the arbitral tribunal shall inform, pursuant to Article 4.4 of the Rules, the designated Concerned Others who have not joined the arbitration of the progress of the arbitration by transmitting to the provided addresses of the Concerned Others copies of all Submissions of the parties or of Intervenors as well as any decisions and procedural orders of the arbitral tribunal. This shall apply to other communications from the arbitral tribunal to the parties or Intervenors only insofar as it may be reasonably assumed that such communications are relevant to a subsequent decision of any Concerned Others to join the arbitration. If the DIS transmits decisions by the arbitral tribunal to the parties, the DIS instead of the arbitral tribunal shall transmit such decisions to any designated Concerned Others who have not joined the arbitration.

5.2
Concerned Others who have not joined the arbitration are not entitled to attend case management conferences or the oral hearing.

Article 6 Extension or Amendment of the Subject Matter of the Claim; Withdrawal of a Claim

6.1
An extension or amendment of the subject matter of the claim (including any counterclaim pursuant to Articles 7.5 to 7.9 of the Rules and any joinder of additional parties pursuant to Article 19 of the Rules) or, in case of a shareholder resolution dispute, the extension of the claim to other resolutions, is only admissible with the consent of all Concerned Others.

6.2
A complete or partial withdrawal of a claim is admissible without the consent of the Concerned Others, unless a Concerned Other objects within one month after having been informed of the intended withdrawal of such claim and the arbitral tribunal acknowledges the Concerned Other's legitimate interest in the continuation of the arbitration.

Article 7 Sole Arbitrator

7.1
If the arbitral tribunal is comprised of a sole arbitrator, the parties and Intervenors may jointly nominate the sole arbitrator within one month following the date of transmission of the Request to the Respondent and to all Concerned Others, or, in case of an admissible joinder of a Concerned Other, within one month following such joinder.

7.2
If the Respondent and the Concerned Others have received the Request at different times, the time limit shall be calculated by reference to the time of receipt by the party or Concerned

Other who last received the Request. If Concerned Others join the arbitration at different points in time, the time limit shall be calculated by reference to the last such joinder.

7.3
Where the parties and the Intervenor do not reach an agreement on the sole arbitrator within the time limits provided in Articles 7.1 and 7.2 of these DIS-CDR, upon request of any Claimant, Respondent, or Intervenor, the sole arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules. The third sentence of Article 11 of the Rules shall apply; however, for purposes of such provision, Intervenors shall be deemed equal to parties.

Article 8 Three-Member Arbitral Tribunal

8.1
If the arbitral tribunal is comprised of three arbitrators, the Request, in deviation from Article 5.2 *(vii)* of the Rules, need not contain the nomination of an arbitrator. Notwithstanding the above, any nomination made shall be deemed to be a proposal.

8.2
Within one month following the date of transmission of the Request to the Respondent and all Concerned Others, or in case of an admissible joinder within one month thereafter, the parties and any Intervenors on Claimant's and on Respondent's side, respectively, shall jointly nominate a co-arbitrator. Article 7.2 of these DIS-CDR shall apply, *mutatis mutandis*.

8.3
Where the parties and any Intervenors on Claimant's or on Respondent's side do not jointly nominate an arbitrator within the time limit provided for in Article 8.2 of these DIS-CDR, the two co-arbitrators shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules.

8.4
Articles 12.2 and 12.3 of the Rules shall apply to the nomination and appointment of the President of the arbitral tribunal; however, for purposes of such provisions, Intervenors shall be deemed equal to parties.

Article 9 Consolidation of Jurisdiction in Case of Parallel Proceedings

9.1
Where multiple arbitrations concerning the same subject matter have been initiated that require a uniform decision applying to all parties and Concerned Others, Articles 9.2 to 9.4 of these DIS-CDR shall apply.

9.2
The arbitration that has been commenced at an earlier point in time (the "Primary Arbitration") shall preclude an arbitration commenced at a later point in time (the "Secondary Arbitration"). The Secondary Arbitration shall be inadmissible.

9.3
The priority of multiple requests for arbitration shall be determined by the time of filing of each Request with the DIS. To prove the exact time of day at which the Request was filed with the DIS, the Request (with or without attachments thereto, pursuant to Article 6.1 of the Rules) shall, in deviation from Articles 4.1 and 4.2 of the Rules, always also be sent by fax or email. In case of doubt, the DIS shall determine the priority of multiple requests for arbitration in its discretion. If the DIS considers prima facie that the case described in Article 9.1 of these DIS-CDR exists, it shall so inform the parties and the designated Concerned Others of the pending arbitration.

9.4
If the Claimant in the Secondary Arbitration has filed its Request within the time limit provided for in Article 3.1 of these DIS-CDR, it may join the Primary Arbitration as a designated Concerned Other. In such case, the Request shall be deemed to constitute a joinder to the Primary Arbitration as a designated Concerned Other. Such Claimant shall become an additional claimant in the Primary Arbitration, unless it objects within the time limit for joinder provided in Article 3.1 of these DIS-CDR. Such additional claimant may participate in the constitution of the arbitral tribunal pursuant to Articles 7 or 8 of these DIS-CDR and name additional Concerned Others in the Primary Arbitration pursuant to Article 4.1 of these DIS-CDR. Insofar as Articles 7 and 8 of these DIS-CDR make reference to the time of the joinder of a Concerned Other for the calculation of time limits, it shall be deemed, for the purposes of this Article 9.4 of these DIS-CDR, that the joinder has occurred on the day on which the time limit for joining the arbitration pursuant to Article 3.1 of these DIS-CDR has expired. If the Claimant in the Secondary Arbitration expressly consents to join the Primary Arbitration before the expiry of the time limit provided for in Article 3.1 of these DIS-CDR, the time of consent shall apply for the calculation of time limits. If the Claimant in the Secondary Arbitration files timely objections, or if it files the Request after the time limit provided in Article 3.1 of these DIS-CDR has expired, such Claimant shall not be considered a party to the Primary Arbitration. Irrespective thereof, the Secondary Arbitration is inadmissible. The foregoing is without prejudice to the Claimant's rights pursuant to Article 4.3 of these DIS-CDR.

Article 10 Confidentiality

Article 44 of the Rules shall also apply to all designated Concerned Others.

Article 11 Extension of Effects of the Arbitral Award

11.1
The effects of an arbitral award extend to those Concerned Others that have been designated as such within the time limits provided in these DIS-CDR, regardless of whether they have availed themselves of the opportunity to join the arbitration as a party or as an Intervenor. The shareholders designated as Concerned Others within the provided time limits agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

11.2
The effects of an arbitral award also extend to those Concerned Others that have been designated as such after the time limits provided in these DIS-CDR, but that have joined the arbitration as a party or as an Intervenor. These Concerned Others also agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

Article 12 Costs

12.1
Concerned Others who have not joined the arbitration as a party or as an Intervenor are not entitled to reimbursement of costs.

12.2
When calculating the costs pursuant to Annex 2 of the Rules (Schedule of Costs), a designated Concerned Other shall be treated as a party.

Annex 6
Dispute Management Rules

Article 1 Scope of Application

1.1
These Dispute Management Rules (the "DMR") shall apply when
(i) the parties have agreed to conduct dispute management proceedings under the DMR,

or

(ii) a party initiates dispute management proceedings under the DMR and the other party consents thereto.

1.2
With respect to any dispute management proceedings, the version of the DMR in force on the date of their commencement pursuant to Article 2.4 of these DMR shall apply.

Article 2 Initiation and Commencement of the Proceedings

2.1
A party wishing to commence dispute management proceedings under the DMR shall file a written application with the DIS. The application shall contain:
(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the applicant;
(iii) a brief description of the dispute and the underlying facts;

and

(iv) the asserted claims and information regarding the amount in dispute.

2.2
If at the time of the application there is an agreement to conduct dispute management proceedings under the DMR, the applicant shall submit a copy of such agreement together with the application pursuant to Article 2.1 of these DMR, as well as evidence of payment to the DIS of half of the costs pursuant to Article 9.1 *(i)* and *(ii)* of these DMR. The DIS shall send the application for the commencement of dispute management proceedings to the other party and shall request the other party to pay the other half of the costs pursuant to Article 9.1 *(i)* and *(ii)* of these DMR.

2.3
If the applicant states that at the time of the application there is no agreement to conduct dispute management proceedings under the DMR, or no agreement is filed with the application pursuant to Article 2.2 of these DMR, the DIS shall send the application to commence

dispute management proceedings to the other party requesting that the latter, within 14 days, provide the DIS with its written consent to conduct such proceedings. If the other party fails to provide its consent within such time period, no dispute management proceedings shall take place. If such consent is provided, the DIS shall request the parties to pay the costs pursuant to Article 9 *(i)* and *(ii)* of these DMR.

2.4
The dispute management proceedings shall commence:
(i) in the case of Article 2.2 of these DMR, on the date on which the application for commencement of dispute management proceedings is filed with the DIS;

or

(ii) in the case of Article 2.3 of these DMR, on the date on which the consent of the other party is filed with the DIS.

The DIS shall inform the parties about the date of commencement of the proceedings.

Article 3 Appointment of a Dispute Manager

After commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, and after informal consultation with the parties, the DIS shall appoint an impartial and independent Dispute Manager. The DIS may refrain from appointing a Dispute Manager unless and until the costs pursuant to Article 9.1 *(i)* and *(ii)* of these DMR have been paid.

Article 4 Joint Consultation

4.1
The Dispute Manager shall contact the parties promptly, and no later than one week following his or her appointment, in order to determine, together with the parties, the date and venue for a joint consultation. The Dispute Manager may prepare the joint consultation at his or her discretion and may provide guidance to the parties in advance.

4.2
During the joint consultation, the Dispute Manager shall comprehensively consult and assist the parties in deciding upon the selection and design of the dispute resolution procedure.

4.3
The parties agree to endeavour, with the assistance of the Dispute Manager, to agree on an appropriate dispute resolution procedure during or promptly after the joint consultation. The parties and the Dispute Manager are free in their selection of such procedure. The Dispute Manager may make proposals regarding the appropriate dispute resolution procedure, but is not authorized to make any decisions.

Article 5 Termination of the Proceedings

5.1
The dispute management proceedings shall terminate:
(i) on the date of the written declaration by the parties that they have agreed upon a dispute resolution procedure pursuant to Article 4.3 of these DMR;
(ii) on the date on which a party files with the DIS a written termination notice;
(iii) on the date on which the Dispute Manager files with the DIS a written termination notice, in particular when he or she considers that conducting the joint consultation would not serve a purpose or that the parties cannot be expected to reach an agreement;

or

(iv) if the parties have failed to agree on a dispute resolution procedure two months from commencement of the proceedings pursuant to Article 2.4 of these DMR.

5.2
The DIS may decide to terminate the dispute management proceedings at any time if, within the time limit set by the DIS, the costs pursuant to Article 9 of these DMR have not been paid.

Article 6 Prescription

The statute of limitations applicable to the claims described in the application shall be tolled upon commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, until three months after the termination of the proceedings pursuant to Article 5 of these DMR.

Article 7 Special Provisions in the Event of a Pending Dispute Resolution Procedure

7.1
If there is a dispute resolution procedure already pending between the parties that involves matters related to the dispute management proceedings, the parties and the Dispute Manager during the joint consultation should additionally take into consideration any effects on such procedure.

7.2
If the pending procedure is an arbitration under the DIS Arbitration Rules, in addition to Article 7.1 of these DMR the following shall apply:
(i) no Administrative Fees pursuant to these DMR shall be due;
(ii) the time limit stipulated in Article 2.3 of these DMR for the other party to provide its consent shall be five days;

and

(iii) in deviation from Article 5.1 *(iv)* of these DMR, the dispute management proceedings shall terminate if, within 30 days from commencement of the dispute resolution proceedings pursuant to Article 2.4 of these DMR, the parties do not agree on a dispute resolution procedure other than the already pending dispute resolution procedure pursuant to Article 7.1 of these DMR.

Article 8 Confidentiality

8.1
Unless the parties agree otherwise, the parties and their outside counsel, the Dispute Manager, the DIS employees, and any other persons associated with the DIS who are involved in the dispute management proceedings shall not disclose to anyone any information concerning the proceedings, including in particular the existence of the proceedings, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available. Disclosures may nonetheless be made to the extent required by applicable law or by other legal duties.

8.2
Unless the parties agree otherwise, no party shall nominate the Dispute Manager as a witness in a procedure that relates to the subject matter of the dispute management proceedings.

8.3
Unless the other party consents thereto, no party shall appoint or otherwise engage the Dispute Manager as party-appointed arbitrator, expert, counsel, or advisor in any arbitration, litigation, or alternative dispute resolution proceedings that relate to the subject matter of the dispute management proceedings.

8.4
The DIS may publish statistical data or other general information concerning dispute management proceedings, provided that no party is identified by name and that no particular dispute management proceedings are identifiable on the basis of such information.

8.5
Article 8 of these DMR is notwithstanding any contractual confidentiality and secrecy obligations of the parties.

Article 9 Costs

9.1
The costs of the dispute management proceedings (including the DIS Administrative Fees and the fees and expenses of the Dispute Manager) shall be determined as follows:
(i) The DIS Administrative Fees shall amount to 500 €.
(ii) The Dispute Manager shall be entitled to a flat fee of 2.500 €, which shall include the preparation for, and the conduct of, the first joint consultation, and which shall be due even if, for reasons beyond the Dispute Manager's control, no joint consultation takes place.
(iii) The Dispute Manager's necessary and documented expenses, in particular travel and lodging costs, shall be reimbursed.

9.2
Paragraph 6 of Annex 2 to the DIS Arbitration Rules in respect of value added tax shall apply, *mutatis mutandis*.

9.3
The parties shall bear in equal shares, and are jointly and severally liable for, the costs of the dispute management proceedings pursuant to Article 9.1.

Article 10 Limitation of Liability

For any acts or omissions in connection with the dispute management proceedings, a Dispute Manager, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the proceedings shall not be liable, except in case of an intentional breach of duty or gross negligence.

DIS Integrity Principles

(1) The following provisions shall aim at making transparent the Integrity Principles of the DIS applicable in arbitrations under the DIS Arbitration Rules concerning:
(i) the nomination of arbitrators by the DIS Appointing Committee; and
(ii) the acceptance of mandates as arbitrators or external counsel by members of organs or other officials of the DIS.

(2) The Integrity Principles serve to promote trust in arbitration and are to be interpreted and applied for this purpose. All members of organs of the DIS and all persons exercising functions within the DIS concerning the administration of DIS arbitrations are obligated to promote trust in arbitration. They are also required to act in the spirit of the Integrity Principles even in cases for which the following provisions do not contain specific instructions, and to resolve possible conflicts of interest on the basis of the highest standards of integrity.

(3) Members of the DIS Appointing Committee (Article 14 of the DIS Statutes) shall not:
(i) simultaneously be members of the Board of Directors or the Advisory Board (Articles 7 and 9 of the DIS Statutes);
(ii) serve more than two terms in office;
(iii) appoint members of the Board of Directors or the Advisory Board or the DIS Secretariat or the DIS's external auditors as arbitrators for arbitrations under the DIS Arbitration Rules;
(iv) during their term of office, accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules.

They may, however, during their term of office, act as external counsel in an arbitration under the DIS Arbitration Rules. In this case, they may not participate in decisions relating to this arbitration pursuant to Article 14.6 of the DIS Statutes.

(4) Members of the Secretariat or other employees of the DIS may not:
(i) accept mandates as arbitrators for an arbitration under the DIS Arbitration Rules;
(ii) act as external counsel in an arbitration under the DIS Arbitration Rules.

(5) Executive members of the DIS Board of Directors pursuant to Section 26 of the German Civil Code (Article 7.2 of the DIS Statutes) may not:
(i) accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules;
(ii) act as external counsel in an arbitration under the DIS Arbitration Rules.

(6) Non-executive members of the DIS Board of Directors who do not have a power of attorney (Article 7 of the DIS Statutes) and members of the DIS Advisory Board (Article 9 of the DIS Statutes) may:
(i) accept mandates as arbitrators in arbitrations under the DIS Arbitration Rules, taking into account the restrictions of Paragraph 3 *(iii)*;
(ii) act as external counsel in proceedings under the DIS Arbitration Rules.

Deutsche Institution für Schiedsgerichtsbarkeit e.V.
German Arbitration Institute
www.disarb.org
dis@disarb.org

These Arbitration Rules are drafted in a single original, of which the German and English texts are equally authoritative.

EXHIBIT 1.C

Document submitted for
certified translation

Urteil des Bundesgerichtshofs vom 15.5.1998, V ZR 89/97, Rdnr. 11 (juris):

Der Erklärungsempfänger soll nicht im Ungewissen über den durch die Willenserklärung des Berechtigten neu zu schaffenden Rechtszustand sein, die grundsätzliche Bedingungsfeindlichkeit dient also seinem Schutz. Wie beim Rücktrittsrecht schafft der Erklärende aber durch seine sogenannte Rechtsbedingung, d. h. durch die Abhängigkeit seiner Erklärung von der behördlichen Genehmigung (vgl. z. B. Palandt–Heinrichs, BGB, Vorb. § 158 Rdnr. 5), keine untragbare Ungewißheit über den neuen Rechtszustand (vgl. BGHZ 97, 264 [267] = NJW 1986, 2245 = LM § 349 BGB Nr. 1).

Certified translation
from the German language

Judgment of the German Federal Court of Justice of May 15, 1998, V ZR 89/97, marginal number 11 (juris):

The recipient of the declaration should not be in uncertainty about the new legal situation to be created by the declaration of intent of the entitled party; the general impermissibility of conditions thus serves to protect the former. As in the case of the right of withdrawal, however, the declaring party does not create by its so-called legal condition, i.e. by making its declaration dependent on official approval (cf. e.g. Palandt-Heinrichs, BGB, prelim. Remarks on § 158, no. 5), any intolerable uncertainty about the new legal situation (cf. BGHZ 97, 264 [267] = NJW 1986, 2245 = LM § 349 BGB No. 1).

I, the undersigned,
as certified translator,
hereby confirm that the above
is a true and complete translation
of the document presented to me
from the German language.

Ludwigshafen, this October 21, 2021

EXHIBIT 1.D

Document submitted for
certified translation

Urteil des Bundesgerichtshofs vom 26.9.1996, I ZR 194/95, Rdnr. 24 (juris):

Schließlich beruft sich die Anschlußrevision ohne Erfolg auf die auflösende Bedingung, unter der die Kl. die Unterwerfungserklärung abgegeben hat. Mit dieser Begründung hat die Kl. ihre Verpflichtung vom "rechtlichen Bestand" der Rechtsprechung des OLG Hamm zur Werbung mit Zollangaben abhängig gemacht; danach sollte die Unterwerfungserklärung entfallen, wenn das OLG seine Rechtsprechung zur Wettbewerbswidrigkeit von Zollangaben aufgibt oder der BGH die Wettbewerbswidrigkeit solcher Angaben in der Werbung für Computer–Bildschirme verneint. Eine solche Bedingung ist – ungeachtet ihres (hier möglicherweise zu verneinenden) Einflusses auf die Wiederholungsgefahr (vgl. BGH, NJW-RR 1993, 1001 = LM H. 9/1993 § 1 UWG Nr. 626 = GRUR 1993, 677 (679) = WRP 1993, 480 – Bedingte Unterwerfung) – zwar grundsätzlich bürgerlichrechtlich wirksam.

Certified translation
from the German language

Judgment of the German Federal Court of Justice of September 26, 1996, I ZR 194/95, marginal number 24 (juris):

Finally, the cross-appeal relies without success on the condition subsequent subject to which the plaintiff issued the declaration of submission. With this justification, the plaintiff made its obligation dependent on the "legal continuance" of the case law of the Higher Regional Court of Hamm on advertising with information relating to inches; according to this, the declaration of submission was to lapse if the Higher Regional Court abandoned its case law on the anti-competitive nature of information relating to inches or the Federal Supreme Court denied the anti-competitive nature of such information in advertising for computer monitors. Such a condition – irrespective of its influence on the risk of repetition (which may be negated here) (cf. BGH, NJW-RR 1993, 1001 = LM H. 9/1993 § 1 UWG No. 626 = GRUR 1993, 677 (679) = WRP 1993, 480 – Conditional Submission) – is in principle effective under civil law.

I, the undersigned,
as certified translator,
hereby confirm that the above
is a true and complete translation
of the document presented to me
from the German language.

Ludwigshafen,
this October 21, 2021

EXHIBIT 2

DECLARATION OF MICHAEL J. WAY IN SUPPORT OF ZF AUTOMOTIVE US INC.'S APPLICATION FOR STAY AND REQUEST FOR IMMEDIATE STAY

I, Michael J. Way, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. My name is Michael J. Way. I am a resident of Bloomfield Hills, Michigan.

2. I submit this Declaration in support of the reply of ZF Automotive US Inc. ("ZF US"), in support of its stay application. I make this Declaration based upon my personal knowledge, and in my capacity as Assistant Secretary of ZF US.

3. Luxshare has questioned the validity of ZF US's commitment not to invoke the applicable statute of limitations in the German arbitration proceeding until four months after the Supreme Court has resolved this matter, in part because of a supposed lack of proof that I am authorized to bind ZF US, and in part because the commitment was conditional on a future decision by the Supreme Court to grant the requested stay.

4. In this declaration, I categorically reaffirm and reissue ZF US's commitment not to invoke the applicable statute of limitations until four months after the Supreme Court has resolved this matter, if a stay is granted.

5. To address Luxshare's purported concern about my authorization to bind ZF US, I am attaching here a certified resolution of the Board of Directors formally conferring such authorization upon me, and ratifying my declaration of October 13, 2021. *See* Stay Reply Ex. 3; 8 Del. C. § 142.

6. To address Luxshare's concern based on the fact that ZF US's commitment is conditional on the Supreme Court's decision to grant the stay, I hereby commit to the Supreme Court that, if a stay is granted, I will subsequently execute, within five business days of that

decision, an unconditional and irrevocable unilateral commitment on behalf of ZF US not to invoke the applicable statute of limitations until four months after the Supreme Court resolves this case. I recognize that my failure to execute such an unconditional and irrevocable commitment within five business days of a stay being granted will be a valid basis for the Supreme Court to vacate the stay.

7. Luxshare has also indicated that, even if the Supreme Court grants a stay of the discovery production deadline, it may choose to file its arbitration before December 31, 2021, notwithstanding ZF US's commitment not to invoke the statute of limitations until four months after the Supreme Court has resolved this matter. Under the DIS Rules on Expedited Proceedings, the arbitral panel shall ordinarily issue a final award within six months after an initial case management conference. Luxshare indicated that this target deadline may prejudice Luxshare, if it has been unable to receive the Section 1782 discovery at issue by the time the six month period expires.

8. On behalf of ZF US, I commit that if the Supreme Court grants a stay, and if Luxshare subsequently files its arbitration before December 31, 2021, ZF US will ask the arbitral panel to extend the six month target deadline for rendering a decision, for whatever reasonable amount of time the arbitral panel believes is necessary to allow (1) the Supreme Court to render an ultimate decision in this case; (2) Luxshare to receive any discovery that the Supreme Court concludes it is entitled to receive; (3) ZF US to ask the arbitral panel to order reciprocal discovery from Luxshare; and (4) the parties to make appropriate use of whatever discovery they have received in the arbitral proceeding.

9. ZF US will make this request to the arbitral panel no later than at the initial case management conference. ZF US understands that its failure to make this request will be a valid basis for the Supreme Court to deny certiorari or dismiss this case.

10. Both of ZF US's commitments—not to invoke the statute of limitations, and to agree to extend the six month target deadline—are designed to eliminate any prejudice that would conceivably flow to Luxshare if this Court were to grant the requested stay.

Date: October 22, 2021
Bloomfield Hills, Michigan

s/ Michael J. Way

EXHIBIT 3

CERTIFICATE OF ZF AUTOMOTIVE U.S. INC.

The undersigned, Scott Relf, does hereby certify that:

1. I am a duly elected, qualified and acting Assistant Secretary of ZF Automotive U.S. Inc., formerly known as TRW Automotive Inc., a Delaware corporation (the "Company");

2. That Sarah A. Kirkwood is the duly appointed sole member of the board of directors of the Company;

3. That Michael J. Way is an Assistant Secretary of the Company and that he is authorized to execute and deliver Affidavits on behalf of the company in the Luxshare matter; and

4. Attached hereto and marked as "Exhibit A" is a true and correct copy of the resolutions, as adopted by the board of directors on October 21, 2021 and that said resolutions have not been modified, revoked, or rescinded in any manner and are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand as a duly authorized officer of the Company this 22nd day of October 2021.

Scott Relf
Assistant Secretary

Exhibit A

AFFIDAVITS IN THE MATTER OF *ZF AUTOMOTIVE US INC., GERALD DEKKER, AND CHRISTOPHE MARNAT* V. *LUXSHARE, LTD.*, U.S. SUP. CT. NO. 21-401

WHEREAS, the Board is aware that the Company is a party to the above named lawsuit (the "Matter") regarding a request for discovery bearing on the sale of certain business operations to Luxshare, Ltd.;

WHEREAS, the Board has determined that it is in the best interests of the Company to specifically authorize its officers to approve, execute, and deliver declarations and/or affidavits in the Matter on behalf of the Company.

NOW, THEREFORE, BE IT RESOLVED, that the President, any Vice President, the Secretary and any Assistant Secretary of the Company, including Assistant Secretary Michael J. Way (each, an "Authorized Person" and together, the "Authorized Persons"), be, and each of them hereby is, authorized to approve, execute, and deliver any declaration or affidavit in the Matter as any such Authorized Person deems appropriate;

RESOLVED FURTHER, that the Authorized Persons be, and each of them hereby is, authorized and empowered to execute and deliver, in the name and on behalf of the Company, all agreements, documents and other instruments and to take any action such Authorized Person deems necessary, appropriate or advisable to effectuate the purposes and intent of these resolutions; and

RESOLVED FURTHER, that the Authorized Persons be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Company, to do and perform, or cause to be done and performed, any and all such acts, deeds and things, to make, execute and deliver, or cause to be made, executed and delivered, any and all instruments, certificates, documents and agreements and to take any and all actions as such Authorized Person may deem necessary or in their opinion desirable to effectuate the purposes and intent of these resolutions and any transactions contemplated thereby, including the performance by the Company of its obligations under any agreement or document referred to herein or therein; and the execution by any Authorized Person of any such agreement, undertaking, document, instrument or certificate or the payment of any fees and expenses or the engagement of such persons or the doing by any of them of any act in connection with the foregoing matters shall conclusively establish and evidence (i) such Authorized Person's determination as to the necessity or desirability of any particular agreement or action, (ii) such Authorized Person's authority therefor, and (iii) the approval and ratification by this Board of the agreements, undertakings, documents, instruments or certificates so executed, the expenses so paid and the actions so taken.

OMNIBUS RESOLUTIONS

RESOLVED FURTHER, that the director and officers of the Company and its subsidiaries be, and each of them hereby is, authorized and directed, in the name and on behalf of the Company, to take such further action as each may deem necessary or desirable to effectuate the purposes and intent of the foregoing resolutions; and

RESOLVED FURTHER, that any and all actions heretofore taken by the directors and officers of the Company in connection with the matters contemplated by the foregoing resolutions be, and they hereby are, approved, ratified, and confirmed in all respects as if such actions had been presented to the Board for its approval prior to such actions being taken.

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings	Case No. 2:20-mc-51245-LJM-APP Hon. Laurie J. Michelson

Motion to Quash Improper Subpoenas and Brief in Support

ZF Automotive US Inc. ("ZF"), Gerald Dekker ("Dekker"), and Christophe Marnat ("Marnat" and, together with ZF and Dekker, "Respondents"), pursuant to Fed. R. Civ. P. 45 and 28 U.S.C. § 1782, move this Court to enter an Order quashing three subpoenas issued to each Respondent because they do not meet the statutory prerequisites for authorizing relief under that statute and, even if they did, the discretionary factors to be considered in connection with an application under 28 U.S.C. § 1782 weigh heavily in favor of quashing the subpoenas. This Motion is based on the facts, arguments, legal authority, and other supporting materials in Respondents' Brief in Support of this Motion, which is incorporated by reference.

As required by Local Rule 7.1(a), counsel for Respondents has conferred with counsel for Luxshare Ltd. (the issuer of the Subpoena) in telephone conversations and e-mails and have discussed the issues relating to the Subpoena in an effort to

address them without bringing the matter before the Court. Despite good faith effort to that end, counsel were not able to resolve the matter.

For these reasons, explained more fully in the accompanying Brief in Support, Respondents request that the Court grant their Motion and quash the subpoenas purportedly issued to them under 28 U.S.C. § 1782.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings	Case No. 2:20-mc-51245-LJM-APP Hon. Laurie J. Michelson

Brief in Support of Motion to Quash Improper Subpoenas

("Although the petitioners attest that they have retained counsel to investigate and prosecute their claims in the planned proceedings, the Court is not persuaded that this means that a dispositive ruling by a foreign tribunal is within reasonable contemplation."). That is particularly true considering Luxshare's unexplained delay in commencing an arbitration, and its inability to credibly explain why it must get Section 1782 discovery before the arbitration has even commenced. Such circumstances do not suggest that an arbitration is within reasonable contemplation; rather, they are indicators that this exercise is nothing more than pre-suit exploration by a party stricken with buyer's remorse and searching for a claim.[4]

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[4] Respondents also submit that the DIS is not a foreign tribunal within the meaning of Section 1782. Respondents are aware of and acknowledge the Sixth Circuit's decision in *In re Application to Obtain Discovery for Use in Foreign Proceedings*, 939 F.3d 710, 721 (6th Cir. 2019), which held that a private arbitral body empowered to issue binding decisions qualifies as a Section 1782 "tribunal." Respondents note, however, that there is currently a circuit split on this precise issue, and a party in at least one such case is pursuing a petition for a writ of certiorari to the Supreme Court of the United States. *See* Mot. of Rolls-Royce PLC to Stay Pending the Filing of a Pet. for Writ of Cert., *Servotronics Inc. v. Boeing Co.*, No. 18-2454, (4th Cir. 2020), ECF No. 52.

Respectfully, Respondents believe that the more well-reasoned decisions are those that have held that foreign private arbitrations are *not* Section 1782 tribunals. *See, e.g.*, *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 881 (5th Cir. 1999); *NBC v. Bear Stearns & Co.*, 165 F.3d 184, 185-86 (2d Cir. 1999). In *In re Application*, the Sixth Circuit based its decision on an understanding that, at the time Section 1782 was enacted, the term "tribunal" was generally understood to include private arbitrations. But as the court discussed in *In re Storag Etzel GmbH*—which also addressed discovery in aid of a DIS arbitration—"courts routinely used 'tribunal' before 1964 to refer only to a court and only to a jury." -- F. Supp. 3d. --, 2020 WL 1849714, at *3 n.6 (D. Del. Apr. 13, 2020). The context, purpose, and

II. THE DISCRETIONARY *INTEL* FACTORS WEIGH HEAVILY IN FAVOR OF GRANTING THE MOTION TO QUASH

Even if the Court finds the statutory criteria are met, the discretionary factors decidedly counsel against permitting such discovery. *First*, ZF US would be a party in any potential DIS arbitration—a factor that weighs heavily against permitting the application to proceed. *Second*, the DIS panel has yet to even be formed, so it is impossible to gauge its "receptivity" to such an expansion of the types of limited discovery typically permitted in expedited proceedings. That is reason enough to stop this discovery from proceeding at this time. But regardless, all indicators—including the DIS Rules—confirm that such discovery is decidedly improper, or at least highly unusual in DIS arbitrations. *Third*, and particularly in light of all that is known about the reluctance of DIS arbitration panels to take such expansive pre-trial discovery, enforcing the subpoenas would be a license to circumvent the proof-gathering restrictions likely to be imposed by the DIS panel. *Fourth*, the sweeping discovery that Luxshare seeks—in the form of both documents and testimony—is wholly overbroad, unduly burdensome, and a transparent attempt to scorch the earth in hopes of finding any evidence that would justify commencing arbitration.

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legislative history of the term "tribunal" confirm that it does not encompass private arbitrations. *See, e.g.*, *id.* at 3. Further, even if some type of arbitral panels could constitute Section 1782 "tribunals," a DIS panel is not one of them. *See, e.g.*, *In re Consorcio Ecuatoriano de Telecomunicaciones S.A.*, 685 F.3d 987 (11th Cir. 2012) *vacated and superseded,* 747 F.3d 1262 (11th Cir. 2014) (articulating a four-factor "functional approach" for assessing whether an arbitral body is a "tribunal").

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: LUXSHARE, LTD. v
ZF AUTOMOTIVE US, INC.,
ET AL

Magistrate Judge Anthony P. Patti
No. 20-51245

_____/

MOTION TO QUASH IMPROPER SUBPOENAS

(Via Zoom Video Conferencing Video)

Detroit, Michigan -- Wednesday, February 24, 2021

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TITLE, (Cont.)

ALSO PRESENT:

Ms. Anna Masser
Mr. Christoph Baus

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intellectual -- it excites me intellectually to read briefs as well done as these. And so I feel quite well informed. And what I don't need you to do is rehash what's in the briefs. I think you're good enough attorneys to realize that anyway.

What I'd like to do is start with questions for each side. And so ZF is going to go first because it's their motion. I'm going to ask them a number of questions, maybe an half an hour's worth of questions that came to me from reading the briefs and then I'll let you wrap it up 15 minutes or so of whatever more you want to say that you don't think was covered. But I don't need you to just go through an outline that points out things in the brief, because you can rest assure that I've read the briefs thoroughly.

So, with that in mind, let's have ZF address The Court first and I want to ask some questions to start with, okay? So, remind me who that's going to be?

MR. BERKOWITZ: It's Sean Berkowitz, Your Honor, I will be on the hot seat, so to speak.

Questioning By The Court

THE COURT: Okay. Mr. Berkowitz, let me start by asking this. There's a suggestion in your brief, and it's in a footnote, that notwithstanding binding Sixth Circuit authority from 2019, that I should not consider a private arbitration body to be -- to constitute litigation or in use in foreign litigation. And I'm wondering how it is that I can ignore what

appears to me to be binding Sixth Circuit authority? And specifically, so that we're all on the same page here, the case I'm referring to is In Re Application to Obtain Discovery for Use in Foreign Proceedings, and then it's Abdul Latif, L-A-T-I-F, Jameel, J-A-M-E-E-L, Transportation Company versus FedEx, 939 Federal Reporter 3d (6th Cir. 2019). And I've read that case and it appears to clearly say that a tribunal under Section 1782 of Title 28 of the United States Code encompasses private arbitrations.

You suggest that there's a split in the Circuits. That other Circuits have gone differently on that and that the Supreme Court is considering a petition for certiorari on that issue. But aren't I bound on that by the Sixth Circuit's ruling from 2019?

MR. BERKOWITZ: Judge, you obviously are aware and we acknowledge this, the binding Sixth Circuit precedent in Footnote 4 of page 11 of our brief.

We raised the issue both because we think that the Sixth Circuit wrongly decided and the more well-reasoned decisions come from The Second, The Fifth and The 11th. And given the pendency, at least, of a writ for certiorari there is a possibility that that would be granted and overturn the Sixth Circuit precedent. We don't want to do anything that would waive our rights to make that argument.

And so I don't mean to suggest that we were looking to

hide. We cited the Sixth Circuit precedent. I believe you're bound by it. But there is a possibility that an even higher court would say that that was wrongly decided and we would like to have the ability to come back and not have waived that argument.

THE COURT: Okay. Thank you. Do you know where the certiorari process stands right now?

MR. BERKOWITZ: There is a -- I looked in the weeks leading up to this, there have been amicus briefs filed in support of the petition. It has not been granted or denied.

THE COURT: Do you know when it was filed because they usually get to them relatively quickly, at least, at this point in the year?

MR. BERKOWITZ: I believe -- it -- what I can tell you is it was filed last year, but I don't know the specific date and we're watching for it. And to the extent that it is granted, Your Honor, before you would issue an opinion we would supplement just to make you aware of that fact.

THE COURT: All right. I would appreciate being aware if certiorari is granted.

Okay. My next question is the statute of limitations in this case, am I correct in believing that it gives Luxshare until the end of this year, 2021, to file the arbitration?

MR. BERKOWITZ: That is correct, Your Honor. What I would say is that certain claims have already fallen by the

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings	Case No. 2:20-mc-51245-LJM-APP Hon. Laurie J. Michelson

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Objections to Opinion and Order Granting In Part and Denying In Part Respondents' Motion to Quash Improper Subpoenas

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it might not even satisfy the statutory prerequisites of § 1782. On March 22, 2021, the Supreme Court granted certiorari in *Servotronics, Inc. v. Rolls-Royce plc.*, 2021 WL 1072280 (U.S. Mar. 22, 2021) (petition for cert. filed Dec. 7, 2020), to address whether a private commercial arbitration—such as a DIS Panel—is a "foreign tribunal" under § 1782. There is currently a Circuit split on the issue, with the Second, Fifth, and Seventh Circuits holding that § 1782 does not apply to foreign private arbitrations, and the Fourth and Sixth Circuits holding that it does.[7]

If the Supreme Court determines that foreign private arbitrations are not subject to § 1782, then Luxshare's petition does not even pass the threshold statutory inquiry. Thus, even though the discretionary factors counsel against allowing § 1782 discovery, the Court should—at the very least—hold decision on the motion in abeyance pending the Supreme Court's decision on a potentially dispositive issue.

CONCLUSION

For these reasons, Respondents respectfully asks the Court to quash the Section 1782 Subpoenas. Alternatively, ZF US respectfully asks the Court to stay enforcement of the Opinion pending a decision in *Servotronics, Inc.*

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[7] Respondents acknowledge the Sixth Circuit's decision in *In re Application*, 939 F.3d at 721, which held that a private arbitral body empowered to issue binding decisions qualifies as a § 1782 "tribunal," but believe that the more well-reasoned decisions hold that foreign private arbitrations are *not* § 1782 tribunals. *See, e.g.*, *Rep. of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 881 (5th Cir. 1999); *NBC v. Bear Stearns & Co.*, 165 F.3d 184, 185-86 (2d Cir. 1999).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings	Case No. 2:20-mc-51245-LJM-APP Hon. Laurie J. Michelson

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Motion to Stay Pursuant to Federal Rule of Appellate Procedure 8 and Brief in Support

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The Supreme Court has granted certiorari in the case of *Servotronics v. Rolls-Royce PLC*, 141 S. Ct. 1684 (2021), to resolve a circuit split regarding whether a private foreign arbitral panel constitutes a "foreign tribunal" under 28 U.S.C. § 1782. If the Supreme Court follows the reasoning of the Second, Fifth, and Seventh Circuits, then Luxshare cannot meet the threshold statutory requirements for the relief it seeks, and its petition will fail as a matter of law—it will not be entitled to any discovery at all. Further, Respondents intend to raise at least three questions of first impression in their appeal to the Sixth Circuit. Each of those issues have the potential to be outcome determinative and deny Luxshare the right to the discovery it seeks through its application.

For this and other substantive reasons, ZF Automotive US Inc. ("ZF US"), Christophe Marnat, and Jerry Dekker (collectively, "Respondents") intend to appeal

the Court's July 1, 2021, order to the Sixth Circuit. A stay pending Respondents' appeal and guidance from the Supreme Court will maintain the status quo, conserve the Court's and litigants' resources, and not prejudice any party. Respondents respectfully seek a stay of discovery pursuant to Federal Rule of Appellate Procedure 8 pending resolution of their appeal.

CERTIFICATE OF COMPLIANCE WITH E.D. MICH. L.R. 7.1

Consistent with Local Rule 7.1, Respondents' counsel spoke with Luxshare's counsel and explained the nature this motion but did not obtain concurrence before filing this motion.

Respectfully submitted,

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Counsel for Respondents

Date: July 16, 2021

are the more well-reasoned decisions—rather than the Sixth Circuit's decision in *In re Application to Obtain Discovery for Use in Foreign Proceedings*.[2] And if the Supreme Court agrees with the Second, Fifth, and Seventh Circuits, Luxshare's application for discovery should have been dead on arrival. That alone establishes the existence of a "substantial legal question" justifying a stay. *Simon Property Group*, 262 F. Supp. 2d at 798. The Supreme Court has set oral argument in *Servotronics* for October 5, 2021, and there is thus every reason to believe that the Supreme Court will issue its decision before the Sixth Circuit decides Respondents' appeal.

Even beyond *Servotronics*, Respondents' own appeal will present at least three issues that the Sixth Circuit has yet to consider. First, Respondents' appeal raises a question that goes to the heart of the proper use of this statute and will give

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[2] There, the Sixth Circuit held that foreign private arbitrations are § 1782 tribunals—but based that decision on an understanding that, at the time § 1782 was enacted, the term "tribunal" was generally understood to include private arbitrations. 939 F.3d 710, 721 (6th Cir. 2019). But as a recent decision also addressing discovery in aid of a DIS arbitration explained, that premise is wrong: "[C]ourts routinely used 'tribunal' before 1964 to refer only to a court and only to a jury." *In re Storag Etzel GmbH*—which -- F. Supp. 3d. --, 2020 WL 1849714, at *3 n.6 (D. Del. Apr. 13, 2020). The context, purpose, and, legislative history of the term "tribunal" confirm that it does not encompass private arbitrations. *See, e.g., id.* at 3. Further, even if *some* type of arbitral panels could constitute Section 1782 "tribunals," a DIS panel is not one of them. *See, e.g., In re Consorcio Ecuatoriano de Telecomunicaciones S.A.*, 685 F.3d 987 (11th Cir. 2012) *vacated and superseded*, 747 F.3d 1262 (11th Cir. 2014) (articulating a four-factor "functional approach" for assessing whether an arbitral body is a "tribunal").

No. 21-2736

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUXSHARE, LTD.,
Petitioner-Appellee,

v.

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,
Respondents-Appellants.

On Appeal from United States District Court for the Eastern District of Michigan,
No. 2:20-mc-51245-LJM-APP

MOTION BY RESPONDENTS-APPELLANTS FOR STAY PENDING APPEAL AND INTERIM STAY PENDING CONSIDERATION OF THIS MOTION

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Counsel for Respondents-Appellants ZF Automotive US, Inc., Gerald Dekker, and Christophe Marnat

On December 4, 2020, ZF timely moved to quash the subpoenas on various grounds, including that the application should have been denied in its entirety. *See* Mot. to Quash, RE6, PageID.212-305. ZF argued that Luxshare's application did not satisfy two of Section 1782's statutory prerequisites—namely, the DIS arbitration was not "within reasonable contemplation," and the arbitral panel was not a "tribunal" within the meaning of Section 1782. *See* Br. on Mot. to Quash, RE6, PageID 232-34 & n.4. Although ZF recognized that this Court has held that a private arbitral body qualifies as a Section 1782 tribunal, *see In re Application to Obtain Discovery for Use in Foreign Proceedings*, 939 F.3d 710, 721 (6th Cir. 2019), ZF also noted there was a circuit split on this issue. ZF thus preserved its argument that the prospective DIS panel was not a "tribunal," consistent with the law in the Second, Fifth, and Seventh Circuits, as well as various district courts. *See* Br. on Mot. to Quash, RE6, PageID.234 n.4. Three days later, a petition for a writ of certiorari was filed before the Supreme Court in *Servotronics, Inc. v. Rolls-Royce*, No. 20-794 (filed Dec. 7, 2020), presenting the question whether a foreign private arbitration is a Section 1782 "tribunal."

ZF further argued that even if Luxshare *had* met the statutory prerequisites, the subpoenas should still be quashed because the four applicable discretionary factors weighed against permitting such discovery. *See* Br. on Mot. to Quash, RE6,

No. 21-2736

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v.

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,
Respondents-Appellants.

On Appeal from United States District Court for the Eastern District of Michigan,
No. 2:20-mc-51245-LJM-APP

RESPONSE BY RESPONDENTS-APPELLANTS TO ORDER TO SHOW CAUSE

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Mot. to Quash, RE6, PageID.212-305. ZF argued that Luxshare's application did not satisfy two of Section 1782's statutory prerequisites—namely, the DIS arbitration was not "within reasonable contemplation," and the arbitral panel was not a "tribunal" within the meaning of Section 1782. *See* Br. on Mot. to Quash, RE6, PageID 232-34 & n.4. Although ZF recognized that this Court has held that a private arbitral body qualifies as a Section 1782 tribunal, *see In re Application to Obtain Discovery for Use in Foreign Proceedings*, 939 F.3d 710, 721 (6th Cir. 2019), ZF also noted there was a circuit split on this issue. ZF thus preserved its argument that the prospective DIS panel was not a "tribunal," consistent with the law in the Second, Fifth, and Seventh Circuits, as well as various district courts. *See* Br. on Mot. to Quash, RE6, PageID.234 n.4. Three days later, a petition for a writ of certiorari was filed before the Supreme Court in *Servotronics, Inc. v. Rolls-Royce PLC*, No. 20-794 (filed Dec. 7, 2020), presenting the question whether a foreign private arbitration is a Section 1782 "tribunal."

ZF further argued that even if Luxshare *had* met the statutory prerequisites, the subpoenas should still be quashed because the four applicable discretionary factors weighed against permitting such discovery. *See* Br. on Mot. to Quash, RE6, PageID.235-48; Reply Br. on Mot. to Quash, RE14, PageID.375-78; *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246-47 (2004) (establishing factors).

No. _____

In the
Supreme Court of the United States

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,

Petitioners,

v.

LUXSHARE, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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undisputed that if Section 1782 does not extend to arbitrations conducted by such panels, Luxshare's request must be denied.

Moreover, if the Sixth Circuit grants the stay of the district court's discovery order that petitioners have requested—or, alternatively, if this Court were to grant the stay that petitioners anticipate seeking from this Court immediately after any stay denial by the Sixth Circuit—there is no risk this case will become moot. Because Luxshare has not yet even commenced arbitration proceedings, the discovery dispute will remain live pending a ruling from this Court. Indeed—and as explained above—petitioners have committed to refrain from invoking the statute of limitations for Luxshare to initiate arbitration until four months after any stay of discovery entered by the Sixth Circuit or this Court expires, so there is no risk that the arbitration proceedings for which discovery is sought could conclude before this Court has had a chance to issue its decision. *See supra* at 10-11 & n.3.

To be sure, the Sixth Circuit has not yet ruled on petitioners' appeal, and ordinarily this Court would wait to see what the appellate court does before granting review itself in the first instance. Here, however, it is absolutely clear that the Sixth Circuit will reject petitioners' threshold argument that Section 1782 does not authorize discovery. As Luxshare and the district court have both (correctly) emphasized, the Sixth Circuit's binding decision in *Abdul Latif*, 939 F.3d at 730-31, unequivocally holds that district courts are authorized to grant discovery for use in foreign arbitration proceedings, on the theory that foreign arbitral panels *do* count as "proceeding[s] in a foreign or international tribunal"

under Section 1782. *See, e.g.*, CA6 ECF No. 13 at 14 (Luxshare's opposition to stay); App. 60a. Petitioners will inevitably lose on that issue if forced to litigate it in the Sixth Circuit.

The best vehicle in which to review the Section 1782 issue is a case like this one—in which the courts below have granted discovery, but where this Court can conduct its merits review before both (1) the discovery is produced, and (2) the foreign arbitration proceeding has begun. If the Court waits for another case in which the court of appeals *denies* discovery, it will face the same mootness problem that appears to have doomed *Servotronics*, in which the foreign arbitration proceedings move forward to a conclusion without the discovery. Indeed, the mootness problem is so fundamental in this arena that the *Servotronics* petitioner had previously argued that the dispute in that case was one that was "capable of repetition yet evading review." *Servotronics* Reply Br. 3 (July 21, 2021).

In these circumstances, the certiorari-before-judgment mechanism offers a procedural safety valve to ensure that important questions regarding discovery can be resolved by this Court. That mechanism is reserved for cases "of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. Here, this Court has already determined (in *Servotronics*) that the Section 1782 is sufficiently important to require this Court's attention this Term. And, for the reasons explained above, if *Servotronics* is dismissed, the Court may not have a similar opportunity to address the issue again in a subsequent case.

No. _____

IN THE

Supreme Court of the United States

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,

Applicants,

v.

LUXSHARE, LTD.,

Respondent.

APPLICATION DIRECTED TO THE HONORABLE BRETT M. KAVANAUGH FOR STAY AND REQUEST FOR IMMEDIATE ADMINISTRATIVE STAY

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October 15, 2021

To be sure, the Sixth Circuit has technically not yet ruled on Applicants' appeal, and ordinarily this Court would wait to see what the appellate court does before granting review itself in the first instance. Here, however, it is clear that the Sixth Circuit will reject Applicants' threshold argument that Section 1782 does not authorize discovery. As Luxshare and the district court have both (correctly) emphasized below, the Sixth Circuit's binding decision in *Abdul Latif*, 939 F.3d at 717-31, unequivocally holds that district courts are authorized to grant discovery for use in foreign arbitration proceedings, on the theory that foreign arbitral panels *do* count as "proceeding[s] in a foreign or international tribunal" under Section 1782. *See, e.g.*, Opp'n to Stay Mot. Pending Appeal 14 (ECF No. 13); Order re Mot. to Compel 4 (Exhibit D). Indeed, Applicants recently moved for summary affirmance of the district court's order in light of *Abdul Latif*. *See supra* at 12-13. Luxshare is highly unlikely to oppose that motion, and Applicants expect the Sixth Circuit to issue a final decision in Luxshare's favor shortly.

A stay is necessary to keep this case fully alive and protect this Court's ability to resolve the Section 1782 issue. Without a stay, Applicants will be forced to turn over the discovery at issue within 12 days. Once they do so, Luxshare will immediately use it in the forthcoming foreign arbitration. Luxshare could use that discovery not only at the eventual arbitral hearing, but also immediately in its opening pleadings, as well as to examine witnesses. Additionally, no United States court—including this Court—would have the power to block Luxshare from using any discovery obtained in the foreign arbitration. Even if this Court ultimately held that

No. 21-2736

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LUXSHARE, LTD.,
Petitioner-Appellee,

v.

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,
Respondents-Appellants.

On Appeal from United States District Court for the Eastern District of Michigan,
No. 2:20-mc-51245-LJM-APP

TIME-SENSITIVE MOTION BY RESPONDENTS-APPELLANTS FOR SUMMARY AFFIRMANCE

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MOTION FOR SUMMARY AFFIRMANCE

Respondents-Appellants (collectively, "ZF") concede that their core argument on appeal is foreclosed by this Court's binding decision in *Abdul Latif Jameel Transp. Co. v. FedEx Corp.*, 939 F.3d 710, 730 (6th Cir. 2019) ("*Abdul Latif*"); *see also* Order at 3, ECF No. 31-2 (denying stay request based in part on *Abdul Latif*). To facilitate expeditious Supreme Court review, ZF hereby moves for summary affirmance of the decision below. Counsel for Petitioner-Appellee Luxshare, Ltd. has indicated that Luxshare wishes to review this motion before taking a position.

This appeal is a challenge to the district court's order that ZF must produce, pursuant to 28 U.S.C. § 1782(a) ("Section 1782"), discovery that Luxshare will then use in an arbitration proceeding it plans to file in Germany. As ZF explained in connection with the stay application this Court denied yesterday, the "key threshold issue in this case" is whether Section 1782—which permits courts to order a person in the United States to produce discovery "'for use in a proceeding in a foreign or international tribunal'"—encompasses discovery intended for use in a foreign private arbitration. Mot. for Stay Pending Appeal at 1-2, ECF No. 8 (quoting 28 U.S.C. § 1782(a)). ZF believes that Section 1782 does not apply to foreign private arbitration proceedings, and thus that no discovery is appropriate here.

Below, the district court granted Luxshare's request for discovery based on this Court's binding precedent that Section 1782(a) applies in this case because a