



# Law of 10 August 1915

Consolidated version applicable from 16 January 2017

**Law of 10 August 1915 on commercial companies**

(Memorial A - 90 of 30 October 1915, p. 925)

**Modified by:**

Law of 13 April 1922	(Mem. A – 24 of 15 April 1924, p. 349) of 30 January 1985
Law of 15 January 1927	(Mem. A – 3 of 22 January 1927, p. 17) of 30 January 1985
Law of 20 June 1930	(Mem. A - 31 of 5 July 1930, p. 617)
Law of 18 September 1933	(Mem. A – 48 of 2 October 1933, p. 749)
Law of 02 April 1948	(Mem. A – 22 of 08 April 1948, p. 498) of 30 January 1985
Law of 26 January 1954	(Mem. A – 5 of 05 February 1954, p. 78) of 30 January 1985
Law of 23 November 1972 1968/151)	(Mem. A – 72 of 13 December 1972, p. 1586; doc. parl. 1496; dir.
Law of 16 May 1975	(Mem. A – 29 of 26 May 1975, p. 652; doc. parl. 1767)
Law of 19 May 1978	(Mem. A – 32 of 13 June 1978, p. 589; doc. parl. 2104)
Law of 24 April 1983	(Mem. A – 35 of 16 May 1983, p. 864; doc. parl. 2474)
Law of 04 May 1984 1978/660)	(Mem. A – 40 of 10 May 1984, p. 586; doc. parl. 2657; dir.
Amdt to the Law of 4 May 1984	(Mem. A – 115 of 31 December 1984, p. 2421) of 30 January 1985
Law of 18 April 1984	(Mem. A – 51 of 07 June 1984, p. 766; doc. parl. 2557)
Law of 28 June 1984	(Mem. A – 81 of 23 August 1984, p. 1346 (doc. parl. 2734)
Grand Duchy Regulation of 30 January 1985 February 1985, p. 74) of 30 January 1985	(Mem. A – 7 of 14
Law of 08 August 1985	(Mem. A – 49 of 28 August 1985, p. 931; doc. parl. 2890)
Law of 25 August 1986	(Mem. A – 65 of 27 August 1986, p. 1826; doc. parl. 2984)
Law of 09 April 1987	(Mem. A – 29 of 30 April 1987, p. 415; doc. parl. 2942)
Law of 07 September 1987	(Mem. A – 77 of 15 September 1987, p. 1792; doc. parl. 2897)
Law of 28 April 1988	(Mem. A – 24 of 27 May 1988, p. 516; doc. parl. 2960)
Law of 11 July 1988 1983/349)	(Mem. A – 45 of 18 August 1988, p. 872; doc. parl. 3154; dir.
Law of 08 March 1989	(Mem. A – 14 of 17 March 1989, p. 176; doc. parl. 3112)
Law of 21 July 1992	(Mem. A – 58 of 10 August 1992, p. 1898; doc. parl. 3381)
Grand Duchy Regulation of 25 November 1992 December 1992, p. 2573) of 30 January 1985	(Mem. A – 92 of 11
Law of 27 November 1992	(Mem. A – 95 of 15 December 1992, p. 2625; doc. parl. 3579)
Law of 28 December 1992	(Mem. A – 106 of 30 December 1992, p. 3141; doc. parl. 3637)
Law of 29 July 1993	(Mem. A – 67 of 25 August 1993, p. 1191; doc. parl. 3707)
Amdt to the Law of 29 July 1993 1994, p. 518) of 30 January 1985	(Mem. A – 28 of 08 April
Law of 02 December 1993	(Mem. A – 94 of 13 December 1993, p. 1739; doc. parl. 3781)

Law of 08 December 1994 1991/674)	(Mem. A – 118 of 28 December 1994, p. 2782; doc. parl. 3887; dir.
Law of 21 December 1994	(Mem. A - 124 of 31 December 1994, p. 3066; doc. parl. 2564)
Law of 12 March 1998 1992/101)	(Mem. A – 24 of 31 March 1998, p 356; doc. parl. 4156; dir.
Law of 10 December 1998	(Mem. A – 105 of 17 December 1998, p. 2516; doc. parl. 4456)
Law of 10 June 1999	(Mem. A – 69 of 11 June 1999, p. 1469; doc. parl. 4463A)
Law of 31 May 1999	(Mem. A – 77 of 21 June 1999, p. 1681; doc. parl. 4328)
Grand Duchy Regulation of 22 December 2000 December 2000, p. 3292) of 30 January 1985	(Mem. A – 141 of 29
Law of 19 December 2002 2003/58)	(Mem. A – 149 of 31 December 2002, p. 3630; doc. parl. 4581; dir.
Law of 10 July 2005 2003/71)	(Mem. A – 98 of 12 July 2005, p. 1726; doc. parl. 5444; dir. 2001/34,
Law of 25 August 2006	(Mem. A - 152 of 31 August 2006, p. 2684; doc. parl. 5352)
Law of 21 December 2006	(Mem. A – 228 of 27 December 2006, p. 4070; doc. parl. 5562)
Law of 23 March 2007	(Mem. A – 46 of 30 March 2007, p. 816; doc. parl. 4992)
Law of 25 August 2006	(Mem. A - 152 of 31 August 2006, p. 2684; doc. parl. 5352)
Law of 23 March 2007	(Mem. A – 46 of 30 March 2007, p. 816; doc. parl. 4992)
Law of 23 March 2007	(Mem. A – 46 of 30 March 2007, p. 826; doc. parl. 5658)
Law of 20 April 2009	(Mem. A – 80 of 27 April 2009, p. 946; doc. parl. 5716; dir. 2003/58)
Law of 10 June 2009 2005/56, 2006/68, 2007/64)	(Mem. A – 151 of 29 June 2009, p. 2268; doc. parl. 5829; dir.
Law of 18 December 2009 1978/660, 1983/349, 2006/48)	(Mem. A – 22 of 19 February 2010, p. 296; doc. parl. 5872; dir.
Law of 10 December 2010 2006/46, 2009/49)	(Mem. A – 225 of 17 December 2010, p. 3634; doc. parl. 5976; dir.
Law of 03 August 2011 2009/109)	(Mem. A – 175 of 12 August 2011, p. 2970; doc. parl. 6227; dir.
Law of 06 April 2013	(Mem. A - 71 of 15 April 2012, p. 890; doc. parl. 6327)
Law of 12 July 2013 2011/61)	(Mem. A - 119 of 15 July 2013, p. 1856; doc. parl. 6471; dir.
Law of 30 July 2013	(Mem. A - 177 of 02 October 2013, p. 3384; doc. parl. 6376)
Law of 10 March 2014	(Mem. A - 39 of 19 March 2014, p. 482; doc. parl. 5974)
Law of 28 July 2014	(Mem. A – 161 of 14 August 2014, p.2484; doc. parl. 6625)
Law of 18 December 2015	(Mem. A – 258 of 28 December 2015, p.6227; doc. parl. 6718)
Law of 27 May 2016	(Mem. A – 94 of 30 May 2016, p.1729; doc. parl. 6624)
Law of 23 July 2016	(Mem. A – 141 of 28 July 2016, p.2390; doc. parl. 6969)
Law of 23 July 2016	(Mem. A – 157 of 04 August 2016, p.2390; doc. parl. 6777)
Law of 10 August 2016	(Mem. A – 167 of 19 August 2016; p.2741; doc. parl. 5730)

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Parties shall only rely on the official French version of the law published in the Luxembourg Official Gazette (Memorial A)

## Section I. - General provisions

### Art. 1.

Commercial companies are companies whose purpose is to conduct commercial activities.

They shall be governed by agreements between the parties, specific business laws and practices and civil law.

(Law of 10 August 2016)

They may be either *sociétés commerciales* strictu sensu, *sociétés commerciales momentanées* or *sociétés commerciales en participation*.

### Art. 2.

(Law of 12 July 2013; Law of 10 August 2016; Law of 23 July 2016)

The following are recognised by law as commercial companies with legal personality:

- general partnerships (*sociétés en nom collectif*);
- common limited partnerships (*sociétés en commandite simple*);
- public limited companies (*sociétés anonymes*) and simplified companies with shares (*sociétés par actions simplifiées*);
- private companies limited by shares (*sociétés en commandite par actions*);
- limited liability companies (*sociétés à responsabilité limitée*) and simplified limited liability companies (*sociétés à responsabilité limitée simplifiées*);
- worker cooperatives (*sociétés coopératives*);
- European companies (*sociétés européennes* – SE).

Each of them shall constitute a legal person separate from their members. European companies (SE) shall acquire legal personality on the date on which they are registered in the register of trade and companies.

The residence of any commercial company shall be located at the head office of the company. Until evidence to the contrary has been provided, the head office of a company shall be deemed to coincide with the place where its registered office is located.

In addition, there are temporary commercial companies (*sociétés commerciales momentanées*), joint venture commercial companies (*sociétés commerciales en participation*) and special limited partnerships (*sociétés en commandite spéciale*) which shall not constitute a legal person separate from that of their members.

The acquisition of an interest in any of the companies referred to in this article shall not of itself constitute a commercial activity.

### Art. 3.

(Law of 18 September 1933; Law of 10 August 2016)

Companies whose purpose is civil and which are subject to the regime provided for in Articles 1832 et seq. of the Civil Code, shall similarly constitute a legal person separate from that of their members, and the service of any process on behalf of or upon such companies shall be valid if made in the name of, or against, the company alone.

(Law of 23 March 2007; Law of 10 August 2016)

Article 181 applies to such companies.

(Law of 18 September 1933; Law of 10 August 2016; Law of 23 July 2016)

However, companies whose purpose is civil may be incorporated in the form of any of the types of commercial companies listed in Article 2, subparagraph 1. However, in such case, those companies and any transactions undertaken by them shall be commercial and be subject to business laws and practices.

Civil companies, regardless of the date of their incorporation and provided that it is not prohibited by any provision of their deed of incorporation, may also be converted into any type of commercial company, other than a *société à responsabilité limitée simplifiée*, by resolution of a general meeting specifically convened for that purpose. Said meeting shall approve the articles of association of the company. Its resolution shall be valid only if approved by the vote of shareholders representing at least three fifths of the shares of the company.

(Law of 10 August 2016; Law of 23 July 2016)

Under the terms of this law, a European economic interest grouping may be converted into any type of company with legal personality other than a *société à responsabilité limitée simplifiée*. Conversely, a company with legal personality may be converted into a European economic interest grouping.

(Law of 23 March 2007; Law of 10 August 2016; Law of 23 July 2016)

Lastly, any of the company types listed in Article 2, subparagraph 1, irrespective of their original purpose or the date of their incorporation and provided that it is not prohibited by any provision of their deed of incorporation, may be converted into any of the other company types listed in said Article or into a civil company, other than a *société européenne* (SE) or a *société à responsabilité limitée simplifiée*.

(Law of 25 August 2006)

A *société anonyme* governed by Luxembourg law may be converted into a *société européenne* (SE) if for at least two years it has had a subsidiary company governed by the law of another Member State of the European Economic Area, hereinafter a Member State.

(Law of 10 August 2016; Law of 23 July 2016)

The provisions of this law concerning conversion also apply to the conversion of legal persons other than companies into one of the forms granted legal personality under this law, with the exception of a *société à responsabilité limitée simplifiée*, subject to the limits established by the particular laws applicable to such legal persons and subject to complying with the special provisions of those same particular laws.

A *société européenne* (SE) with its registered office in the Grand Duchy of Luxembourg may be converted into a *société anonyme* governed by Luxembourg law. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

The conversion provided for in this Article shall not give rise to liquidation nor to the creation of a new legal entity.

(Law 18 September 1933)

The rights of third parties are reserved.

#### **Art. 4.**

(Law of 23 November 1972; Law of 23 July 2016)

*Sociétés en nom collectif, sociétés en commandite simple, sociétés cooperatives*, civil companies, *sociétés en commandite spéciale* and *sociétés à responsabilité limitée simplifiées* shall, on pain of nullity, be established by means of a special, notarised or private deed, in the latter case in compliance with article 1325 of the Civil Code. Two originals shall be sufficient for civil companies, (...) *sociétés coopératives, sociétés en commandite simple* and *sociétés en commandite spéciale*.

*Sociétés anonymes, sociétés en commandite par actions* and *sociétés à responsabilité limitée* shall, on pain of nullity, be established by means of a special notarised deed.

(Law of 10 August 2016)

**Article 4bis.**

- (1) The companies listed in Article 2, subparagraph 1 as well as *sociétés en commandite spéciale* shall be described by a trade name which may be either a specific name or a description of their company's purpose.

The said name or purpose must be different from that of any other company. If it is identical, or if the similarity thereof can lead to error, any interested party may cause it to be changed and may, where applicable, claim damages.

- (2) Only *sociétés européennes* (SE) may include the abbreviation "SE" in their trade name.

Nevertheless, companies and other legal entities registered in a Member State before the date of entry into force of Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for a European company, whose trade name features the abbreviation "SE", shall not be required to alter their trade name.

(Law of 10 August 2016)

**Art. 4ter.**

The deed of incorporation of a *société en nom collectif*, *société en commandite simple* or a civil company must state the following information, failing which it shall be void:

1. The name of the company and its registered office;
2. The corporate purpose of the company;
3. Exact details of the contributions made by the partners.

**Art. 5.**

Extracts of the deeds establishing *sociétés en nom collectif*, (...) *sociétés en commandite simple* and *sociétés en commandite spéciale* shall be published at the expense of the company.

**Art. 6.**

(Law of 12 July 2013)

The extract must contain the following particulars, failing which the penalties provided for in Article 10 shall apply:

- 1) a precise description of the members who are jointly and severally liable;
- 2) the company name or the trade name, its purpose and the place where its registered office is located;
- 3) the description of the managers, their signatory powers as well as, as regards *sociétés en nom collectif*, the nature of, and limits to, their powers;
- 4) the date on which the company commences and the date on which it ends.

**Art. 7.**

The extract of company deeds shall be signed: in the case of notarised deeds, by the notary who retains the complete deed and, in the case of private deeds, by all members who are jointly and severally liable.

**Art. 8.**

(Law of 20 April 2009; Law of 10 August 2016)

The deeds of *sociétés anonymes*, *sociétés par actions simplifiées*, *sociétés en commandite par actions*, *sociétés à responsabilité limitée*, *sociétés coopératives* and civil companies shall be published in their entirety. Powers of attorney, irrespective of whether they are in the form of a public or private deed, which are annexed thereto, do not have to be published in the Recueil Électronique des Sociétés et Associations or filed with the register of trade and companies.

(Law of 23 November 1972)

By way of derogation from the first paragraph, in the case of civil companies which are to be regarded as family companies within the meaning of Article III of the Law of 18 September 1933 providing for *sociétés à responsabilité limitée* and making certain changes to the legal and tax regime applicable to commercial and civil companies, the publication of the deeds of civil companies may be made in the form of an extract to be signed by the managers, or, failing this, by all the members, which must contain the following particulars, failing which the penalties provided for in Article 10 shall apply:

- 1) The exact details of the partners;
- 2) The name of the company, its corporate purpose and the place where its registered office is located;
- 3) The names of its managers together with the nature of, and limits to, their powers;
- 4) Details of the assets contributed or to be contributed by each partner, with an accurate valuation of any contributions in kind;
- 5) The date on which the company commences and the date on which it ends.

**Art. 9.**

(Law of 27 May 2016)

– (...)

**Art. 10.**

(Law of 27 May 2016)

Any court action brought by a company whose deed of incorporation has not been published in the Recueil Électronique des Sociétés et Associations, as required by the provisions of Chapter Vbis, Title I of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, shall be inadmissible.

**Art. 11.**

(Law of 23 November 1972)

Any contractual amendment to the deeds of a company must, on pain of nullity, be made in the form required for the deed of incorporation of the company.

(Law of 23 November 1972)

**Art. 11bis.**

(Law of 27 May 2016; Law of 10 August 2016)

§1. In accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the following documents must be filed and published:

- 1) (...)
- 2) (...)
- 3) Extracts of any deed relating to the appointment or termination of the appointment of:
  - a) directors, members of the management committee, managing director, members of the management board and of the supervisory board, managers and auditors of *sociétés anonymes*, *sociétés en commandite par actions*, *sociétés à responsabilité limitée*, *sociétés en commandite simple*, *sociétés en commandite spéciale* and civil companies, as well as chairpersons and directors of *sociétés par actions simplifiées*;
  - b) the persons appointed for day-to-day management of *sociétés anonymes* and *sociétés à responsabilité limitée*;
  - c) liquidators of companies which have legal personality and, as the case may be, of



*sociétés en commandite spéciale.*

Where the liquidator is a legal person, the extract shall contain the name or modified name of the natural person who represents the liquidator in the exercise of its powers of liquidation.

d) the persons appointed for submitting deeds for sociétés anonymes and sociétés en commandite par actions designated in accordance with Article 42.

The extract shall include a precise indication of the first and last names and of the private or professional address of the persons referred to therein.

- 4) Extracts of deeds providing for the manner of liquidation and the powers of the liquidators if said powers are not exclusively and expressly defined by law or by the articles of association of the company;
- 5) Extracts of any court decision which has become final or which is enforceable on a provisional basis which rules that a company is dissolved or that its constitution is void or that amendments to the articles thereof are void.

Such extract shall contain:

a) the trade name of the company and its registered office;

b) the date of the decision and the court which issued it;

c) where applicable, the appointment of the liquidator or liquidators, stating exactly their full name and private or business address; where the liquidator is a legal person, the extract shall contain the name or modified name of the natural person who represents the liquidator in the exercise of its powers of liquidation.

- 6) Extracts of any court decision which has become final or which is enforceable on a provisional basis which rules that a resolution by the company's general meeting is void or is to be suspended.

Such extract shall contain:

a) the trade name of the company and its registered office;

b) the date of the decision and the court which issued it.

- 7) Extracts of any court decision which reverses any provisionally enforceable court decision described at (5) or (6) above.

§2. If any of the following events occurs, the company's competent bodies must issue a signed declaration:

- 1) The dissolution of the company due to expiry of its term or for any other reason;
- 2) The death of any of the persons mentioned in at §1(3) of this Article;
- 3) In *sociétés à responsabilité limitée* and civil companies, any changes in the members.

The declaration must be filed and published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

§3. In accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the following documents must be filed and published in the form of a mention that they have been filed:

- 1) The full text of the articles of association, in an updated version after each amendment thereof, of *sociétés anonymes*, *sociétés en commandite par actions* and *sociétés à responsabilité limitée*,
- 2) The annual accounts, consolidated accounts and all other related documents and information which by law must be published.

§4. The deeds and information which must be published in accordance with the previous

paragraphs may be invoked against third parties in accordance with the conditions laid down in Article 19-3 of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

*(Law of 10 August 2016)*

**Art. 11ter.**

Any company may issue bonds.

Articles 84 to 94-8 apply to any issue of bonds by a company. However, the issue documentation for such bonds may supersede these rules.

These rules may also be made wholly or partially applicable to any issue of transferable securities other than shares or units by companies established under Luxembourg or foreign law.

*(Law of 10 August 2016)*

**Art. 11quater.**

The issue of convertible bonds, any other convertible debt instruments or subscription rights, whether isolated or attached to another security, by companies other than *sociétés anonymes* shall be governed by the rules of law concerning the disposal of shares and units or those concerning the consent of non-partners. These same rules apply to transfers that occur inter vivos or mortis causa. Consent may be given in advance to non-partners who are identified or identifiable in the consent resolution, or upon issue of the bonds or instruments, or subsequently. Such consent is irrevocable if declared as such in the consent resolution.

**Art. 12.**

*(Law of 25 August 2006; Law of 10 August 2016)*

Companies shall act through their managers, directors, members of the management board or chairperson, as the case may be, the powers of which shall be determined by law or by the deed of incorporation and any deeds adopted subsequently in accordance with the deed of incorporation.

*(Law of 23 November 1972)*

Upon completion of the publication formalities regarding those persons who, as a corporate body, are empowered to commit a company, no irregularity in their appointment may be relied upon vis-à-vis third parties, unless the company proves that the said third parties had knowledge thereof.

*(Law of 23 November 1972)*

**Art. 12bis.**

Any person who enters into a commitment of any kind, including by acting as surety or business manager, in the name of a company which is in the process of formation and has not yet acquired legal personality, shall be personally and jointly and severally liable for said company, subject to any agreement to the contrary, if the said commitments are not assumed by the company within two months of its incorporation, or if the company is not incorporated within two years after the commitment was entered into.

Where such commitments are taken over by the company, they shall be deemed to have been contracted by the company from the outset.

*(Law of 23 November 1972)*

**Art. 12ter.**

*(Law of 24 April 1983; Law of 10 August 2016)*

(1) A *société anonyme*, a *société en commandite par actions* and a *société à responsabilité limitée* may be declared void only in the following cases:

- 1) if the deed of incorporation is not drawn up in the form of a notarised deed;
- 2) if such deed does not state the trade name of the company, the corporate purpose, the capital contributions or the amount of subscribed capital;
- 3) if the corporate purpose is unlawful or contrary to public policy;
- 4) if there is not at least one founder who is validly committed.

If the clauses of the deed of incorporation defining the distribution of profits or the apportionment of losses are contrary to Article 1855 of the Civil Code, those clauses shall be deemed excluded.

- (2) In addition to the infringements listed in Article 4, a civil company, a *société en nom collectif* and a *société en commandite simple* may be declared void only in the following cases:

- 1) if the corporate purpose is unlawful or contrary to public policy;
- 2) if the deed of incorporation omits one or more of the points required in Article 4ter;
- 3) if the civil company or the *société en nom collectif* do not have at least one founder who is validly committed, or if the *société en commandite simple* does not have at least one general partner (*associé commandité*) and a separate limited partner (*associé commanditaire*) who are validly committed.

If the clauses of the deed of incorporation defining the distribution of profits or the apportionment of losses are contrary to Article 1855 of the Civil Code, those clauses shall be deemed excluded.

(Law of 23 November 1972)

#### **Art. 12quater.**

(Law of 12 July 2013; Law of 27 May 2016; Law of 10 August 2016)

§1. The voidance of a company vested with legal personality must be declared by court order.

Such voidance shall have effect as from the date of the order declaring it.

However, it is only enforceable against third parties from when the decision required by Article 11bis, §1 (5) is published and subject to the requirements of Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

(2) The voidance on grounds of formal irregularities of a company vested with legal personality in application of Article 4 or Article 12ter., 1st paragraph, item 1) or 2), and 2nd paragraph, items 2) and 115), 2nd paragraph, item 1), or of a *société en commandite spéciale* in application of Article 22-1, paragraph (8), item a), may not be challenged by the company or by any member affiliated with third parties, even by way of a plea, unless it has been ordered by a court decision published in accordance with paragraph 1.

(3) Paragraphs (1) and (2) apply to the voidance of contractual amendments to the deeds of incorporation of companies, in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

#### **Art. 12quinquies.**

The voidance of a company pursuant to a court order in accordance with Article 12quater shall entail the liquidation of the company as in the case of a dissolution.

The voidance shall not of itself affect the validity of the company's commitments or of commitments entered into in favour of the company, without prejudice to the consequences of the company's liquidation.

The courts may determine the method of liquidation and appoint the liquidators.

**Art. 12sexies.**

No third party objections against a court order declaring the voidance of a company vested with legal personality or the voidance of a contractual amendment to the deeds governing the said company, shall be admissible upon the expiry of a period of six months from publication of the court order in accordance with Article 11bis, section 1, 5).

(Law of 10 August 2016)

**Art. 12septies.**

(1) A resolution adopted by a general meeting as per this law is void:

1. If the resolution contains a formal irregularity and the claimant can prove the irregularity has influenced the resolution;
2. If the procedures for the general meeting have been breached or if the general meeting has deliberated an item not on the agenda with fraudulent intent;
3. If the resolution was in any other way adopted *ultra vires* or through abuse of power;
4. If voting rights that were suspended under a legal provision not reversed by this law were exercised and if, had these voting rights not been unlawfully exercised, the conditions for quorum and majority required for the resolutions of the general meeting would not have been met;
5. For any other reason established by this law.

(2) The voidance of a resolution adopted by a general meeting must be announced in a court ruling.

A claim for voidance will not be admissible if brought by a member who voted in favour of the resolution, unless that member's consent was legally flawed, or by a member who has expressly or implicitly waived his right to rely on it, unless the voidance originates from a rule of public policy.

(3) The claim for voidance is directed against the company. The claimant may file for interlocutory proceedings to request the enforcement of the resolution at issue be provisionally suspended. The suspension order and the ruling announcing the voidance of the resolution shall be effective from the date of the decision in which they are announced. However, they are only enforceable against third parties from when the decision required by Article 11bis, §1 (6) is published and subject to the requirements of Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

(4) If the voidance may infringe upon rights that were acquired in good faith by a third party vis-à-vis the company on the basis of the general meeting's resolution, the court may rule that the voidance shall be ineffective against those rights, without prejudice to the claimant's right to request damages, if applicable.

**Art. 13.**

(Law of 12 July 2013)

*Sociétés commerciales momentanées* and *sociétés commerciales en participation* shall not be subject to the formalities applicable to commercial companies vested with legal personalities.

Their existence shall be determined by the methods of proof accepted in commercial matters.

## **Section II. - Sociétés en nom collectif (General Partnerships)**

### **Art. 14.**

*(Law of 10 August 2016)*

A *société en nom collectif* is a company in which all the members are jointly and severally liable without limitation for all the obligations of the company.

### **Art. 15.**

*(Law of 10 August 2016)*

– (...)

(Law of 12 July 2013)

**Section III. - Sociétés en commandite simple and sociétés en commandite spéciale  
(Common limited partnerships and special limited partnerships)**

**Sub-section 1. - Sociétés en commandite simple (Common limited partnerships)**

**Art. 16.**

(Law of 10 August 2016)(1) A *société en commandite simple* is a common limited partnership entered into, for a limited or an unlimited period of time, by one or more general partners with unlimited joint and several liability for all the corporate obligations, and one or more limited partners who only contribute a specific amount constituting ownership interests which may be but need not be represented by securities as provided in the partnership agreement.

- (2) The contributions of the partners to the limited partnership may be in the form of contributions in cash, in kind or in the form of services. The contributions, including the admission of new partners in cases other than a transfer of ownership interests, shall be made in accordance with the conditions and formalities provided in the partnership agreement.
- (3) The limited partnership may issue debt instruments.
- (4) Unless otherwise provided in the partnership agreement, a general partner may also be a limited partner, provided that there are always at least one general partner and one limited partner who are legally distinct from each other.
- (5) Each *société en commandite simple* must maintain a register containing:
  - a) a complete, compliant and up-to-date copy of the partnership agreement for the limited partnership;
  - b) a list of all the partners including their first and last names, their professions and their private or professional address or, in the case of legal entities, their trade name, their legal form, their exact address and their registration number in the register of trade and companies if the legislation of the State governing the relevant legal entity provides for such number, as well as the ownership interests held by each of them;
  - c) a record of all transfers of ownership interests issued by the limited partnership and the date of notification or acceptance of such transfers.

Each partner may inspect said register, subject to the restrictions provided in the partnership agreement.

**Art. 17.**

The management of a *société en commandite simple* is carried out by one or more managers, who may but need not be general partners, designated in accordance with the partnership agreement.

Managers who are not general partners shall be liable in accordance with Article 59.

The partnership agreement may allow the managers to delegate their powers to one or more agents who are liable only for the performance of their mandate.

Unless otherwise provided in the partnership agreement, each manager may on behalf of the partnership take any action necessary or useful to the fulfilment of the corporate purpose. Any restrictions provided in the partnership agreement with respect to the powers of the managers are not binding on third parties, even if they are published. However, the partnership agreement may authorise one or more managers to represent the limited partnership, either alone or jointly, and a clause to that effect is binding on third parties subject to the conditions laid down in "Chapter Vbis, Title I of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual

accounts of undertakings”.

The company shall be bound by any acts of the manager(s), even if such acts exceed the corporate purpose, unless it proves that the third party knew that the act exceeded the corporate purpose or could not, in view of the circumstances, have been unaware of it.

Each manager represents the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant.

Writs served on behalf of or against the company shall be validly served in the name of the company alone.

**Art. 18.**

A limited partner may enter into any transaction with the *société en commandite simple* without his capacity as limited partner in itself affecting his rank as general or preferred creditor under the terms of the relevant transaction.

He shall be prohibited from carrying out any act of management with regard to third parties.

A limited partner shall be jointly and severally liable with regard to third parties for any obligations of the common limited partnership in which he participated in violation of the ban contained in the previous paragraph.

He shall also be jointly and severally liable vis-à-vis third parties for commitments in which he did not participate, if he has regularly carried out acts of management vis-à-vis such third parties.

The following do not constitute acts of management for which the limited partner is indefinitely and jointly and severally liable with regard to third parties: the exercise of partner prerogatives, the providing of opinions or advice to the partnership, to its affiliates or to their managers, the carrying out of any control or supervisory measures, the granting of loans, guarantees or securities or the giving of any other type of assistance to the partnership or its affiliates, as well as the granting of any authorisation to the managers in the cases provided for in the partnership agreement for acts outside their powers.

The limited partner may act as a member of a management body or as agent of a manager of the partnership, even if that manager is a general partner, or may execute documents on the manager's behalf under the latter's corporate signature, even acting in the capacity of a representative of the partnership, without incurring as a result unlimited joint and several liability for the obligations of the partnership, provided the capacity of representative which he represents is indicated.

**Art.19.**

The distributions and repayments to partners as well as the conditions in which the *société en commandite simple* may require their restitution are governed by the partnership agreement.

Unless otherwise provided in the partnership agreement, profits and losses of the common limited partnership shall be shared among all partners in proportion to their ownership interests.

**Art. 20.**

Unless otherwise provided in the partnership agreement, the voting rights of each partner shall be in proportion to his ownership interests.

Any amendment of the corporate purpose as well as the change of nationality, conversion or liquidation must be decided upon by the partners. The partnership agreement shall determine among the other resolutions those which need not be adopted by the partners. It shall also determine the formalities and the conditions for passing such resolutions. In the absence of such provisions in the partnership agreement:

- a) resolutions of partners shall be adopted at general meetings or by way of consultations in writing during which each partner shall receive the exact wording of

the text of the resolutions or decisions to be adopted and shall cast his vote in writing;

b) resolutions shall be validly adopted by a majority of the votes cast, regardless of the portion of ownership interests represented, except for resolutions on amendments to the corporate purpose, a change of nationality, a conversion of legal form or liquidation which shall each be adopted only with the consent of partners representing three-quarters of the ownership interests and in all cases with the consent of all general partners.

c) such meetings or written consultations may be called or initiated by the manager(s) or by partners representing more than half of the ownership interests.

Each year at least, the partners shall decide on the annual accounts by special vote which shall occur on such date as determined in the partnership agreement, but no later than six months after the end of the financial year. The partnership agreement may provide that the first special vote may occur within eighteen months after the incorporation of the company. Fifteen days, or any longer period provided in the partnership agreement before the date on which the partners must decide on the annual accounts, the partners may inspect and receive a copy at the registered office of:

1° the annual accounts;

2° the management report, if any;

3° the report of the licensed independent auditors (*réviseurs d'entreprises agréés*), if any;

4° any other information provided for in the partnership agreement.

#### **Art. 21.**

The ownership interests of limited partners may, on pain of nullity, only be transferred, divided or pledged in accordance with the terms and in the manners provided for in the partnership agreement. In the absence of provisions in the partnership agreement, any transfer other than a transmission in case of death, a division and a pledge of an ownership interest of a limited partner, requires the consent of the general partner(s).

The ownership interests of general partners may, on pain of nullity, only be transferred, divided or pledged in accordance with the terms and in the manners provided for in the partnership agreement. In the absence of provisions in the partnership agreement, any transfer other than a transmission in case of death, a division and a pledge of an ownership interest of a general partner requires the consent of the partners who deliberate in the manner provided for the amendment of the partnership agreement.

Transfers and divisions of ownership interests shall not be valid with regard to the limited partnership or third parties until after they shall have been notified to the limited partnership or accepted by it. They will however not be binding on third parties with regard to the obligations of the limited partnership which arose prior to their publication, except if the third party knew or could not have been unaware of them.

The partnership agreement may authorise management or the partners to reduce or to redeem, as the case may be upon request of one or more partners, all or part of the ownership interests of one or more of the partners, and determine the terms of such reduction or redemption.

#### **Art. 22.**

In the event of the general partner's death, dissolution, legal incapacity, dismissal, resignation, inability to act or bankruptcy or in case the general partner is in another situation affecting the rights of creditors generally, and there is no other general partner and it has been provided that, in such an event, the company would continue to exist, the general partner shall be replaced. Unless otherwise specifically provided for in the partnership agreement, the judge presiding the chamber of the district court dealing with commercial matters may appoint, at the request of any interested parties, a temporary



administrator, who may but need not be a partner, who shall take all urgent and purely administrative measures alone, until the resolution of the partners, which this administrator shall have passed within two weeks following his appointment. The administrator shall be liable only for the performance of his mandate. Any interested party may object to the order; the objection shall be notified both to the company as well as to the person appointed and to the person who applied for the appointment. The proceedings regarding the objection shall be heard as in urgent applications.

## **Sub-section 2. - Sociétés en commandite spéciale (special limited partnerships)**

### **Art. 22-1**

(Law of 10 August 2016)

- (1) A *société en commandite spéciale* is a partnership entered into, for a limited or an unlimited period of time, by one or more general partners with unlimited joint and several liability for all the obligations of the partnership, with one or more limited partners who only contribute a specific amount consisting in ownership interests which may be but need not be represented by securities as provided under the terms of the partnership agreement.
- (2) The *société en commandite spéciale* shall not constitute a legal entity distinct from that of its partners.
- (3) The contributions of the partners to the *société en commandite spéciale* may be in the form of contributions in cash, in kind or in the form of services. Contributions, including admitting new partners except for a transfer of ownership interests, shall be made in accordance with the conditions and formalities specified in the partnership agreement.
- (4) The limited partnership may issue debt instruments.
- (5) Unless otherwise provided in the partnership agreement, a general partner may also be a limited partner, provided that there are always at least one general partner and one limited partner who are legally distinct from each other.
- (6) Each *société en commandite spéciale* must maintain a register containing:
  - a) a complete, compliant and up-to-date copy of the partnership agreement for the limited partnership;
  - b) a list of all the partners including their first and last names, their professions and their private or professional address or, in the case of legal entities, their trade name, their legal form, their exact address and their registration number in the register of trade and companies if the legislation of the State governing the relevant legal entity provides for such number, as well as the ownership interests held by each of them;
  - c) a record of all transfers of ownership interests issued by the limited partnership and the date of notification or acceptance of said transfers.Each partner may inspect said register, subject to the restrictions provided in the partnership agreement.
- (7) The domicile of a *société en commandite spéciale* is located at the seat of its head office. Until evidence to the contrary shall have been provided, the head office is deemed to be the place where the registered office is located, as specified in the partnership agreement.
- (8) A *société en commandite spéciale* may be only declared void in the following cases:
  - a) if the deed of incorporation does not state the company name of the partnership or its corporate purpose;
  - b) if the corporate purpose is unlawful or contrary to public policy;
  - c) if the partnership does not include at least one general partner and one

distinct limited partner who are validly committed. Articles 12quater to 12sexies shall apply.

**Art. 22-2**

- (1) Registrations and other formalities regarding the assets pooled within the *société en commandite spéciale* or on which it has any right, shall be made in the name of the partnership.
- (2) The assets pooled within the *société en commandite spéciale* shall satisfy exclusively the rights of creditors which arose from the constitution, operation or liquidation of the limited partnership.

**Art. 22-3**

The management of a *société en commandite spéciale* is performed by one or more managers, who may but need not be general partners, appointed in accordance with the partnership agreement.

Managers who are not general partners shall be liable in accordance with Article 59.

The partnership agreement may allow the managers to delegate their powers to one or more agents who are liable only for the performance of their mandate.

Unless otherwise provided in the partnership agreement, each manager may on behalf of the partnership take any action necessary or useful to the fulfilment of the corporate purpose. Any restrictions provided in the partnership agreement with respect to the powers of the managers are not binding on third parties, even if they are published. However, the partnership agreement may authorise one or more managers to represent the limited partnership, either alone or jointly, and a clause to that effect is binding on third parties subject to the conditions laid down in "Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings".

The limited partnership shall be bound by any acts of the manager(s), even if such acts exceed the corporate purpose, unless it proves that the third party knew that the act exceeded the corporate purpose or could not, in view of the circumstances, have been unaware of it.

Each manager represents the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant.

Writs served on behalf of or upon the *société en commandite spéciale* shall be served validly in the name of the *société en commandite spéciale* alone, represented by one of its managers.

**Art. 22-4**

A limited partner may enter into any transaction with the *société en commandite spéciale* without his capacity as limited partner affecting his rank as unsecured or preferred creditor according to the terms of the relevant transaction.

He shall be prohibited from carrying out any act of management with regard to third parties.

A limited partner shall be jointly and severally liable vis-à-vis third parties for any obligations of the limited partnership in which he participated in violation of the prohibition contained in the previous paragraph.

He shall also be jointly and severally liable vis-à-vis third parties for commitments in which he did not participate, if he has regularly carried out acts of management vis-à-vis such third parties.

Exercising partner prerogatives, providing opinions or advice to the *société en commandite spéciale*, to its affiliates or to their managers, carrying out any control or supervisory measures, granting of loans, guarantees or securities or giving any other type of assistance to the *société en commandite spéciale* or its affiliates, as well as giving any authorisation to

the managers in the cases provided for in the partnership agreement for acts outside their powers do not constitute acts of management for which the limited partner is jointly and severally liable vis-à-vis third parties.

The limited partner may act as a member of a management body or as the authorised representative of a manager of the *société en commandite spéciale*, even if that manager is an unlimited partner, or may execute documents on the manager's behalf or under the latter's corporate signature, even acting in the capacity of a representative of the *société en commandite spéciale*, without incurring as a result unlimited joint and several liability for the obligations of the limited partnership, provided that the capacity of representative in which he acts is indicated.

**Art. 22-5**

The distributions and repayments to partners as well as the conditions in which the *société en commandite spéciale* may require they be repaid are governed by the partnership agreement.

Unless otherwise specified in the partnership agreement, profits and losses of the *société en commandite spéciale* shall be shared among all partners in proportion to their ownership interests.

**Art. 22-6**

Unless otherwise provided in the partnership agreement, the voting rights of each partner shall be in proportion to his ownership interests.

Any amendment of the corporate purpose, as well as the change of nationality, conversion or liquidation must be decided upon by the partners. The partnership agreement shall determine among the other resolutions those which need not be adopted by the partners. It shall also determine the formalities and the conditions for passing such resolutions. In the absence of such provisions in the partnership agreement:

- a) resolutions of partners shall be adopted at general meetings or by way of consultations in writing during which each partner shall receive the exact wording of the text of the resolutions or decisions to be adopted and shall cast his vote in writing;
- b) resolutions shall only be validly adopted by a majority of the votes cast, regardless of the portion of ownership interests represented, except for resolutions on amendments to the corporate purpose, a change of nationality, or a conversion or liquidation which shall be adopted only with the consent of partners representing three-quarters of the ownership interests and in all cases with the consent of all general partners.
- c) such meetings or written consultations may be called or initiated by the manager(s) or by partners representing more than half of the ownership interests.

Only the information provided for in the partnership agreement may be submitted to the partners.

**Art. 22-7**

The ownership interests of limited partners may, on pain of nullity, only be transferred, divided or pledged in accordance with the terms and in the manners provided for in the partnership agreement. In the absence of provisions in the partnership agreement, any transfer other than a transmission in case of death, a division and a pledge of an ownership interest of a limited partner, requires the consent of the general partner(s).

The ownership interests of general partners may, on pain of nullity, only be transferred, divided or pledged in accordance with the terms and in the manners provided for in the partnership agreement. In the absence of provisions in the partnership agreement, any transfer other than a transmission in case of death, a division and a pledge of an ownership interest of a general partner requires the consent of the partners who deliberate in the manner provided for the amendment of the partnership agreement.

Transfers and divisions of ownership interests shall not be valid vis-à-vis the limited partnership or third parties until they shall have been notified to the limited partnership or accepted by it. They will however not be binding on third parties with regard to the obligations of the limited partnership which arose prior to their publication, except if the third party knew or could not have been unaware of them.

The partnership agreement may authorise management or the partners to reduce or redeem, as the case may be upon request of one or more partners, all or part of the interests of one or more partners in the partnership and determine the terms thereof.

**Art. 22-8**

In the event of the general partner's death, dissolution, legal incapacity, dismissal, resignation, inability to act or bankruptcy or in case the general partner is in another situation affecting the rights of creditors generally, and there is no other general partner and it has been provided that, in such an event, the *société en commandite spéciale* would continue to exist, the general partner shall be replaced. Unless otherwise specifically provided for in the partnership agreement, the judge presiding the chamber of the district court dealing with commercial matters may appoint, at the request of any interested parties, a temporary administrator, who may but need not be a partner, who shall take all urgent and purely administrative measures alone, until the resolution of the partners, which this administrator shall have passed within two weeks following his appointment. The administrator shall be liable only for the performance of his mandate. Any interested party may object to the order; the objection shall be notified both to the company as well as to the person appointed and to the person who applied for the appointment. The proceedings regarding the objection shall be heard as in urgent applications.

**Art. 22-9**

The conversion of a *société en commandite spéciale* into a company of one of the other types provided for in Article 2, paragraph 1, shall give rise to a new legal entity. In addition to the conditions specified under the partnership agreement, the substantive and formal requirements applicable to the incorporation of a company with the corporate form into which the *société en commandite spéciale* is converted shall apply.

(Law of 25 August 2006)

**Section IV. - Sociétés Anonymes and Sociétés Européennes (SE) (Public limited companies and European Companies)**

**Section 1. – On the nature and classification of sociétés anonymes and sociétés européennes (SE)**

**Art. 23.**

- (1) A *société anonyme* is a company whose capital is divided into shares and which is formed by one or more persons who only contribute a specific amount.

In case the company comprises one person only, such person shall be designated as the single member.

The *société anonyme* may have a single member at its formation and also as a result of all its shares being held subsequently by a single person.

The death or the dissolution of the single member shall not result in the dissolution of the company.

- (2) The *société européenne* (SE) is a *société anonyme* set up in accordance with Article 2 of Council Regulation (EC) No 2157/2001 of 8th October 2001 on the Statute for a European Company (SE), which has established its registered office and its central administration in the Grand-Duchy of Luxembourg.

It has the possibility to transfer its registered office to another Member State without loss of its legal personality.

It shall be governed by the provisions of the present law applicable to the *société anonyme* and by the provisions specifically applicable to the *société européenne* (SE) under Council Regulation (EC) 2157/2001 of 8th October 2001 on the Statute for a European Company.

**Art. 24.**

(Law of [\*\*\*] July 2016)

(...)

**Art. 25.**

(Law of 25 August 2006)

- (1) A *société anonyme* shall be referred to by a specific name or by the purpose of its undertaking.

The said name or purpose must be different from that of any other company.

If it is identical, or if the similarity thereof can lead to error, any interested party may cause it to be changed and may, where applicable, claim damages.

(Law of 25 August 2006)

- (2) Only *sociétés européennes* (SE) may include the abbreviation “SE” in their trade name.

Nevertheless, companies and other legal entities registered in a Member State before the date of entry into force of Council Regulation (EC) 2157/2001 of 8 October 2001 on the Statute for a European company, whose trade name features the abbreviation “SE”, shall not be required to alter their trade name.

(Law of 25 August 2006)

**Section 2. – The incorporation of *sociétés anonymes* and *sociétés européennes* (SE)**

**Art. 26.**

(Law of 24 April 1983)

(1) The following requirements shall apply to the incorporation of a *société anonyme*:

(Law of 25 August 2006)

1) there must be at least one shareholder;

(Law of 24 April 1983; Law of 10 August 2016)

2) the capital must be at least 30,000 euros; however, this amount may be increased by Grand Ducal Regulation to be adopted upon advice from the *Conseil d'Etat* in order to take into account either variations in national currency in relation to the unit of account or changes in EU regulations;

(Law of 25 August 2006)

For a *société européenne* (SE), the capital must be at least 120,000 euros.

(Law of 24 April 1983)

3) the capital be subscribed for in full;

4) at least one quarter of each share must be paid-up in cash or by means of contributions in kind.

(Law of 10 June 2009)

(2) The notary, drawing up the deed, shall verify that these conditions and those set out in Articles 26-1, paragraph (2), 26-3 and 26-5 have been satisfied and shall expressly ascertain compliance therewith.

(Law of 25 August 2006)

**Art. 26bis.**

(1) A *société européenne* (SE) may be formed by means of a merger of *sociétés anonymes* formed in accordance with the laws of a Member State and having their registered office and head office within the European Union, provided at least two of them are governed by the law of different Member States.

In such case, the law of the Member State governing each merging company shall apply as in the case of a merger of *sociétés anonymes*, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

- creditors of the merging companies;
- holders of bonds of the merging companies;
- holders of securities, other than shares, which carry special rights in the merging companies.

(2) A *société européenne* holding (holding SE) may be formed by *sociétés anonymes* and *sociétés à responsabilité limitée* formed in accordance with the law of a Member State and having their registered office and head office within the European Union, provided at least two of them:

a) are governed by the laws of different Member States, or

b) have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

(3) A subsidiary *société européenne* (SE) may be formed by civil (i.e. non-commercial) or commercial companies with legal personality except for those companies which are not run for profit, and by other legal bodies governed by public or private law, formed

under the law of a Member State, with their registered office and head office within the European Union and who subscribe for its shares, provided at least two of them:

a) are governed by the laws of different Member States, or

b) have for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

- (4) A company the head office of which is not in a Member State may participate in the formation of a *société européenne* (SE) provided that company is formed under the law of a Member State, has its registered office in that same Member State and has a real and continuous link with a Member State's economy.

**Art. 26ter.**

A *société européenne* (SE) holding may be formed in accordance with article 26bis paragraph (2).

The companies promoting the formation of a *société européenne* (SE) shall continue to exist.

Articles 26 quarter to 26 octies shall apply.

**Art. 26quater.**

The management bodies of the companies which promote the operation shall draw up draft terms of formation of the *société européenne* (SE).

The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the decision to adopt the form of a *société européenne* (SE).

The draft terms shall also indicate:

- a) the trade name and registered office of the companies forming the *société européenne* (SE) together with those proposed for the *société européenne* (SE);
- b) the exchange ratio for the shares or corporate units and, if applicable, the amount of any cash payment;
- c) the terms for the allotment of shares in the *société européenne* (SE);
- d) the rights conferred by the *société européenne* (SE) on the shareholders having special rights and on the holders of securities other than shares or corporate units, or the measures proposed concerning them;
- e) any special advantage granted to the experts who examine the draft terms of merger or to the members of the administrative, management, supervisory or controlling bodies of the merging companies;
- f) the articles of association of the *société européenne* (SE);
- g) information on the procedures by which arrangements for employee involvement are determined in implementation of Directive 2001/86/EC;
- h) the minimum proportion of the shares or corporate units in each of the companies promoting the operation which the shareholders must contribute in order for the *société européenne* (SE) to be formed.

Said proportion shall be made up of shares or corporate units conferring more than 50% of the permanent voting rights.

**Art. 26quinquies.**

(Law of 27 May 2016; Law of 10 August 2016)

The draft terms of formation shall be published for each of the companies promoting the operation in accordance with the requirements of Chapter VIbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings or in the manner laid down in each Member State's

national law in accordance with Article 3 of Directive 2009/101/EC, at least one month before the date of the general meeting called to decide on the draft terms of formation.

**Art. 26sexies.**

- (1) The draft terms of formation shall be examined and a written report shall be drawn up for the shareholders. For each company promoting the operation, an examination shall be carried out and a report shall be drawn up by one or more independent experts who shall be appointed or approved by a judicial or administrative body in the Member State to which each company is subject, in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

(Law of 18 December 2009; Law of 23 July 2016)

For companies subject to Luxembourg law, such experts are appointed by the management body and must be selected among the independent auditors. However, the report may be drawn up by one or more independent experts for all the companies promoting the operation. In such case, the appointment is made, on the joint application of the companies concerned, by a judicial or administrative body in the Member State to which one of the companies concerned or the proposed *société européenne* (SE) is subject, in accordance with national provisions adopted in implementation of Directive 78/855/EEC. In Luxembourg this authority shall be the judge presiding the chamber of the district court dealing in commercial matters in the district in which the registered office of one of the companies concerned is located, sitting as in urgent proceedings.

- (2) In the report referred to in paragraph (1), the experts shall in any case declare whether the proposed share exchange ratio is or is not fair and reasonable. This declaration shall:
  - a) indicate the methods used for the determination of the proposed exchange ratio;
  - b) indicate whether such methods are adequate in the circumstances and the values resulting from each such method, and provide an opinion as to the relative importance attributed to such methods in determining the value actually retained.

In addition, the report shall describe any particular difficulties of valuation.

- (3) The rules provided in Article 26-1 paragraphs (2) to (4) shall not apply.
- (4) Each expert shall be entitled to obtain from the companies promoting the operation all useful information and documents and to carry out all necessary verifications.

**Art. 26septies.**

The general meeting of each company promoting the operation as well as, if applicable, the general meeting of the holders of securities other than shares or corporate units, shall approve the draft terms of the formation of the *société européenne* (SE).

Employee involvement in the *société européenne* (SE) shall be decided pursuant to the provisions adopted in implementation of Directive 2001/86 EC. The general meeting of each company promoting the operation may reserve the right to make registration of the *société européenne* (SE) conditional upon its express ratification of the arrangements so decided.

**Art. 26 octies.**

- (1) The shareholders of the companies promoting the operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares or corporate units to the formation of the *société européenne* (SE). This period shall begin on the date upon which the deed of incorporation of the *société européenne* (SE) shall have been approved by the meetings referred to in Article 26septies.
- (2) The *société européenne* (SE) shall be formed only if, within the period referred to in paragraph (1), the shareholders of the companies promoting the operation have contributed the minimum percentage of shares or corporate units in each company as



provided for in the draft terms of formation and if all the other conditions are fulfilled.

(Law of 27 May 2016)

- (3) The establishment by the notary that all the conditions for the formation of the *société européenne* (SE) are fulfilled in accordance with paragraph (2) shall, in respect of each of the promoting companies, be published in accordance with the requirements of chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings or in the form provided by the law of each Member State adopted in implementation of Article 3 of Directive 68/151/EEC. Shareholders of the companies concerned who have not indicated within the period referred to in paragraph (1) whether they intend to make their shares or corporate units available to the promoting companies for the purpose of forming the *société européenne* (SE) shall have a further month in which to do so.
- (4) Shareholders who have contributed their securities to the formation of the *société européenne* (SE) shall receive shares therein.
- (5) The *société européenne* (SE) may not be registered until it is shown that the formalities referred to in Articles 26ter to 26septies and the conditions referred to in paragraph (2) have been fulfilled.

#### **Art. 26nonies.**

A subsidiary *société européenne* (SE) may be formed in accordance with Article 26bis paragraph (3).

Companies and other legal entities referred to in Article 26bis paragraph (3) participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a *société anonyme* under national law.

(Law of 24 April 1983)

#### **Art. 26-1**

- (1) Any shares issued against contributions in kind must be paid-up within a period of five years after the time of incorporation.

(Law of 18 December 2009; Law of 23 July 2016)

- (2) Contributions in kind shall, prior to the incorporation of the company, be subject to review by the independent auditor who shall be appointed by the founders.

(Law of 24 April 1983)

- (3) This report must give a description of each of the proposed contributions as well as of the methods of valuation used and shall state whether the values reached by the application of these methods correspond at least to the number and nominal value, or, in the absence of a nominal value, the accounting par value and, where applicable, the share premium of the shares to be issued in consideration thereof. The report shall remain appended to the deed provided for in Article 27 or the draft deed provided for in Article 29. The conclusions thereof must be reproduced in the above-mentioned documents.

(Law 10 June 2009)

- (3bis) Where, upon a decision of the board of directors or the management board, the contribution in kind is made up of transferable securities as defined in point 18 of Article 4, paragraph 1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April, 2004 on markets in financial instruments or money-market instruments as defined in point 19 of Article 4, paragraph 1 of said Directive and those securities or instruments are valued at the weighted average price at which they have been traded on one or more regulated market(s) as defined in point 14 of Article 4, paragraph 1 of the Directive during a period of 6 months preceding the effective date of the contribution in kind, paragraphs (2) and (3) shall not be

applicable.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the board of directors or the management board. For the purposes of the aforementioned revaluation, paragraphs (2) and (3) shall apply.

(Law of 23 July 2016)

(3ter) Where, upon a decision of the board of directors or the management board, the contribution in kind is made up of assets other than the transferable securities and money-market instruments referred to in paragraphs (3bis) to (3quater) which have already been subject to a fair value opinion by an independent auditor and where the following conditions are fulfilled:

a) the fair value is determined at a date not more than six months before the effective date of the contribution;

b) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Grand-Duchy of Luxembourg, which are applicable to the kind of assets to be contributed,

paragraphs (2) and (3) shall not be applicable.

In the case of new circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the board of directors or the management board. For the purposes of the aforementioned revaluation, paragraphs (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding a total percentage of at least 5% of the company's subscribed capital on the day of the decision to increase the capital may request a valuation by an independent auditor, in which case paragraphs (2) and (3) shall apply. Such shareholder(s) may submit a request up until the effective date of the contribution, provided that, at the date of the request, the shareholder(s) in question still hold(s) a total percentage of at least 5% of the company's subscribed capital, as was the case on the day of the decision to increase the capital.

(3quater) Where, upon a decision of the board of directors or the management board, the contribution in kind is made of assets other than the transferable securities and money-market instruments referred to in paragraph (3bis) whose fair value is derived, for each individual asset, from the statutory accounts of the previous financial year, provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May, 2006 on statutory audits of annual accounts and consolidated accounts, paragraphs (2) and (3) shall not apply.

The second and third subparagraphs of paragraph (3ter) shall apply *mutatis mutandis*.

(Law of 27 May 2016)

(3quinquies) Where a contribution in kind as referred to in paragraphs (3bis) to (3quater) occurs without a report of an independent auditor as referred to in paragraphs (2) and (3), a declaration containing the following particulars shall be published in accordance with the requirements of chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings within one month after the effective date of the contribution:

a) a description of the non-cash contribution;

b) its value, the source of this valuation and, where appropriate, the method of

valuation;

c) a statement detailing whether the value obtained corresponds at least to the number, to the nominal value or, where there is no nominal value, the accounting par value and, where appropriate, to the premium on the shares to be issued against such contribution;

d) a statement that no new circumstances with regard to the original valuation have occurred.

The declaration shall also include indications on the nominal value of the shares or where there is no such value, the number of shares issued against each contribution in kind, as well as the name of the investor having made the contribution.

*(Law of 27 May 2016)*

(3sexies) Where a contribution in kind is proposed without a report of an independent auditor as referred to in paragraphs (2) and (3), in relation to an increase in the capital which is proposed to be made under Article 32, paragraphs (2) and (3), an announcement containing the date on which the decision to increase the capital was adopted and the information listed in paragraph (3quinquies) shall be published in accordance with the requirements of chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings before the contribution in kind represented by the asset is to become effective. In this event, the declaration pursuant to subparagraph 1 of paragraph (3quinquies) shall be limited to a statement that no new circumstances have occurred since the aforementioned announcement was published.

*(Law of 24 April 1983)*

(4) Paragraphs (2) and (3) are not applicable where at least 90 per cent of the nominal value or accounting par value of all the shares are issued against contributions in kind made by one or more companies and where the following requirements are met:

a) with regard to the company to which the contributions are made, the natural or legal persons referred to in Article 27 have agreed to dispense with the expert's report;

b) a record of the dispense remains appended to the instrument;

c) the companies making such contributions have reserves which, under law or their articles of association, may not be distributed and which are at least equal to the nominal value, or in the absence of a nominal value, the accounting par value, of the shares issued against contributions in kind;

d) the companies making such contributions guarantee, up to an amount equal to that indicated in c), the debts of the recipient company arising between the time the shares are issued against contributions in kind and one year after publication of that company's annual accounts for the financial year during which those contributions were made. Any transfer of these shares is prohibited within this period;

e) the guarantee referred to under d) must be given in an appendix to the instrument provided for in Article 27;

f) the companies making these contributions shall place a sum equal to that indicated in c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which the contributions were made or, where applicable, until such later date as all the claims relating to the guarantee referred to in d) which are submitted during that period shall have been settled.

*(Law of 24 April 1983)*

**Art. 26-2**

*(Law of 23 July 2016)*

- (1) The acquisition by a company, within the two years following its incorporation, of any asset belonging to a natural or legal person, by whom or on whose behalf the deed of incorporation was signed, for a consideration of not less than one tenth of the subscribed capital, shall be subject to a verification and publication in the manner provided by Article 26-1 and shall be subject to approval by the general meeting of shareholders. *(Law of 18 December 2009)* The independent auditor is appointed by the board of directors or by the management board, as the case may be.

*(Law of 24 April 1983)*

- (2) Paragraph (1) shall not apply to acquisitions made in the normal course of the company's business or to acquisitions made on the initiative of or under the supervision of an administrative or judicial authority, or to stock exchange acquisitions.

*(Law of 24 April 1983)*

**Art. 26-3**

*(Law of 10 August 2016)*

Contributions other than in cash may only be remunerated by shares if they comprise assets for which an economic valuation can be produced, excluding assets which comprise undertakings to perform work or supply services.

Such contributions are contributions in kind.

**Art. 26-4**

Subject to the provisions concerning the reduction of the subscribed capital, shareholders may not be released from their obligation to pay-up their contribution.

**Art. 26-5**

*(Law of 10 August 2016)*

- (1) Shares may not be issued for a value less than their nominal value. If a share has no nominal value, it may be issued below its accountable par, subject to complying with the requirements of Article 32, paragraphs (6) and (7).
- (2) However, notwithstanding the terms of Article 32, paragraphs (6) and (7), those persons who, professionally, undertake the placing of shares may, with the consent of the company, pay less than the total price of the shares to which they subscribe during such a transaction.
- (3) The minimum amount to be paid by subscribers as per paragraph (2) is ninety percent of the total subscription price of the shares to which they are subscribing.

**Art. 27.**

*(Law of 24 April 1983)*

The deed constituting the company shall indicate:

*(Law of 25 August 2006)*

- 1) the identity of the natural or legal person or persons by whom or on whose behalf it has been signed;

*(Law of 24 April 1983)*

- 2) the form of the company and its name;
- 3) the registered office

- 4) the corporate purpose;
- 5) the amount of the subscribed capital and, where applicable, of the authorised capital;
- 6) the amount of the subscribed capital initially paid-up;
- 7) the classes of shares, where several classes exist, the rights attaching to each class, the number of shares subscribed to and, in the case of an authorised capital, the shares to be issued in each class and the rights concerning each class, as well as:
  - the nominal value of the shares or the number of shares for which no nominal value is specified;
  - any special conditions restricting the transfer of shares;

*(Law of 06 April 2013)*

- 8) whether the shares are in registered, bearer, or book-entry form and any provision supplemental to, or derogating from, the law;

*(Law of 18 December 2009; Law of 10 August 2016)*

- 9) details of each contribution in kind, the conditions on which it is made, the name of the contributor and the conclusions of the report of the independent auditor provided for in Article 26-1;
- 10) the reason for, and the extent of, any special advantages conferred at the time of incorporation of the company upon any person who participated in the incorporation of the company;
- 11) if applicable, the number of securities or units which do not represent the stated capital, as well as the rights attaching thereto, in particular the right to vote at general meetings;
- 12) insofar as they are not provided for by law, the rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among such corporate bodies;
- 13) the duration of the company;
- 14) at least the approximate amount of the costs, expenses and remuneration or charges of whatever form, which are payable by the company or chargeable to it by reason its incorporation.

**Art. 28.**

*(Law of 24 April 1983)*

The company may be constituted by means of one or more notarial deeds to which all the members are parties, either in person or by representative(s) holding notarised or private proxies.

The parties to those instruments shall be deemed to be the founders of the company. However, if the deeds designate as founder(s) one or more shareholders who together hold at least one third of the capital of the company, the other parties who merely subscribe for shares in cash and are not granted, directly or indirectly, any special advantage, shall be regarded as mere subscribers.

If the payments have been made in application of Article 26 before the execution of any of the deeds of incorporation, the proof thereof may be furnished in the form of a private receipt, to be drawn up in duplicate.

**Art. 29.**

- (1) The company may also be constituted by means of subscriptions.
- (2) The deed of incorporation of the company shall be drawn up in advance in the form of

a notarial deed and shall be published as a draft. The parties to this deed shall be deemed to be the founders of the company.

*(Law of 10 July 2005; Law of 10 August 2016)*

- (3) Subscriptions shall contain a notice convening the subscribers to a meeting to be held within three months for the purpose of the final incorporation of the company.

*(Law of 24 April 1983)*

- (4) They shall contain a notice convening the subscribers to a meeting to be held within three months for the purpose of the final incorporation of the company.

*(Law of 10 July 2005)*

(5) (...)

(6) (...)

**Art. 30.**

*(Law of 24 April 1983)*

- (1) On the scheduled date, the founder(s) shall present to the meeting, which shall be held in the presence of a notary, proof, together with supporting documents, that the conditions laid down by Article 26 have been satisfied.
- (2) If the majority of the subscribers present in person or represented by the holder(s) of notarised or private proxies, other than the founder(s), have no objection to the incorporation of the company, the founder(s) shall declare that it is definitively incorporated.

*(Law of 27 May 2016)*

- (3) If the targeted capital has not been subscribed in its entirety, the company may nevertheless be incorporated with an amount of capital corresponding to the total amount subscribed, provided that the deed of incorporation published in accordance with chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings has allowed for such a possibility.
- (4) The notarised minutes of the meeting of the subscribers, which shall contain a list of the subscribers and a statement of the payments made, shall definitively incorporate the company.

**Art. 31.**

*(Law of 24 April 1983; Law of 10 August 2016)*

- (1) The founders shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:
  - 1) any portion of the capital which will not have been validly subscribed, and any potential difference between the minimum capital provided for by Article 26 and the amount subscribed; they shall ipso jure be deemed to be subscribers thereof;
  - 2) the full and complete payment of up to one quarter of the shares subscribed for, and the payment within a period of five years of the shares issued against contributions in kind; they shall likewise be held joint and severally liable for the full and complete payment of the portion of the capital of which they are deemed to be subscribers pursuant to the foregoing paragraph;
  - 3) the indemnification of the damage which is the immediate and direct result of either the voidance of the company or the omission or incorrectness in the deed or draft deed of the company or in the subscription forms of the statements prescribed by Articles 27 and 29.
- (2) Any person who enters into a commitment for a third party mentioned by name in the deed and acting either as agent or as surety, shall be deemed to be personally

committed if they have no valid mandate or the commitment is not ratified within two months of the commitment.

The founders shall be jointly and severally liable for such commitments.

**Art. 31-1**

*(Law of 10 August 2016)*

– (...)

*(Law of 25 August 2006, renumbered by the Law of 10 August 2016)*

**Art. 31-1.**

The following procedure shall be observed in case of conversion of a *société européenne* (SE) into a *société anonyme* in accordance with article 3.

- 1) The management body of the *société européenne* (SE) shall draw up draft terms of conversion in writing and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of a *société anonyme*.

*(Law of 27 December 2016)*

- 2) The draft terms of conversion shall be made public as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, at least one month prior to the date of the general meeting called to rule on the proposed conversion.

*(Law of 18 December 2009)*

- 3) Prior to the general meeting referred to in paragraph (4), one or more licensed independent auditor appointed by the management body shall certify that the company has assets at least equivalent to its capital.
- 4) The general meeting of the *société européenne* (SE) shall approve the draft terms of conversion together with the articles of the *société anonyme*. The decision of the general meeting requires that the conditions as to quorum and majority laid down for the amendments to the articles of association be fulfilled.

*(Renumbered by the Law of 10 August 2016)*

**Art. 31-2.**

The following procedure shall be observed in case of conversion of a *société anonyme* into a *société européenne* (SE) in accordance with article 3.

- (1) The management body of the *société anonyme* shall draw up draft terms for the conversion in writing and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of a *société européenne* (SE).

*(Law of 27 December 2016)*

- (2) The draft terms of conversion shall be made public as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, at least one month prior to the date of the general meeting called to rule on the proposed conversion.

*(Law of 18 December 2009; Law of 23 July 2016)*

- (3) Prior to the general meeting referred to in paragraph (4), one or more independent auditors appointed by the management body shall certify that the company has net assets at least equivalent to its capital plus the reserves which may not be distributed under law or by virtue of the articles of association.

(Law of 25 August 2006)

- (4) The general meeting of the *société anonyme* shall approve the draft terms of conversion together with the articles of association of the *société européenne* (SE). The decision of the general meeting requires that the conditions as to quorum and majority laid down for the amendments to the articles of association be fulfilled.
- (5) The rights and obligations of the company to be converted in terms of employment conditions arising from national law, practice and individual employment contracts or employment relationships at the national level and existing at the date of registration shall, by reason of such registration, be transferred to the *société européenne* (SE).
- (6) The registered office may not be transferred to another Member State pursuant to Articles 101-1 to 101-17, at the same time as the conversion is effected.

**Art. 32.**

(Law of 24 April 1983)

- (1) Any increase of capital shall be decided upon by the general meeting in accordance with the conditions provided for amendments to the articles of association .

(Law of 25 August 2006)

- (2) The deed of incorporation may, however, authorise the board of directors or the management board to increase the capital, on one or more occasions, up to a specified amount.

(Law of 24 April 1983)

- (3) The general meeting may also grant such authorisation by means of an amendment to the articles of association.
- (4) The rights attaching to the new shares shall be defined in the articles of association.

(Law of 10 August 2016)

- (5) The authorisation is only valid for up to five years from the date on which the deed of incorporation or the amended articles of association are published or, if permitted by the articles of association, from the date of the deed of incorporation or the amended articles of association. It may be renewed on one or more occasions by the general meeting deliberating in accordance with the requirements for amendments to the articles of association, for a period which, for each renewal, may not exceed five years.

(Law of 10 August 2016)

- (6) If the agenda of a general meeting includes a share issue in which the nominal value below the accountable par of former shares of the same category is not mentioned, this fact must be stated specifically in the convening notice.

The operation must be accompanied by a detailed report from the board of directors or the management board, as applicable, covering in particular the issue price and the financial consequences of the operation for shareholders. A report shall be produced by a company auditor appointed by the board of directors or the management board, stating that the financial and accounting information contained in the report from the board of directors or management board is reliable and sufficient to allow the general meeting to make an informed vote on the motion.

These reports must be filed, in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. They shall be declared on the agenda. Every shareholder shall be entitled to obtain free of charge, upon production of his title, eight days before the meeting, a copy of the reports. A copy shall be sent to all registered shareholders at the same time as the convening notice.



The absence of the report from the company auditor, as described in sub-paragraph 2, shall annul the vote of the general meeting unless all shareholders have unanimously waived the need for such report.

- (7) Notwithstanding paragraph (6), share issues in which the nominal value below the accountable par of former shares of the same category is not mentioned may also be made, within the limits of the authorised capital, provided however that the delegation granted to the board of directors or, if applicable, the management board as per paragraphs (2) or (3) includes an authorisation to issue new actions below the accountable par of former shares of the same category.

If the motion to authorise the board of directors or, if applicable, the management board to issue new shares below the accountable par of former shares of the same category is included on the agenda of a general meeting, the conditions stated in subparagraphs 1 to 3 of paragraph (6) must be met.

In this case, the report from the board of directors or, if applicable, the management board, produced as per subparagraph 2 of paragraph (6) shall state the minimum subscription price of the shares to be issued within the limits of the authorised capital.

*(Law of 24 April 1983)*

**Art. 32-1**

- (1) The formalities and conditions provided for the incorporation of companies shall apply to increases of capital by means of new contributions, subject to the following provisions.

*(Law of 25 August 2006)*

- (2) The members of the board of directors or of the management board, as the case may be, shall be jointly and severally liable with of the founders for the obligations of the latter under Article 31.

*(Law of 24 April 1983)*

- (3) *(Law of 23 March 2007)* (...) If the proposed increase of capital is not entirely subscribed, the capital shall be increased by the amount of subscriptions received provided the conditions of the issue expressly provided for that possibility.

*(Law of 25 August 2006)*

- (4) The increase of capital shall be recorded in a notarial deed, prepared at the request of the board of directors or of the management board, as the case may be, against presentation of the documents proving the subscriptions and payments in the case of an increase carried out by way of subscriptions or where it is effected pursuant to the authorisation provided for in Article 32. The notarial deed must be drawn-up within one month from the end of the subscription period or within three months from the day on which that period commenced.

*(Law of 18 December 2009; Law of 27 May 2016; Law of 10 August 2016)*

- (5) At least one quarter of each share must be paid, either in cash, including by offsetting certain liquid and payable debts against the company, or by a contribution in kind, or through the incorporation of reserves, profits or issue premiums.

*(Law of 10 August 2016)*

- (6) In the case of contributions in kind, the shares must be paid in full within five years from the time the increase of capital has been resolved. A report shall be drawn up by an independent auditor in accordance with Article 26-1; this independent auditor is appointed by the board of directors or by the management board, as the case may be. The report by this company auditor must be filed, in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

*(Law of 10 August 2016)*

**Art. 32-1bis.**

If the capital is increased by means of an incorporation of reserves, the new shares shall belong to the bare owner, without prejudice to the rights of the usufructuary.

*(Law of 24 April 1983)*

**Art. 32-2**

Where a share premium is provided for, the amount thereof must be paid up in full.

**Art. 32-3**

- (1) Shares to be subscribed in cash shall be offered on a pre-emptive basis to shareholders in the proportion of the capital represented by their shares.
- (2) The articles of association may provide that paragraph (1) shall not apply to shares which have different rights relating to participation in distributions or in the assets in the event of liquidation. The articles may also provide that, where the subscribed capital of a company with several classes of shares is increased by the issue of new shares in only one class, the pre-emptive right of the holders of shares of the other classes may not be exercised until after that right has been exercised by the holders of the shares of the class in which the new shares are issued.

*(Law of 25 August 2006; Law of 27 May 2016; Law of 10 August 2016)*

- (3) The right to subscribe may be exercised within a period determined by the board of directors or by the management board, as the case may be, which may not be less than fourteen days from the date on which the offer is published in the Recueil Électronique des Sociétés et Associations and in a newspaper published in Luxembourg. However, when all shares are registered, shareholders may be informed by registered letter, without prejudice to any other means of communication that may be approved by individual recipients and that guarantees conveyance of the information.

*(Law of 24 April 1983; Law of 10 August 2016)*

- (4) The subscription rights may be negotiated throughout the subscription period and no restrictions may be placed on that negotiability.

Notwithstanding subparagraph 1, the restrictions applicable to the securities to which the subscription rights are attached shall also apply to those rights.

*(Law of 25 August 2006; Law of 10 August 2016)*

- (5) The articles of association may not withdraw or restrict pre-emption rights.

They may nevertheless authorise the board of directors or the management board, as the case may be, to withdraw or restrict these rights in relation to an increase of capital made within the authorised capital provided for in accordance with Article 32. Such authorisation shall not be valid for a period longer than that provided for in Article 32(5).

A general meeting convened to deliberate, in accordance with the conditions applicable to amendments to the articles of association, either on a capital increase or on the authorisation to increase the capital in accordance with Article 32 (1), may limit or withdraw pre-emptive subscription rights or authorise the board of directors or the management board, as the case may be, to do so. Any proposal to that effect must be specifically announced in the convening notice. Detailed reasons must therefore be set out in a report prepared by the board of directors or by the management board, as the case may be, and presented to the meeting, dealing in particular with the proposed issue price. Absence of this report shall result in the voidance of the general meeting's resolution unless all shareholders have waived the need for the report.

*(Law of 10 August 2016)*

(5bis) The articles of association may authorise the board of directors or the management board, as applicable, to undertake a free issue of existing or future shares to members of the company's salaried staff. When such authorisation relates to shares that have yet to be issued, the provisions of paragraph (5) apply, without prejudice to the terms of this present paragraph, and the authorisation granted by the general meeting shall by operation of law entail a waiver by the existing shareholders of their pre-emptive subscription rights for the benefit of the recipients of the freely-allocated shares.

The general meeting may determine or authorise the board of directors or management board, as applicable, to determine the terms and conditions of the allocation of free shares, which may include a fixed allocation period and a minimum vesting period for the shares thus received.

Shares may be allocated under the same terms:

- to salaried staff members of companies or of economic interest groupings of which at least ten percent of the share capital or voting rights is owned, directly or indirectly, by the company which is issuing the shares;
- to salaried staff members of companies or of economic interest groupings which, directly or indirectly, own at least ten percent of the share capital or voting rights in the company which is issuing the shares;
- to salaried staff members of companies or of economic interest groupings of which at least fifty percent of the share capital or voting rights is owned, directly or indirectly, by a company which itself owns, directly or indirectly, at least fifty percent of the share capital in the company which is issuing the shares;
- to authorised representatives of the company which is issuing the shares or of the companies or economic interest groupings described above, or of certain categories thereof.

*(Law of 24 April 1983)*

(6) The pre-emptive subscription rights are not excluded as provided for in paragraph (5) *(Law of 23 March 2007)* where, in accordance with the decision relating to the increase of the subscribed capital, the shares are issued to banks or other financial institutions with a view to their being offered to the shareholders of the company in accordance with paragraphs (1) and (3).

*(Law of 10 August 2016)*(7) For companies whose shares are not officially listed on a market in Luxembourg or another country or traded on a normally-operating market, recognised and publicly-accessible regulated market, and unless their articles of association state otherwise, third parties may, after the preferential subscription period set as per paragraph (3), participate in the capital increase, unless the board of directors or, if applicable, the management board should decide that the preferential rights shall be exercised, proportionately to the portion of the capital represented by their shares, by former shareholders who have previously exercised their right during the preferential subscription period. The terms applicable to subscriptions by former shareholders shall in this case be determined by the board of directors or, if applicable, the management board.

*(Law of 10 August 2016)*

8) When usufruct has been granted over shares, the preferential subscription right attached to those shares belongs to the bare owner. If the bare owner sells the subscription rights, the proceeds from the disposal or any property he purchases with those proceeds shall be subject to usufruct. If the bare owner fails to exercise his right, the usufructuary may in his place subscribe to the new shares or sell the subscription rights.

In the latter case, the bare owner may ask for the proceeds from the disposal to be reinvested; any property thus purchased shall be subject to usufruct. The bare owner of the shares shall be considered, vis-à-vis the usufructuary, to have failed to exercise his pre-emptive subscription right over the new shares issued by the company when he has neither subscribed to new shares nor sold the subscription rights by eight days before the end of the subscription period granted to shareholders.

The bare owner shall have bare ownership of the new shares, and the usufructuary shall have usufruct. However, if funds are invested by the bare owner or by the usufructuary in partial or full payment of a subscription, the new shares shall only belong to the bare owner and the usufructuary up to the value of the subscription rights; any surplus new shares shall belong entirely to the party that contributed the funds.

This paragraph also applies to allocations of free shares. When the bare owner is required to submit a request for an allocation of shares, the bare owner is considered, vis-à-vis the usufructuary, to have failed to exercise his right to obtain an allocation of free shares if he has not submitted such a request and has not sold the subscription rights by three months after the start of the allocation period.

The terms of this paragraph apply in the absence of an agreement between the parties.

*(Law of 24 April 1983; Law of 10 August 2016)*

**Art. 32-4.**

Articles 32, 32-1 except paragraph (6) and 32-3 apply to issues of convertible bonds, all other convertible debt instruments and subscription rights, whether isolated or attached to another security. Paragraph (65) of Article 32-1 does however apply to issues of convertible bonds or any other convertible debt instruments when the subscription price of such instruments is paid in kind.

Article 32-2 applies to conversions of convertible bonds and all other convertible debt instruments into capital as well as to the exercise of subscription rights whether isolated or attached to another security. Articles 32, 32-1 and 32-3 do not apply to the situations described in this subparagraph.

The conversion of convertible bonds shall be viewed as a contribution in cash that may be released by set-off with a claim over the company and will be governed by the same conditions as that type of contribution.

The decision by the board of directors to proceed with an issue of convertible bonds or any other type of convertible debt instrument or subscription rights must be taken during the authorisation period. This decision shall reduce accordingly the available amount of authorised capital. The conversion of convertible bonds or the exercise of subscription rights may take place after the end of the authorisation period.

*(Law of 10 July 2005)*

**Art. 33. (...)**

**Art. 34. (...)**

**Art. 35. (...)**

**Art. 36. (...)**

### **Section 3. – Shares and share transfers**

**Art. 37.**

*(Law of 21 December 2006; Law of 6 April 2013; Law of 10 August 2016)*

(1) The capital of *sociétés anonymes* shall be divided into shares with or without an

indication of the value thereof.

Securities which do not represent the stated capital may be issued, and are referred to in this law as "founder shares". The articles of association shall specify the rights attaching thereto.

Shares and founders' shares are in registered, bearer or dematerialised form.

Shares may be issued in denominations of less than one share, an appropriate number thereof conferring the same rights as a share, without prejudice to the requirements of Article 68.

Shares and smaller denominations of shares shall bear a serial number, unless they are book-entry shares.

- (2) The articles of association and the issue documentation for convertible bonds or subscription rights may limit inter vivos and mortis causa transfers of all types of shares, founder shares, subscription rights or any other securities granting the right to an acquisition of shares, including convertible bonds, bonds with subscription rights and any other convertible debt instruments.

Inalienability clauses must be time-limited.

However, when the limitation results from an approval clause or a clause stipulating a pre-emptive right, the application of these clauses cannot result in the non-transferability being extended for more than twelve months from the request for approval or the invitation to exercise the pre-emptive right.

Where the clauses referred to in subparagraph 3 stipulate an extension longer than twelve months, that provision is reduced to twelve months by operation of law.

If the articles of association do not stipulate a method for determining the transfer price of the shares, units, rights or securities referred to in subparagraph 1, that price shall, unless the parties agree otherwise, be determined by the judge presiding the chamber of the district court dealing with commercial matters and sitting as in urgent proceedings. The value of the shares, units, rights or securities referred to in securities 1 shall be fixed on the day of the notification of sale, in cases of inter vivos transfers, or on the date of death in cases of transfers mortis causa.

Any transfer that is made in breach of the articles of association is void.

**Art. 38.**

*(Law of 10 August 2016)*

If there are several owners of a share or smaller denomination of one share, the company shall be entitled to suspend the exercise of the rights attaching thereto until one person is designated as being the owner, with regard to the company, of the share or smaller denomination. Every joint owner nevertheless has the right of information pursuant to Article 73.

**Art. 39.**

A register of the registered shares shall be maintained at the registered office and every shareholder may examine it; the register shall specify:

the precise designation of each shareholder and the number of shares or fractional shares held by him;

the payments made on the shares;

*(Law 06 April 2013)*

transfers and the dates thereof or the conversion of shares into shares in bearer or book-entry form, subject to the provisions of the articles of association.

**Art. 40.**

Ownership of registered shares shall be established by an entry in the register prescribed in the

foregoing Article.

*(Law of 06 April 2013)*

The company must satisfy the request of a person inscribed in the register to issue a certificate relating to the shares registered under that person's name.

Transfers shall be carried out by means of a declaration of transfer entered in the said register, dated and signed by the transferor and the transferee or by their duly authorised representatives, and in accordance with the rules on the assignment of claims laid down in article 1690 of the Civil Code. The company may accept and enter in the register a transfer on the basis of correspondence or other documents recording the agreement between the transferor and the transferee.

Subject to any contrary provisions of the articles of association, transmission, in the case of death, shall be validly established with regard to the company, provided it is not disputed, on presentation of the death certificate, the certificate of registration and an affidavit (*acte de notoriété*) attested by a district judge (*juge de paix*) or by a notary.

**Art. 41.**

*(Law of 23 November 1972; Law of 25 August 2006; Law of 06 April 2013; Law of 27 May 2016; Law of 10 August 2016)*

Bearer shares shall be signed by two directors or two members of the management board, as the case may be, or where the company comprises a single director or where the management board is composed of a single person, by such person. Subject to contrary provisions of the articles of association, the signature may be handwritten, printed or affixed by means of a stamp.

However, one of the signatures may be affixed by a person delegated for that purpose by the board of directors or by the management board, as the case may be. In such cases, it must be handwritten.

A certified true copy of the deed delegating authority to a person who is not a member of the board of directors or the management board, as applicable, shall be previously filed in accordance with chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

The share shall state:

- 1) the date of the deed of incorporation of the company and the date of the publication thereof;
- 2) the share capital, the number and type of each class of shares and the nominal value of the securities or the interest in the company which they represent;
- 3) a brief description of the contributions made to the company and the applicable conditions thereto;
- 4) any special advantages conferred upon the founders;
- 5) the duration of the company.

The preceding paragraph is not applicable to global share certificates taking the form of global bearer certificates deposited with a securities settlement system. The number of securities represented by these certificates must be determined or be capable of being determined.

**Art. 42.**

- (1) Bearer shares are to be deposited with a custodian appointed by the board of directors or the management board, as applicable, and shall meet the requirements of paragraph 2.

- (2) The custodian cannot be a shareholder of the issuing company. Only the following professional institutions operating in Luxembourg may be appointed custodian:
  - a) credit institutions;
  - b) wealth managers;
  - c) distributors of UCI units;
  - d) specialised professionals in the financial sector (PSF), certified as family offices, domiciliation agencies for companies, professionals performing incorporation or management services for companies, registrar agents or as professional custodians of financial instruments;
  - e) lawyers at the Court registered on list I and European lawyers practicing under their original professional title registered on list IV of the Bar referred to in Article 8, paragraph 3 of the amended Law of 10 August 1991 on the legal profession;
  - f) notaries;
  - g) statutory auditors and licensed independent auditors;
  - h) certified accountants;
- (3) The custodian maintains a register of bearer shares in Luxembourg. This register contains:
  - a) the exact name of each shareholder and the number of shares or fractional shares held by them;
  - b) the date of deposit;
  - c) a list of any assignments and the date or of any conversions of shares into registered form;

Each holder of bearer shares shall be entitled to only obtain information that concerns him/her.
- (4) The custodian holds shares deposited pursuant to paragraph 1, on behalf of the shareholder who is the owner. The ownership of the bearer share is subject to entry in the register. At the written request of the shareholder, a certificate for all entries concerning him/her shall be issued by the custodian.

Any assignment shall be rendered binding by a statement of transfer entered on the same register by the custodian. The custodian may accept for this purpose any document or notice evidencing the transfer of ownership between the transferor and transferee.

Subject to any contrary provisions of the articles of association, notification of the transfer shall be deemed validly established with regard to the custodian provided that is not disputed, on presentation of the death certificate, the certificate of registration and an affidavit attested by a district judge or by a notary.
- (5) The rights attaching to bearer shares can only be exercised where the bearer shares have been deposited with the custodian and all of the information provided for in paragraph 3 has been duly entered on the register.
- (6) The custodian cannot transfer the bearer shares, except in the following circumstances whereby he/she must return the shares to the bearer:
  - a) to his/her successor in his capacity as custodian, in the event of the termination of his/her functions;
  - b) to the company, in the event of conversion of bearer shares into registered shares, the redemption by the company of its own shares in accordance with articles 49-2 and 49-3, or the depreciation of the capital in accordance with Article 69-1.
- (7) The liability of the custodian, subject to his/her obligations as provided for in paragraphs 3, 4 and 6, shall be determined in accordance with the same rules as the

liability of the directors or members of the management board, where applicable (*Law of 6 April 2013*)

**Art. 42bis.**

Book-entry shares are granted physical form by way of entry in a securities account in the name of the accountholder held at a settlement institution, a central account keeper, an account keeper or a foreign account keeper. Assignments shall be carried out by way of book entry.

**Art. 43.**

(*Law of 07 September 1987; Law of 10 August 2016*)

(...)

Shares shall be in registered form until they are fully paid-up.

(*Law of 06 April 2013*)

The owners of shares or securities in bearer form may, at any time, request that they be converted, at their expense, into shares or securities in registered form or, if the articles of association so provide, into shares or book-entry securities. In the latter case, costs are to be borne by the person provided for in the law on book-entry securities.

Unless the articles of association expressly provide otherwise, the owners of shares or securities in registered form may, at any time, request conversion thereof into shares or securities in bearer form.

If the articles of association so provide, the owners of shares or securities in registered form may request conversion thereof into book-entry shares or securities. Costs are to be borne by the person provided for in the law on book-entry securities.

The holders of book-entry shares or securities may, at any time, request that they be converted, at their expense, into shares or securities in registered form unless the articles of association provide for that shares or securities must be in book-entry form.

**Art. 44.**

(*Law of 08 August 1985; Law of 10 August 2016*)

(...)

**Art. 45.**

(*Law of 8 August 1985; Law of 25 August 2006; Law of 27 May 2016; Law of 10 August 2016*)

(1) Non-voting shares may be issued:

- upon the incorporation of the company if provided for by the articles of association;
- by an increase in capital;
- by the conversion of ordinary shares into non-voting shares.

In the latter two cases, the general meeting shall deliberate in accordance with the rules laid down in Article 67-1 (1) and (2) .

(2) Non-voting shares may be issued only where the articles of association stipulate a right to a dividend upon the distribution of profits, the right to reimbursement of the contribution and the right to a share of the profit upon liquidation.

(3) The general meeting determines the maximum of amount of such shares to be issued.

(4) If non-voting shares are created by the conversion of ordinary shares already issued or, where this power has been provided in the articles of association, if non-voting shares are converted into ordinary shares, the general meeting shall determine the



maximum amount of shares to be converted and the conditions for conversion.

The offer for conversion shall be made at the same time to all shareholders in proportion to the amount of capital held. The right to subscribe may be exercised within a period to be determined by the board of directors or by the management board, as the case may be, which may not be less than thirty days from the start of the subscription period which shall be announced by means of a notice determining the subscription period which shall be published in the *Recueil Électronique des Sociétés et Associations* and in a newspaper published in Luxembourg.

However, when all shares are registered, shareholders may be informed by registered letter without prejudice to any other means of communication that may be approved by individual recipients and that guarantees conveyance of the information.

**Art. 46.**

*(Law of 08 August 1985; Law of 10 August 2016)*

- (1) Non-voting shares carry a voting right when the general meeting's resolution will amend the rights attached to non-voting shares and at any meeting called to rule on a reduction in the share capital or the early dissolution of the company.
- (2) With the exception of cases where they have voting rights, non-voting shares shall not be taken into account in determining the conditions as to quorum and majority at general meetings.

**Art. 47.**

*(Law of [\*\*\*] 2016)*

The convening notices, reports and documents which, by virtue of the provisions of this law, must be sent or notified to the shareholders of the company shall likewise be sent or notified to the holders of non-voting shares within the periods prescribed for that purpose.

**Art. 48.**

A statement regarding the capital of the company shall be published once each year, at the end of the balance sheet.

*(Law 24 April 1983)*

It shall comprise:

the number of shares subscribed;

the amounts paid-up;

the list of the shareholders who have not yet paid-up their shares, specifying the sums remaining due from them.

The publication of this list shall, as regards the changes of the shareholders recorded therein, have the same effect as a publication made in accordance with Article 11bis.

In the event of an increase of capital, the statement shall indicate a mention of the portion of the capital which shall not yet have been subscribed.

**Art. 49.**

Notwithstanding any provision to the contrary, shareholders shall be liable for the total amount of their shares.

However, the valid assignment of the shares shall release them, with regard to the company, from the obligation to make any contribution to debts arising after the assignment, and with regard to third parties, from the obligation to make any contribution to debts arising after publication of the assignment.

Each assignor shall have a right of recourse jointly and severally against his immediate assignees and the subsequent assignees.

*(Law of 12 March 1998)*

#### **Section 4 (...)**

*(Law of 24 April 1983)*

##### **Art. 49-1**

- (1) The shares of a company may not be subscribed by the company itself.
- (2) If the shares of a company have been subscribed by a person acting in his own name but on behalf of the company, the subscriber shall be deemed to have subscribed them on his behalf.

*(Law of 25 August 2006; Law of 10 August 2016)*

- (3) The natural or legal persons referred to in Article 27.1) as well as the parties to the instrument referred to in Article 29 paragraph (2) or, in the case of an increase of the subscribed capital, the members of the board of directors or of the management board, as the case may be, shall be jointly and severally obliged to pay up any shares subscribed in contravention of this Article.

However, the above-mentioned persons may be released from such obligation on proving that no misconduct is attributable to them personally.

*(Law of 24 April 1983)*

##### **Art. 49-2**

*(Law of 10 June 2009)*

- (1) Without prejudice to the principle of equal treatment of all shareholders who are in the same position, or to the law on market abuse, the company may only acquire its own shares, either itself or through a person acting in its own name but on the company's behalf, under the following conditions:
  - 1) the authorisation to acquire shares shall be given by the general meeting, which shall determine the terms and conditions of the proposed acquisition and in particular the maximum number of shares to be acquired, the duration of the period for which the authorisation is granted and which may not exceed 5 years and, in the case of acquisition against payment, the maximum and minimum consideration. The board of directors or the management board shall ensure that, at the time of each authorised acquisition, the conditions referred to in points 2) and 3) are respected;
  - 2) the acquisitions, including shares previously acquired by the company and held in the company's portfolio, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in paragraphs (1) and (2) of Article 72-1;
  - 3) only fully paid-up shares may be included in the transaction;

*(Law of 10 August 2016)*

- 4) the acquisition offer must be made in the same conditions to all shareholders in the same situation, except for acquisitions which are decided unanimously by a general meeting at which all shareholders are present or represented; likewise, listed companies may purchase their own shares on the market without the need to make an acquisition offer to shareholders.

*(Law of 25 August 2006)*

- (2) Where the acquisition of the company's own shares is necessary in order to prevent serious and imminent harm to the company, the condition under (1) 1° above shall not apply.

In such case, the next general meeting must be informed by the board of directors or

by the management board, as the case may be, of the reasons for and the purpose of the acquisitions made, of the number and nominal value, or in the absence thereof, of the accounting par value of the shares acquired, of the proportion of the subscribed capital which they represent and the countervalue thereof.

(Law of 10 August 2016)(3) Neither does the condition at (1), 1st paragraph apply if the shares are acquired by either the company itself or a person acting in its name but on behalf of that company so that they may be distributed to the staff of that company or of a company related to it by a relationship of control. For the purposes of this article, a relationship of control means the relationship between a parent company and a subsidiary as described in Article 309 of this law.

The distribution of any such shares must take place within twelve months from the date of their acquisition.

(Law of 24 April 1983; Law of 10 August 2016)

**Art. 49-3.**

(1) Article 49-2 does not apply to:

- a) shares acquired pursuant to a resolution to reduce the capital or in the circumstances referred to in Article 49-8;
- b) shares acquired as a result of a universal transfer of assets;
- c) fully paid-up shares acquired free of charge or acquired by banks and other financial institutions pursuant to a purchase commission contract;
- d) shares acquired pursuant to a legal obligation or a court order for the protection of minority shareholders, in the event, particularly of a merger, the division of the company, a change in the company's purpose or form, the transfer abroad of the registered office or the introduction of restrictions on the transfer of shares;
- e) shares acquired from a shareholder in the event of failure to pay them up;
- f) fully paid-up shares acquired pursuant to an allotment by court order for the payment of a debt owed to the company by the owner of the shares;
- g) fully paid-up shares issued by an investment company with fixed capital as defined in Article 72-3 and acquired at the investor's request by that company or by a person acting in his own name but on behalf of that company.

These acquisitions may not have the effect of reducing the net assets below the aggregate of the subscribed capital and the reserves which may not be distributed under law.

- (2) Shares acquired in the cases indicated under b) to f) of paragraph (1) must however be disposed of within a maximum period of three years after their acquisition, unless the nominal value, or, in the absence of nominal value, the accounting par value of the shares acquired, including shares which the company may have acquired through a person acting in its own name, but on behalf of the company, does not exceed 10% of the subscribed capital.
- (3) If the shares are not disposed of within the period prescribed in paragraph (2), they must be cancelled. The subscribed capital may be reduced by a corresponding amount. Such a reduction shall be compulsory where the acquisitions of shares to be cancelled results in the net assets having fallen below the amount referred to in Article 72-1.

**Art. 49-4**

Any shares acquired in contravention of Articles 49-2 and 49-3 paragraph (1) sub a) must be disposed of within a period of one year after acquisition. Should they not be disposed of within that period, Article 49-3 paragraph (3) shall apply.

**Art. 49-5**

- (1) In those cases where the acquisition by the company of its own shares is permitted in accordance with Articles 49-2 and 49-3, the holding of such shares shall be subject to the following conditions:

*(Law of 10 August 2016)*

a) The voting rights attached to shares held by the company are suspended. The redeemed shares are not used to calculate the quorum and majority conditions at meetings.

If the board of directors decides to suspend the right to dividends on shares held by the company, the dividend coupons shall remain attached. In these circumstances, the distributable profit is reduced in line with the number of shares held and the amounts that would have been distributed are retained until the shares are sold, with the coupons attached. The company may also keep the distributable profit at the same amount and distribute it between the shares whose voting rights have not been suspended. In this latter case, the expired coupons are destroyed.

If the company owns redeemed founder shares, it may not exercise the corresponding voting rights.

If the company owns founder shares which carry a right to dividends, the rules of the second subparagraph apply.

b) if the said shares are included among the assets shown in the balance sheet, a non-distributable reserve of the same amount shall be created among the liabilities.

- (2) Where a company has acquired its own shares in accordance with Articles 49-2 and 49-3, the management report must indicate:

a) the reasons for acquisitions made during the financial year;

b) the number and the nominal value, or in the absence of nominal value, the accounting par value, of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

c) in the case of acquisition or disposal against payment, the countervalue of the shares;

d) the number and nominal value, or, in the absence of nominal value, the accounting par value, of all the shares acquired and held in the company's portfolio as well as the proportion of the subscribed capital which they represent.

**Art. 49-6**

*(Law of 10 June 2009; Law of 27 May 2016; Law of 10 August 2016)*

- (1) A company may not directly or indirectly, advance funds or grant loans or guarantees with a view to the acquisition of its shares by a third party except under the following conditions:

a) These transactions take place under the responsibility of the board of directors or of the management board at fair market conditions, especially with regard to interest received by the company and with regard to guarantees provided to the company for the loans and advances referred to above. The financial situation of the third party or, if the transaction involves several parties, of each party involved must have been duly investigated.

b) The transactions shall be submitted by the board of directors or the management board for prior approval to the general meeting deliberating under the same conditions as for amendments to the articles of association. The board of directors or the management board shall present a written report to the general meeting, indicating the reasons for the transaction, the company's interest in entering into the transaction, the

conditions under which the transaction is entered into, the risks involved in the transaction with regard to the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report is filed with the register of commerce and companies as per the requirements of Chapter Vbis, Title I of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, and are published in the Recueil Électronique des Sociétés et Associations as per Article 11bis §3.

c) The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in paragraphs (1) and (2) of Article 72-1, taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares in accordance with Article 49-2 paragraph (1). The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, equal to the aggregate amount of the financial assistance.

d) Where a third party, by means of financial assistance from a company, acquires that company's own shares within the meaning of Article 49-2 paragraph (1) or subscribes for shares issued as part of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.

- (2) Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business or to transactions carried out with a view to the acquisition of shares by or on behalf of the staff of the company or of a company related to it by a relationship of control. However, such transactions may not have the effect of reducing the net assets of the company below the aggregate of the capital subscribed and the reserves which may not be distributed under law or the articles of association.
- (3) Paragraph (1) shall not apply to transactions carried out with a view to acquiring shares as described in Article 49-3, paragraph (1) sub g).

*(Law of 10 June 2009)*

**Art. 49-6bis.**

*(Law of 23 July 2016)*

Where members of the board of directors or of the management board of a company, which is party to a transaction referred to in Article 49-6, paragraph (1), or members of a parent company or the parent company itself, or third parties acting in their own name but on behalf of the members of the board of directors or of the management board or on behalf of such company, are counterparties to a transaction referred to in Article 49-6, the supervisory auditors or the independent auditor shall provide a special report on the transaction to the general meeting who shall decide on that report.

*(Law of 24 April 1983; Law of 10 August 2016)*

**Art. 49-7.**

- (1) The acceptance of the company's own shares as collateral either by the company itself or by a person acting in his own name, but on behalf of the company, shall be treated as an acquisition for the purposes of Articles 49-2, 49-3 paragraph (1) and Articles 49-5 and 49-6.
- (2) Paragraph (1) shall not apply to transactions concluded by banks and other financial institutions in the normal course of business.

**Art. 49-8**

By way of derogation from the foregoing, the issue of redeemable shares shall be authorised provided that the redemption thereof is subject to the following conditions:

- 1) the redemption must be authorised by the articles of association before the redeemable shares are subscribed;

- 2) the shares must be fully paid-up;
- 3) the terms and conditions for the redemption must be laid down in the articles of association;
- 4) redemption can only be made by using sums available for distribution in accordance with Article 72-1 (*Law of 23rd March, 2007*) [...] or the proceeds of a new issue made with a view to carrying out such redemption;
- 5) an amount equal to the nominal value, or, in the absence thereof, the accounting par value, of all the shares redeemed must be included in a reserve which cannot be distributed to the shareholders except in the event of a reduction in the subscribed capital; the reserve may only be used to increase the subscribed capital by incorporation of reserves;
- 6) sub-paragraph (5) shall not apply to a redemption using the proceeds of a new issue made with a view to carrying out such redemption;
- 7) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums which are available for distribution in accordance with Article 72-1, paragraph (1).

(*Law of 27 May 2016*)

- 8) the redemption must be published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

(*Law of 12 March 1998; Law of 10 August 2016*)

**Art. 49bis.**

- (1) a) The subscription, acquisition or holding of shares in a *société anonyme* by another company within the meaning of Article 1 of Directive 2009/101/EC in which the *société anonyme* directly or indirectly holds the majority of the voting rights or over which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the *société anonyme* itself. Article 49-5, paragraph (1)(b) does not however apply where the company is controlled directly by the *société anonyme*.
- b) Subparagraph a) shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in Article 1 of Directive 2009/101/EC.
- (2) However, where the *société anonyme* only holds a majority of the voting rights indirectly or can only exercise a dominant influence indirectly, paragraph (1) does not apply, but in such case the voting rights attached to the shares in the *société anonyme* held by the other company are suspended.
- (3) For the purposes of this Article:
  - a) a *société anonyme* is deemed to be able to exercise a dominant influence if it:
    - has the right to appoint or dismiss a majority of the members of the administrative body, of the management body or of the supervisory body, and is at the same time a shareholder or member of the other companyor
    - is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.
  - b)
    - a *société anonyme* is deemed to indirectly hold voting rights where such voting rights are held by a company having one of the legal forms referred to in paragraph (1) in which the *société anonyme* directly holds a majority of the

voting rights

- a *société anonyme* is deemed to be able to indirectly exercise a dominant influence over another company where the *société anonyme* directly holds the majority of the voting rights in a company having one of the legal forms referred to in paragraph (1) which
  - has the right to appoint or dismiss a majority of the members of the administrative body, of the management body or of the supervisory body, and is at the same time a shareholder or member of the other company
  - or
  - is a shareholder or member of the other company and has sole control of the majority of the voting rights of the other company's shareholders or members under an agreement concluded with other shareholders or members of that company.

c) a *société anonyme* is deemed to hold voting rights where, in application of the articles of association, the law or an agreement, it is entitled to exercise the voting rights attached to the shares of the company and can in fact exercise them.

(4) Paragraph (1) shall not apply where

a) the subscription, acquisition or holding of shares of the *société anonyme* is carried out on behalf of a person other than the person subscribing, acquiring or holding the shares and who is neither the *société anonyme* referred to in paragraph (1) nor another company in which the *société anonyme* directly or indirectly holds a majority of the voting rights or over which it can directly or indirectly exercise a dominant influence;

b) the subscription, acquisition or holding of shares of the *société anonyme* is carried out by the other company referred to in paragraph (1) in its capacity and in the context of its activities as a professional securities dealer, provided that it is a member of a stock exchange situated or operating within a Member State of the European Union, or is authorised or supervised by an authority of a Member State of the European Union competent to supervise professional securities dealers which, within the meaning of this article, may include credit institutions.

(5) Paragraph (1) does not apply where the holding of shares in the *société anonyme* by the other company referred to in paragraph (1) results from an acquisition made before the relationship between the two companies corresponds to the criteria laid down in paragraph (1).

However, the voting rights attached to those shares shall be suspended and those shares shall be taken into account in order to determine whether the condition laid down in Article 49-2, paragraph (1) 2° is fulfilled.

(6) Paragraphs (2) and (3) of Article 49-3 and Article 49-4 shall not apply where shares in a *société anonyme* are acquired by the other company referred to in paragraph (1) provided:

a) the voting rights attached to the shares in the *société anonyme* held by the other company are suspended; and

(Law of 25 August 2006)

b) the members of the management body of the *société anonyme* are obliged to buy back from the other company the shares referred to in paragraphs (2) and (3) of Article 49-3 and in Article 49-4 at the price at which the other company acquired them; exceptionally this sanction shall not apply where such members prove that the *société anonyme* played no part whatsoever in the subscription or acquisition of the shares in question.

(Law 25 August 2006)

#### **Section 4. – Management and supervision of *sociétés anonymes* and of *sociétés européennes* (SE)**

##### **Sub-section 1. - The board of directors**

###### **Art. 50.**

*Sociétés anonymes* are managed by agents appointed for a specific period, who may, but are not required to be members, who may be removed from office and who may receive a salary or not.

###### **Art. 51.**

(Law of 25 August 2006; Law of 10 August 2016)

There must be at least three directors.

However, where the company has been formed by a single member or where it has been established at a general meeting of shareholders that the company only has a single member, the board of directors can be made up of one member until the ordinary general meeting following the establishment of the existence of more than one member.

In the *société européenne* (SE), the number of directors or the rules for determining the number of directors shall be laid down in its articles of association. However, there must be at least three directors where employee participation in the *société européenne* (SE) is regulated in implementation of Directive 2001/86/EC.

They shall be appointed for a term set by the general meeting of shareholders; however, they may be appointed for the first time in the deed of incorporation of the company. This provision shall apply to the *société européenne* (SE) without prejudice, where applicable, to the employee participation arrangements determined in implementation of Directive 2001/86/EC.

Their term of office may not exceed six years; they may at any time be removed from office by the general meeting.

In case of vacancy of the office of a director appointed by the general meeting, the remaining directors so appointed may, unless the articles of association provide otherwise, fill the vacancy on a provisional basis.

In such circumstances, the next general meeting shall make the final appointment.

###### **Art. 51bis.**

(Law of 10 August 2016)

Where a legal entity is appointed as director, member of the management committee, or managing director, it shall designate a permanent representative to exercise that duty in the name and on behalf of the legal entity.

Such representative shall be subject to the same conditions and shall incur the same civil liability as if he fulfilled such duty in his own name and on his own behalf, without prejudice to the joint and several liability of the legal entity which he represents. The revocation by such legal entity of its representative is conditional upon the simultaneous appointment of a successor.

The appointment and termination of the position of a permanent representative are subject to the same publicity rules as if he acted in his own name and on his own behalf.

###### **Art. 52.**

Unless the deed of incorporation provides otherwise, directors may be re-elected; in the event of a vacancy before the end of a director's term of office, the director appointed shall serve for the remainder of the term of office of the director whom he replaces.



(Law of 23 November 1972)

**Art. 53.**

The board of directors shall have the power to take any action necessary or useful to realise the corporate purpose, with the exception of the powers reserved by law or by the articles of association for the general meeting. (Law of 25 August 2006). In a *société européenne* (SE), the articles of association shall list the categories of transactions which require an express decision of the board of directors.

It shall represent the company with regard to third parties and in legal proceedings, either as plaintiff or as defendant. Writs served on behalf of or against the company shall be validly served in the name of the company alone.

Any limitations to the powers conferred upon the board of directors by the preceding subparagraphs resulting either from the articles of association of the company or from a decision of the competent corporate bodies shall not be valid with regard to third parties, even if they are published.

(Law of 27 May 2016)

However, the articles of association may authorise one or more directors to represent the company in any deed or in legal proceedings, either alone or jointly. This clause is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

(Law of 25 August 2006)

Where a delegation of powers in a *société européenne* (SE) has been validly granted and where the holder of such delegation passes a deed which is within the limits of such delegation but belongs to a category of transactions which require an express decision of the board of directors under the articles of association of the *société européenne* (SE), such deed shall be binding on the company without prejudice to damages, where applicable.

(Law of 8 March 1989; Law of [\*\*\*] 2016)

**Art. 54.**

The board of directors may decide to create committees, whose composition and powers it shall determine and which shall operate under its responsibility.

(Law of 08 March 1989)

**Art. 55. (...)**

**Art. 56. (...)**

**Art. 57.**

(Law of 25 August 2006; Law of 23 March 2007; Law of 10 August 2016)

Any director having a direct or indirect financial interest in a transaction that falls within the remit of the board of directors and which conflicts with the interests of the company, shall be obliged to advise the board thereof and to cause a record of his statement to be included in the minutes of the meeting. He may not take part in these deliberations.

At the next following general meeting, before any other resolution is put to vote, a special report shall be made on any transactions in which any of the directors may have had an interest conflicting with that of the company.

By way of derogation from subparagraph 1, where the company comprises only a single director, only transactions made between the company and its director having an interest conflicting with that of the company shall be mentioned in the minutes.

Where, due to a conflict of interests, the number of directors required by the articles of association for the board to validly deliberate and vote on a point in question is not met, the

board of directors may, unless otherwise provided in the articles of association, decide to defer the vote on that item to the shareholders.

The preceding subparagraphs shall not apply where the decision of the board of directors or of the single director relates to recurring operations entered into under normal conditions.

**Art. 58.**

The directors shall not contract any personal obligation in relation to the company's commitments.

**Art. 59.**

*(Law of 10 August 2016)*

The directors, members of the management committee and the managing director shall be liable to the company in accordance with general law for the execution of the mandate given to them and for any misconduct in the management of the company's affairs.

The directors and members of the management committee shall be jointly and severally liable, both towards the company and any third parties, for damages resulting from the violation of this law or the articles of association.

The directors and members of the management committee shall be released from that liability in relation to an infringement to which they were not a party, provided no misconduct is attributable to them and they have reported such infringement, if members of the board of directors, to the first general meeting after learning of it or, if members of the management committee, to the first board meeting after learning of it.

**Art. 60.**

*(Law of 23 November 1972)*

The day-to-day management of the company's business and the power to represent the company with respect thereto may be delegated to one or more directors, officers, managers or other agents, who may but are not required to be members, acting either alone or jointly.

Their appointment, their removal from office and their powers and duties shall be governed by the articles of association or by a decision of the competent corporate bodies; however, no restrictions placed upon their powers to represent the company in the day-to-day management will be valid with regard to third parties, even if they are published.

*(Law of 27 May 2016)*

This clause, by virtue of which the day-to-day management is delegated to one or more persons acting either alone or jointly, is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

*(Law of 25 August 2006)*

The delegation in favour of a member of the board of directors shall entail the obligation for the board to report each year to the ordinary general meeting on the salary, fees and any advantages granted to the delegate.

*(Law of 23 November 1972; Law of 10 August 2016)*

The liability of persons entrusted with day-to-day management shall be governed by the general rules on mandates with respect to such management.

The persons to which day-to-day management is delegated are governed by Article 57, which applies by analogy. Where there is only one delegate facing a conflict of interests, the decision must be taken by the board of directors. Following an infringement of Article 57, the persons entrusted with day-to-day management may be held liable on the basis of

Article 59, subparagraph 2, it being understood that, when applying this provision, they will be released from that liability in relation to an infringement to which they were not a party, provided no misconduct is attributable to them and they have reported such infringement to the first board meeting after learning of it.

*(Law of 10 August 2016)*

**Art. 60-1**

The articles of association may authorise the board of directors to delegate its powers of management to a management committee or a managing director, provided that delegation does not include the general policy of the company or any of the acts reserved for the board of directors by other provisions of the law. If a management committee is created or a managing director is appointed, the board of directors is responsible for its or his/her supervision.

The management committee will comprise several persons who may but need not be directors.

The conditions for appointing members of the management committee or the managing director, their dismissal, remuneration and term of office, as well as the rules of procedure for the management committee, shall be determined in the articles or, otherwise, by the board of directors.

The articles of association may confer upon the managing director or upon one or more members of the management committee the power to represent the company, either alone or jointly.

The appointment of a managing director and the creation of a managing committee and the clause in the articles of association described in subparagraph 3, the power of representation of the managing director and of the members of the management committee, are all enforceable against third parties, in accordance with the rules laid down in Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

The articles of association or a decision by the board of directors may restrict the powers of management that may be delegated by virtue of subparagraph 1. Such restrictions, along with any division of the tasks among the members of the management committee, are not enforceable against third parties, even if published. *(Law of 10 August 2016)*

**Art. 60-2.**

Any member of the management committee having a direct or indirect financial interest in a transaction that falls within the remit of the committee and which conflicts with the interests of the company, shall be obliged to advise the committee thereof and to cause a record of his statement to be included in the minutes of the meeting. He may not take part in these deliberations.

At the next meeting of the board of directors, before any other motion is put to the vote, a special report shall be made on any transactions in which any of the members of the management committee may have had an interest conflicting with the interests of the company.

A copy of the minutes is sent to the board of directors for its next meeting.

Where, due to a conflict of interests, the number of members of the management committee required for it to validly deliberate and vote on the point in question is not met, the management committee may decide to defer the decision on this point to the board of directors.

Where the managing director has a direct or indirect financial interest in a decision or transaction that falls within the remit of his powers that conflicts with the interests of the company, he must defer the decision to the board of directors.

The preceding subparagraphs shall not apply where the decision of the management

committee relates to recurring operations entered into under normal conditions.

(Law of 23 November 1972; Law of 10 August 2016)

**Art. 60bis.**

The company shall be bound by any deeds of the board of directors or the directors with capacity to represent the company in accordance with Article 53, subparagraph 4, by the members of the management committee authorised to represent it in accordance with Article 60-1 subparagraph 3, by the managing director or by the person entrusted with day-to-day management, even if such acts exceed the corporate purpose, unless it can prove that the third party knew that the deed exceeded the corporate purpose or could not in view of the circumstances have been unaware of it, without the mere publication of the articles of association constituting such proof.

(Law of 25 August 2006)

**Sub-section 2. - The management board and the supervisory board**

**Art. 60bis-1.**

- (1) The articles of association of any *société anonyme* may provide that it shall be governed by the provisions of the present sub-paragraph. In such case, the company shall remain subject to all the provisions applicable to *sociétés anonymes*, except those contained in Articles 50 to 60bis.
- (2) The introduction or deletion from the articles of association of such a provision may be decided during the existence of the company.

**A. The management board**

**Art. 60bis-2.**

- (1) The *société anonyme* is managed by a management board. The number of its members or the rules for determining this number shall be laid down in the articles of association for *sociétés européennes* (SE). In a *société anonyme*, they are laid down in the articles of association, or failing that, by the supervisory board.
- (2) In single-shareholder *sociétés anonymes* or in *sociétés anonymes* whose capital is less than 500,000 euros, a single person may exercise the functions granted to the management board.
- (3) The management board fulfils its duties under the supervision of a supervisory board.

**Art. 60bis-3.**

The members of the management board shall be appointed by the supervisory board.

The articles of association may nevertheless provide that the general meeting may appoint the members of the management board. In such case, the general meeting shall have sole authority.

**Art. 60bis-4.**

(Law of 10 August 2016)

Where a legal entity is appointed as member of the management board or supervisory board, it shall designate a permanent representative to exercise that duty in the name and on behalf of the legal entity.

Such representative is subject to the same conditions and shall incur the same civil liability as if he fulfilled such duty in his own name and on his own behalf, without prejudice to the joint and several liability of the legal entity which he represents. The revocation by such legal entity of its representative is conditional upon the simultaneous appointment of a successor.

The appointment and termination of the position of a permanent representative are subject to the same publicity rules as if he acted in his own name and on his own behalf.

**Art. 60bis-5.**

The members of the management board may be dismissed by the supervisory board and, where provided for in the articles of association, by the general meeting.

**Art. 60bis-6.**

- (1) The members of the management board shall be appointed for a term provided in the articles of association and which shall not exceed six years. They may be reappointed.
- (2) In case of vacancy of the office of a member of the management board, the remaining members may, unless the articles of association provide differently, fill the vacancy on a provisional basis.
- (3) In such a case, the supervisory board or the general meeting, as the case may be, shall make the final appointment at the next meeting. The appointed member of the management board shall complete the term of office of the member whom he replaces.

**Art. 60bis-7.**

*(Law of 27 May 2016; Law of 10 August 2016)*

- (1) The management board shall have the power to take any action necessary or useful to realise the corporate purpose, with the exception of those powers reserved by law or the articles of association for the supervisory board and the general meeting.
- (2) The articles of association of a *société européenne* (SE) shall list the categories of transactions which require authorisation of the management board by the supervisory board.

Where a transaction requires the authorisation of the supervisory board and such authorisation is denied, the management board may submit the dispute to the general meeting.

- (3) The management board shall represent the company with regard to third parties and in legal proceedings, either as plaintiff or as defendant. Writs served on behalf of or against the company shall be validly served in the name of the company alone.
- (4) Any limitations to the powers conferred upon the management board by the preceding paragraphs resulting either from the articles of association of the company or from a decision of the competent corporate bodies are not valid with regard to third parties, even if they are published.

However, the articles may authorise one or more members of the management board to represent the company in any deed or in legal proceedings, either alone or jointly. This clause is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

Where in a *société européenne* (SE) a delegation of powers has been validly granted and where the holder of such delegation passes a deed which is within the limits of such delegation but belongs to a category of transactions which require an authorisation of the management board or the supervisory board under the articles of association of the *société européenne* (SE), such deed shall be binding on the company without prejudice to damages, where applicable.

- (5) The management board may decide to create committees, whose composition and powers it shall determine and which shall operate under its responsibility.

**Art. 60bis-8.**

The day-to-day management of the business of the company and the power to represent the company with respect thereto may be delegated to one or more members of the management board, officers, managers or other agents, who may but are not required to be members, acting either alone or jointly, except such persons who are members of the supervisory board.

Their appointment, their removal from office and their powers and duties shall be governed by the articles of association or by a decision of the competent corporate bodies; however, no restrictions placed upon their powers to represent the company in the day-to-day management will be valid with regard to third parties, even if they are published.

*(Law of 27 May 2016)*

This clause, by virtue of which the day-to-day management is delegated to one or more persons acting either alone or jointly, is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

The delegation in favour of a member of the management board shall entail the obligation for the management board to report each year to the ordinary general meeting on the salary, fees and any advantages granted to the delegate.

The liability of persons entrusted with day-to-day management shall be governed by the general rules on mandates with respect to such management.

*(Law of 10 August 2016)*

The persons to which day-to-day management is delegated are governed by Article 60bis-18, which applies by analogy. Where there is only one delegate facing a conflict of interests, the decision must be taken by the management board. Following an infringement of Article 60bis-18, the persons entrusted with day-to-day management may be held liable on the basis of Article 60bis-10, subparagraph 2, it being understood that, when applying this provision, they will be released from that liability in relation to an infringement to which they were not a party, provided no misconduct is attributable to them and they have reported such infringement to the first meeting of the management board after learning of it.

#### **Art. 60bis-9.**

The company shall be bound by any acts of the management board, the members of the management board with capacity to represent the company in accordance with Article 60bis-7 paragraph (4) or of the person entrusted with day-to-day management, even if such acts exceed the corporate purpose, unless it can prove that the third party knew that the act exceeded the corporate purpose or could not in view of the circumstances have been unaware of it, without the mere publication of the articles constituting such proof.

#### **Art. 60bis-10.**

*(Law of 10 August 2016)*

The members of the management board shall be liable to the company in accordance with general law for the execution of the mandate given to them and for any misconduct in the management of the company's affairs.

They shall be jointly and severally liable, both towards the company and any third parties, for damages resulting from the violation of this law or the articles of association. They shall be discharged from such liability in the case of a violation to which they were not a party provided no misconduct is attributable to them and they have reported such violation to the first general meeting after they had acquired knowledge thereof.

The authorisation given by the supervisory board in accordance with paragraph (2) of Article 60bis-7 shall not relieve the members of the management board from their liability.

### **B. The supervisory board**

#### **Art. 60bis-11.**

- (1) The supervisory board shall at all times supervise the management of the company by the management board, but is not authorised to interfere with such management.
- (2) It shall grant or deny the authorisations required pursuant to Article 60bis-7, paragraph (2).

**Art. 60bis-12.**

- (1) The supervisory board shall have an unlimited right to inspect all the transactions of the company; it may inspect, but not remove, the books, correspondence, minutes and, in general, all the records of the company.
- (2) The management board shall, at least every three months, make a written report to the supervisory board on the progress and foreseeable development of the company's business.
- (3) In addition, the management board shall promptly provide the supervisory board with any information on events likely to have a significant impact on the company's situation.
- (4) The supervisory board may require the management board to provide information of any kind which it may require to exercise supervision in accordance with Article 60bis-11.
- (5) The supervisory board may undertake or arrange for any investigations necessary for the performance of its duties.

**Art. 60bis-13.**

Each year, the supervisory board shall receive from the management board all documents listed in Article 72 at the time set in such article for their delivery to the supervisory auditors and shall present to the general meeting its observations on the report of the management board and on the annual accounts.

**Art. 60bis-14.**

*(Law of 10 August 2016)* The provisions of Articles 51, 51bis, 52 and 54 shall apply to the supervisory board.

**Art. 60bis-15.**

- (1) The supervisory board may entrust one or more of its members with special mandates for one or more specific purposes.
- (2) It may decide to create commissions whose composition and duties it shall determine and which shall exercise their activities under its responsibility. The attribution of such duties may however not consist in a delegation to a commission of the powers reserved by law or by the articles of association for the supervisory board itself or result in a reduction or limitation of the powers of the management board.

**Art. 60bis-16.**

The members of the supervisory board shall be liable to the company in accordance with general law for the execution of the mandate given to them and for any misconduct in the supervision of the company's affairs.

They shall be jointly and severally liable, both towards the company and any third parties, for damages resulting from the violation of this law or the articles of association of the company. They shall be released from that liability in relation to an infringement to which they were not a party, provided no misconduct is attributable to them and they have reported such infringement to the first general meeting after learning of it.

**C. Rules common to the management board and the supervisory board**

**Art. 60bis-17.**

- (1) No person may at the same time be a member of the management board and the supervisory board.
- (2) However, in the event of a vacancy in the management board, the supervisory board may appoint one of its members to act as a member of the management board. During such a period, the functions of the person concerned as a member of the supervisory board shall be suspended.

**Art. 60bis-18.**

*(Law of 10 August 2016)*

(1) Any member of the management board or the supervisory board having a direct or indirect financial interest in a transaction that falls within the remit of the management board or the supervisory board which conflicts with the interests of the company, shall be obliged to advise the management board or the supervisory board thereof and to cause a record of his statement to be included in the minutes of the meeting. He may not take part in these deliberations.

At the next general meeting, before any other resolution is put to the vote, a special report shall be made on any transactions in which any of the members of the management board or the supervisory board may have had an interest conflicting with the interests of the company.

By way of derogation from subparagraph 1, where the management board or the supervisory board of the company comprises a single member, only transactions made between the company and the member of the management board or the supervisory board having an interest conflicting with the interests of the company, are mentioned in the minutes.

Where, due to a conflict of interests, the number of members required by the articles of association to validly deliberate and vote on a point in question is not met, the management board or supervisory board may, unless otherwise provided by the articles of association, decide to defer the vote on that item to the shareholders.

(2) Where the transaction referred to in subparagraph 1 gives rise to a conflict of interest between the company and a member of the management board, it shall in addition require the authorisation of the supervisory board.

(3) The provisions of the preceding subparagraphs shall not apply where the decisions under consideration relate to current operations entered into under normal conditions.

**Art. 60bis-19.**

The members of the management board and of the supervisory board may be remunerated. The type and amount of remuneration paid to the members of the management board are determined by the supervisory board. The type and amount of remuneration paid to the members of the supervisory board are determined by the articles of association or, failing this, by the general meeting.

**Sub-section 3. - Supervision by the supervisory auditors**

**Art. 61.**

The supervision of the company must be entrusted to one or more supervisory auditors, who may but are not required to be members.

They shall be appointed by the general meeting of shareholders.

Unless otherwise provided in the deed of incorporation, supervisory auditors may be re-elected.

Their term of office may not exceed six years; they may be removed at any time by the general meeting.

The general meeting shall determine the number of supervisory auditors and their fees.

*(Law of 25 August 2006)*

If the number of supervisory auditors falls, as a result of death or otherwise, to less than one half of the supervisory auditors appointed, the board of directors or the management board, as applicable, must immediately convene a general meeting in order to fill the vacancies.



**Art. 62.**

The supervisory auditors shall have unlimited power of supervision and control over all of the operations of the company. They may inspect, but not remove, the books, correspondence, minutes and, in general, all the records of the company.

*(Law of 25 August 2006)*

Semi-annually, the board of directors or the management board, as applicable, shall provide them with a statement summarising the assets and liabilities. The supervisory auditors must report to the general meeting on the results of the mandate entrusted to them, making such recommendations as they consider fit, and must inform the meeting of the method adopted by them for verification of the inventories.

Their liability, insofar as it derives from their duties of supervision and control, shall be determined according to the same rules as those applicable to the liability of directors or of the members of the management board.

The supervisory auditors may arrange to be assisted by an expert for the purpose of verifying the books and accounts of the company.

The expert must be approved by the company. Failing such approval, the president of the district court dealing with commercial matters, upon application by the supervisory auditors served in the form of a writ on the company, shall select the expert. The president shall hear the parties in chambers and shall issue his ruling as to the appointment of the expert in open court. This ruling need not be served on the company and is not subject to appeal.

*(Law of 25 August 2006)*

**Sub-section 4. - Rules common to the management bodies, the supervisory board and the supervisory auditors**

**Art. 63.**

The general meeting which has resolved to exercise the corporate action provided for by Articles 59, 60bis-10, 60bis-16 and 62, subparagraph 3, against the directors, the members of the management or supervisory board or the supervisory auditors in office may entrust the implementation of this resolution to one or more agents.

*(Law of 10 August 2016)*

**Art. 63bis.**

An action may be brought against the directors or members of the management board or of the supervisory board, as applicable, on behalf of the company by the minority shareholders or holders of founder shares.

This minority action may be brought by one or more shareholders or founder shareholders owning, at the general meeting that ruled on the discharge, shares carrying a right to vote at that meeting representing at least ten percent of the votes attached to all shares.

**Art. 64.**

*(Law of 10 August 2016)*

- (1) The directors, the members of the management board or of the supervisory board and the supervisory auditors form panels which shall deliberate in accordance with the articles of association and, in the absence of provisions in that respect, in accordance with the ordinary rules for deliberating assemblies.

Decisions by the board of directors, the management board and the supervisory board may be adopted, if permitted by the articles of association, by unanimous written consent of the directors or members of the management board or supervisory board.

Decisions adopted in this manner shall be deemed to have been adopted at the registered office of the company.

- (2) Except for a *société européenne* (SE) where such appointment is mandatory, the board

of directors, the management board and the supervisory board may elect a chairperson from among their number.

- (3) The board of directors or the management board of a *société européenne* (SE) shall meet at least once every three months at intervals laid down by the articles to discuss the progress and foreseeable development of the business of the *société européenne* (SE).
- (4) Each member of the board of directors, of the management board and of the supervisory board shall be entitled to examine all information submitted to the relevant board.
- (5) In a *société européenne* (SE), the supervisory board shall convene upon notice of its chairman.

**Art. 64bis.**

*(Law of 10 August 2016)*

- (1) Unless otherwise provided by the articles of association and without prejudice to specific legal provisions, the internal rules relating to quorum and decision-making in the board of directors, the supervisory board and the management board of the company shall be as follows:
  - a) quorum: at least half of the members must be present or represented.
  - b) decision-making: a majority of the members must be present or represented.
- (2) Unless otherwise provided by the articles of association, and where a chairperson has been elected, the chairperson of each body shall have the casting vote in the event of a split vote.
- (3) Unless otherwise provided by the articles of association, the directors or members of the management board participating in the board of directors or management board meeting by video conference or by telecommunication means allowing for their identification, shall be deemed to be present for the calculation of quorum and majority. Such means must satisfy technical characteristics which ensure an effective participation in the meeting of the board of directors or of the management board, whose deliberations shall be transmitted without interruption.

The meeting held at a distance by way of such communication means shall be deemed to have taken place at the registered office of the company.

**Art. 65.**

The articles of association may provide that the directors and the supervisory auditors together constitute the general board; they shall determine the powers and duties thereof.

**Art. 66.**

*(Law of 25 August 2006; Law of 10 August 2016)*

The directors and the members of the management board and of the supervisory board, the members of the management committee, the managing director as well as any person invited to attend the meetings of such corporate bodies, shall be under a duty, even after they have ceased to hold office, not to divulge any information they have concerning the *société anonyme*, the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted by a legal or regulatory provision applicable to *sociétés anonymes* or is in the public interest.

**Section 5. – General meetings**

**Art. 67.**

*(Law of 7 September 1987; Law of 25 August 2006; Law of 23 March 2007; Law of 10 August 2016)*

- (1) The general meeting of shareholders shall have the widest powers to adopt or ratify

any action relating to the company.

Where the company comprises a single member, he shall exercise the powers reserved for the general meeting.

The general meeting of a *société européenne* (SE) shall decide on matters for which it is given sole responsibility by:

- a) the present law in accordance with Council Regulation 2157/2001/EC of 8 October 2001 on the statute for a European *société européenne* (SE),
- b) the provisions of Luxembourg law adopted in implementation of Directive 2001/86/EC, to the extent that the registered office of the *société européenne* (SE) is located in the Grand Duchy of Luxembourg<sup>1</sup>.

Furthermore, the general meeting of a *société européenne* (SE) shall decide on matters for which responsibility is given to the general meeting:

- of a *société anonyme* governed by Luxembourg law to the extent that the registered office of the *société européenne* (SE) is situated in the Grand-Duchy of Luxembourg or
- by its articles of association in accordance with that law.

- (2) The articles of association shall contain provisions governing proceedings at general meetings and the formalities necessary for admission thereto. In the absence of such provisions, appointments shall be made and resolutions shall be adopted in accordance with the ordinary rules of deliberating assemblies; minutes shall be signed by the members of the board and by the shareholders who request to do so; copies to be delivered to third parties shall be certified as conforming to the original by the notary having custody of the relevant original deed where proceedings of the meeting have been recorded in a notarised deed, or by the person designated for that purpose by the articles of association, or, failing this, by the chairman of the board of directors or of the management board, as the case may be, or by the person replacing him, such persons being liable for any damage which may result from their incorrect certification.

An attendance register is kept for every general meeting.

If the company comprises a single member, his decisions shall be recorded in the minutes.

- (3) Every shareholder shall, notwithstanding any provision to the contrary, but in compliance with the provisions of the articles of association, be entitled to vote personally or by proxy. Subject to the articles of association providing therefore, shareholders participating in the meeting by way of video conference or by way of telecommunication means allowing their identification, shall be deemed to be present for the calculation of quorum and majority. Such means must satisfy technical characteristics which ensure effective participation in the meeting whose deliberations shall be transmitted without interruption.
- (3bis) The articles of association may authorise any shareholder to cast its vote by mail, by means of a voting form, the details of which shall be laid down in the articles of associations.

Voting forms which indicate neither the direction of a vote nor an abstention shall be considered void.

For the calculation of the quorum, only those voting forms which have been received by the company prior to the general meeting within the period provided for in the articles of association shall be taken into account.

- (4) Every shareholder may, notwithstanding any clause to the contrary in the articles of association, take part in the deliberations, with a number of votes equal to the number

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<sup>1</sup> Law of 25 August 2006.

of shares held by him, without limitation.

When shares are of unequal value or their value is not stated, unless otherwise provided by the articles of association, each share lawfully carries the right to a number of votes proportionate to the share-part of the capital it represents, where the share accounting for the smallest share-part is equal to one vote; fractions of votes are not counted, except in the circumstances provided in Article 68.

- (5) The board of directors or the management board, as applicable, is entitled to adjourn a meeting, while in session, to four weeks. It must do so upon request of one or more shareholders representing at least one-tenth of the share capital. Any such adjournment, which shall also apply to general meetings called for the purpose of amending the articles of association, shall cancel any resolution passed. The second meeting shall be entitled to pass final resolutions provided that, in cases of amendments to the articles of association, the conditions as to quorum laid down in Article 67-1 are fulfilled.
- (6) If an ordinary general meeting, which is adjourned, was convened for the same day as a general meeting convened to amend the articles of association and if the latter is not quorate, the first meeting may be adjourned to a sufficiently remote date for it to be possible to reconvene both meetings for the same day, provided however that the period of the adjournment does not exceed six weeks.
- (7) The exercise of voting rights attached to shares in respect of which calls have not been paid shall be suspended until such time as those calls which have been duly made and are payable, shall have been paid.
- (8) The articles of association state that the board of directors or the management board, as applicable, may suspend the voting rights of any shareholder who has not fulfilled the obligations incumbent on him by virtue of the articles of association or his subscription or undertaking documentation.

Any shareholder may personally agree to not exercise all or some of his voting rights on a temporary or permanent basis. Such a waiver is binding on the shareholder as well as on the company from when it is notified of the fact.

*(Law of 10 August 2016)*

**Art. 67bis.**

- (1) Shareholder agreements may be drawn up to govern the exercise of voting rights.

However:

1. agreements which are contrary to the requirement of this law or the interests of the company;
  2. agreements whereby a shareholder agrees to vote as instructed by the company, a subsidiary or one of the bodies of those companies;
  3. agreements whereby a shareholder agrees with those same companies or bodies to approve all motions originating from the company's bodies, are void.
- (2) Votes cast at a general meeting by virtue of one of the agreements listed in paragraph (1), subparagraph (2) are void. These votes shall entail the voidance of the resolutions to which they relate unless they had no influence on the outcome of the vote. Claims for voidance shall become prescribe six months after the vote.

**Art. 67-1**

*(Law of 7 September 1987; Law of 25 August 2006; Law of 27 May 2016; Law of 10 August 2016)*

- (1) Unless otherwise provided by the articles of association, an extraordinary general meeting, resolving as provided below, may amend any provisions of the articles of

association. Nevertheless, the commitments of the shareholders may only be increased with the unanimous consent of the shareholders.

The articles of association may authorise the board of directors or the management board, as applicable, to transfer the registered office of the company from one town to another or within the same town and to make the corresponding modifications to the articles of association.

- (2) The general meeting shall not validly deliberate unless at least one half of the capital is represented and the agenda indicates the proposed amendments to the articles of association and, where applicable, the text of those which concern the purpose or the form of the company. If the first of these conditions is not met, a new meeting may be convened, in the manner required by the articles of association, by means of an announcement filed with the register of commerce and companies and published at least fifteen days prior to the meeting in the *Recueil Électronique des Sociétés et Associations* and in a newspaper published in Luxembourg. Such convening notice shall reproduce the agenda and indicate the date and the results of the previous meeting. The second meeting shall validly deliberate regardless of the proportion of the capital represented. At both meetings, resolutions, in order to be adopted, must be carried by at least two-thirds of the votes cast. Votes cast shall not include votes attached to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or invalid vote.
- (3) (...)

**Art. 68.**

Where there is more than one class of shares and the resolution of the general meeting is such as to change the respective rights thereof, the resolution must, in order to be valid, fulfil the conditions as to attendance and majority laid down in the foregoing Article with respect to each class.

**Art. 69.**

*(Law of 24 April 1983)*

- (1) The general meeting, acting in accordance with the conditions prescribed for the amendment of the articles of association, may decide to reduce the subscribed capital. The convening notice shall specify the purpose of the reduction and how it is to be carried out.

*(Law of 07 September 1987; Law of 27 May 2016)*

- (2) If the reduction is to be carried out by means of a repayment to shareholders or a waiver of their obligation to pay up their shares, creditors whose claims predate the publication in the *Recueil Électronique des Sociétés et Associations* of the minutes of the meeting may, within 30 days from such publication, apply for the constitution of collateral to the judge presiding the chamber of the district court dealing with commercial matters and sitting as in urgent proceedings. The president may only reject such an application if the creditor already has adequate safeguards or if such collateral is unnecessary, having regard to the assets of the company.

*(Law of 24 April 1983)*

- (3) No payment may be made or waiver given to the shareholders until such time as the creditors have obtained satisfaction or until the judge presiding the chamber of the district court dealing with commercial matters and sitting as in urgent proceedings, has ordered that their application should not be acceded to.
- (4) The provisions of paragraphs (2) and (3) shall not apply in the case of a reduction in the subscribed capital whose purpose is to offset losses incurred which are not capable of being covered by means of other own funds or to include sums of money in a reserve, provided that the reserve does not exceed 10% of the reduced subscribed capital as result of this operation.

Except in the event of a reduction in the subscribed capital in accordance with paragraphs (2) and (3), it may not be distributed to shareholders or be used to release shareholders from their obligation to make their contributions. It may be used only for offsetting losses incurred or for increasing the subscribed capital by the incorporation of reserves.

- (5) Where the reduction of capital results in the capital being reduced below the legal minimum, the meeting must at the same time resolve to either increase the capital up to the required level or to change the company form.

*(Law of 24 April 1983; Law of 27 May 2016; Law of 10 August 2016)*

**Art. 69-1.**

- (1) The articles may provide that, by resolution of the general meeting to be published in accordance with the provisions of Chapter Vbis, Title I of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, all or some of the profits and reserves other than those which may not be distributed under law or the articles of association, may be used to amortise the capital by means of the repayment at par of all the shares or of a portion of the shares drawn by lot, without the stated capital being reduced. If usufruct has been granted over the repaid shares, the usufructuary has quasi-usufruct over the amount repaid.
- (2) Shares repaid shall be cancelled and replaced by bonus shares which shall carry the same rights as the cancelled shares, except the right to reimbursement of the contribution and the right to participate in the distribution of a first dividend allocated to the unamortised shares.

**Art. 69-2**

- (1) In the case of the reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in its own name but on behalf of the company, the withdrawal must always be decided upon by the general meeting.
- (2) Article 69, paragraphs (2) and (3) shall apply except in the case of fully paid-up shares which are acquired free of charge or by the application of distributable sums pursuant to Article 72-1; in such cases, an amount equal to the nominal value, or in the absence thereof, the accounting par value, of all the withdrawn shares must be incorporated in a reserve. Such reserve may not, except in the event of a reduction of the subscribed capital, be distributed to the shareholders; it may be only used for offsetting losses incurred or for increasing the subscribed capital by incorporation of reserves.
- (3) In the case referred to in paragraph (1), the decision of the general meeting shall be subject to a separate vote for each class of shares the rights of which are affected by the operation. Moreover, the provisions of Articles 31, paragraph (1) and 69, paragraph (4) shall not apply.

**Art. 70.**

*(Law of 25 August 2006; Law of 27 May 2016; Law of 10 August 2016)*

At least one general meeting must be held every year within the Grand Duchy of Luxembourg. The general meeting shall be held within six months of the closing of the financial year and the first general meeting may be held within eighteen months after its formation.

The board of directors or the management board, as applicable, and the supervisory board as well as the auditors may convene a general meeting. They shall be obliged to convene a general meeting so that it is held within a period of one month if shareholders representing one-tenth of the capital submit such a request in writing with an indication of the agenda.

The directors, members of the management board and of the supervisory board, as applicable, and the auditors, may be convened to meetings which they themselves have

not convened and are in all cases authorised to participate in such meetings. The approved independent auditors appointed by the general meeting may be convened to take part in meetings. Meetings shall be convened in the manner and within the time limits provided for in this article.

Where, in accordance with Article 67, the meeting is held between shareholders who are not physically present, the meeting is deemed to have been held at the registered office of the company.

If, following a request made by the shareholders pursuant to subparagraph 2, the general meeting is not held within the prescribed period, the general meeting may be convened by an agent, appointed by the judge presiding the chamber of the district court dealing with commercial matters and sitting as in urgent proceedings on the application of one or more shareholders who together hold the aforementioned proportion of the share capital.

One or more shareholders who together hold at least ten per cent of the subscribed capital may request that one or more additional items be put on the agenda of any general meeting. Such request shall be sent to the registered office by registered mail, at least five days prior to holding of the meeting.

The convening notice for any general meeting shall contain the agenda and shall be issued by means of an announcement filed with the register of commerce and companies and published at least fifteen days prior to the meeting in the Recueil Électronique des Sociétés et Associations and in a newspaper published in Luxembourg.

Convening notices shall be sent to the shareholders in person at least eight days prior to the date of the meeting. They shall be sent by post, unless the recipients have individually agreed to receive the convening notice by another means of communication. There is no requirement for formal proof of delivery.

*(Law of 10 August 2016)*

**Art. 70bis.**

Where all shares are in registered form, the convening notices for any general meeting may be made only by registered letters, without prejudice to any other means of communication individually accepted by each recipient and which can guarantee delivery within at least eight days before the date of the meeting. The legal provisions requiring publication of the convening notices in the Recueil Électronique des Sociétés et Associations or in a Luxembourg newspaper do not apply in this case.

*(Law of 06 April 2013)*

**Art. 71.**

The holders of book-entry shares or securities may take part in the general meeting and exercise their rights only if they hold such book-entry shares or securities at the latest on the fourteenth day prior to the general meeting at midnight, Luxembourg time.

*(Law of 25 August 2006)*

**Section 6. – Inventories and balance sheets**

**Art. 72.**

Each year, the board of directors or the management board, as applicable, must prepare an inventory indicating the value of all securities and immovable assets of, and all the debts owed to and by, the company, with an appendix summarising all of its commitments, and the debts of the officers, directors, members of the management board, as applicable, members of the supervisory board and auditors of the company.

The board of directors or the management board, as applicable, prepares the annual accounts in which the necessary depreciation charges must be recorded.

The balance sheet shall mention separately the fixed assets and current assets and, on the

liability side, the debts of the company towards itself, bonds, debt secured by mortgages or pledges and unsecured debt.

Each year at least one-twentieth of the net profits shall be allocated to the creation of a reserve; this allocation shall cease to be compulsory when the reserve has reached an amount equal to one-tenth of the share capital, but shall again be compulsory if the reserve falls below this amount.

One month before the ordinary general meeting, the board of directors or the management board, as applicable, shall deliver documentary evidence, together with a report on the business of the company, to the auditors who must prepare a report setting forth their proposals.

*(Law of 24 April 1983)*

**Art. 72-1**

- (1) Except for cases of reductions of subscribed capital, no distributions to shareholders may be made when on the closing date of the last financial year the net assets as set out in the annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital, plus the reserves which may not be distributed under law or by virtue of the articles of association.
- (2) The amount of the subscribed capital referred to under (1) shall be reduced by the amount of subscribed capital remaining uncalled if the latter is not recorded under the assets in the balance sheet.
- (3) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits carried forward and any amounts drawn from reserves which are available for that purpose, less any losses carried forward and sums to be paid into the reserves in accordance with the law or the articles of association.
- (4) The term "distribution" as used in the foregoing provisions includes in particular the payment of dividends and of interest relating to shares.

*(Law of 24 April 1983)*

**Art. 72-2**

*(Law of 25 August 2006)*

- (1) No interim dividends may be paid unless the articles of association authorise the board of directors or the management board, as applicable, to do so. Any such payment shall in addition be subject to the following conditions:
  - a) an accounting statement shall be drawn up showing that the funds available for distribution are sufficient;
  - b) the amount to be distributed may not exceed total profits made since the end of the last financial year for which the annual accounts have been approved, plus any profits carried forward and sums drawn from reserves available for this purpose, less losses carried forward and any sums to be paid into the reserves pursuant to the requirements of the law or of the articles of association;
  - c) the decision of the board of directors or the management board, as applicable, to distribute an interim dividend may not be taken more than two months after the date at which the accounting statement referred to under a) above has been drawn up.

*(Law of 23 March 2007)*

– (...)

*(Law of 18 December 2009; Law of 23 July 2016)*

- d) in their report to the board of directors or the management board, as applicable, the auditor or the independent auditor shall verify whether the above conditions have



been satisfied.

(Law of 25 August 2006)

- (2) Where the interim dividend payments exceed the amount of the dividend subsequently decided upon by the general meeting, they shall, to the extent of the overpayment, be deemed to have been paid as an advance on the next dividend.

(Law of 24 April 1983)

**Art. 72-3**

- (1) Article 72-1, paragraph (1) shall not apply to investment companies with fixed capital.
- (2) The following *sociétés anonymes* shall be regarded as investment companies with fixed capital:

- *sociétés anonymes* with the sole purpose of investing their funds in various securities, real estate or other assets with the sole aim of spreading the investment risks and giving their shareholders the benefit of the results of the management of their assets,

and

- which offer their own shares for subscription to the public, provided that:
  - a) they include the words *société d'investissement* in their instruments, notices, publications, letters and other documents;
  - b) their total assets as set out in the annual accounts, at the closing date of the last financial year are, or following such distribution would become, less than one and a half times the company's total liabilities to creditors as set out in the annual accounts;
  - c) the annual accounts contain a note to that effect.

**Art. 72-4**

(Law of 30 July 2013)

Any distribution made in violation of Articles 72-1, 72-2 and 72-3 as well as Article 72ter of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings must be repaid by the shareholders who have received it if the company proves that the shareholders knew of the irregularity of the distributions made in their favour or could not, in the circumstances, have been unaware of it.

**Art. 73.**

(Law of 25 August 2006; Law of 18 December 2009; Law of 10 August 2016)

Eight days before the general meeting, the shareholders may inspect at the registered office:

1. the annual accounts and the list of directors or of members of the management board and of the supervisory board, as well as the list of the auditors or the licensed independent auditor;
2. the list of sovereign debt, shares, bonds and other company securities making up the portfolio;
3. the list of shareholders who have not paid-up their shares, with an indication of the number of their shares and their domicile;
4. the report of the board of directors or of the management board, as applicable, and the observations of the supervisory board;
5. the report of the auditors or of the licensed independent auditor;
6. in case of changes to the articles of association, the proposed amendments and the draft of the resulting consolidated articles of association.

Every shareholder has the right, upon request and upon providing proof of his shareholder status, to obtain, eight days before the meeting, a free copy of the annual accounts and of the report of the supervisory auditors or the licensed independent auditor, the management report and the observations of the supervisory board.

This right is also granted to every owner of a jointly-owned share and to usufructuaries and bare owners. They may attend general meetings, but with a voting right or in an advisory capacity only, as applicable.

**Art. 74.**

*(Law of 25 August 2006)*

The general meeting shall hear the reports of the directors or of the management board, as applicable, as well as the report of the auditors and shall discuss the annual accounts.

After approval of the annual accounts, the general meeting shall vote specifically as to whether discharge is given to the directors or to the members of the management board and of the supervisory board, as applicable, as well as to the auditors. Such discharge shall be valid only if the annual accounts contain no omission or false information concealing the true situation of the company and, with regard to any acts carried out which fall outside the scope of the articles of association, if they have been specifically indicated in the convening notice.

**Art. 75.**

*(Law of 25 August 2006; Law of 27 May 2016)*

The annual accounts, preceded by the mention of the date of publication of the deed of incorporation of the company, must be published, within one month of their approval, by the directors or by the management board, as applicable, at the expense of the company in accordance with the provisions of Article 11bis.

The first names, surnames, occupations and domiciles of the directors, members of the management board, as applicable, and the auditors in office must be included at the end of the annual accounts, as well as a table indicating the use and allocation of the net profits in accordance with the resolutions of the general meeting.

**Section 7. – Specific information to be included in documents**

**Art. 76.**

*(Law of 25 August 2006; Law of 27 May 2016; Law of 10 August 2016)*

All deeds, invoices, notices, publications, letters, order forms and other documents issued by *sociétés anonymes* and *sociétés européennes* (SE) must state:

- 1) the trade name of the company;
- 2) the words *société anonyme* or, as applicable, *société par actions simplifiée*, written in full or the initials SA or, as the case may be, the initials SAS or SE, reproduced legibly, immediately before or after the trade name;
- 3) a precise indication of the registered office;
- 4) the words "Registre de commerce et des sociétés, Luxembourg" or the initials "R.C.S. Luxembourg" followed by the registration number.

If the above documents state the share capital, that statement shall take into account any decrease which it may have suffered according to the results of the various successive balance sheets and shall indicate both the portion not yet paid up and, in the case of an increase of capital, the portion which has not yet been subscribed.

Any change of the registered office shall be published by the directors or the members of the management board, as applicable, in the Recueil Électronique des Sociétés et Associations.

**Art. 77.**

Any agent acting on behalf of a *société anonyme* in respect of which the requirements of the foregoing Article are not fulfilled may, depending on the circumstances, be declared

personally liable for the commitments entered into therein by the company. In the event of overstatement of the capital or the failure to mention the portion not yet paid-up or subscribed to or the incorrect mention thereof, the third party, in case of failure by the company, shall be entitled to claim from such agent, a sum sufficient to ensure that he is placed in the same position as if the stated capital had been the true capital and had been paid-up or subscribed to in full or to the extent indicated.

**Art. 78.**

*(Law of 25 August 2006; Law of 10 August 2016)*

In all deeds by which the company is bound, the signature of the directors, members of the management board or of the management committee, the managing director or, as applicable, directors, managers and other agents must be immediately preceded or followed by an indication of the capacity in which they are acting.

**Section 8. The issue of bonds**

**Art. 79.**

*(Law of 10 August 2016)*

(...)

*(Law of 10 July 2005)*

**Art. 80.**

(...)

**Art. 81.**

(...)

**Art. 82.**

(...)

**Art. 83.**

(...)

**Art. 84.**

*(Law of 25 August 2006; Law of 23 March 2007; Law of 06 April 2013; Law of 27 May 2016; Law of 10 August 2016)*

A register of registered bonds shall be kept at the registered office.

Bearer bonds shall be signed by a director or member of the management board or a person authorised for this purpose by the board of directors or the management board, as applicable. Unless otherwise provided for in the articles of association, the signature may be handwritten, printed or stamped.

A certified true copy of the deed delegating authority to a person who is not a member of the board of directors or the management board, as applicable, shall be previously filed in accordance with chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

(...)

Global bond certificates taking the form of global bearer certificates deposited with a securities settlement system may be signed by one or more persons authorised to do so by the issuing company. The number of securities represented by these certificates must be determined or be capable of being determined.

The provisions of Articles 40, 42bis, and 43 subparagraphs 2, 3 and 4 apply to bonds.

**Art. 85.**

*(Law of 10 August 2016)*

Bondholders shall be entitled to examine the documents filed in accordance with Article 73. Unless otherwise provided in the articles of association, they may attend general meetings, but shall be entitled to speak only if consulted.

**Art. 86.**

*(Law of 09 April 1987)*

Bondholders, holding securities forming part of the same issue, shall form a group organised in accordance with the following provisions.

**Art. 87.**

*(Law of 25 August 2006)*

- (1) One or more representatives of the group of bondholders may be appointed at the time of the issue by the company or, during the term of the loan, by the general meeting of bondholders.
- (2) If no representative has been appointed in the manner provided for in the foregoing paragraph, the judge presiding the chamber of the district court dealing with commercial matters in the district in which the registered office of the company is located, and sitting as in urgent proceedings, may, in the event of an emergency, at the application of the company, of any bondholder or of any interested third party, designate one or more representatives and determine their powers.
- (3) The following may not be appointed as representatives of the group of bondholders:
  - 1) the debtor company;
  - 2) companies holding one-tenth or more of the share capital of the debtor company or in which the debtor company holds at least one-tenth of the share capital;
  - 3) companies guaranteeing all or part of the obligations of the debtor company;

*(Law of 18 December 2009)*

- 4) members of the board of directors, of the management board or of the supervisory board, auditors, licensed independent auditors, and representatives of the aforementioned companies.
- (4) The general meeting of bondholders may dismiss the group representatives. They may also be removed for just cause by the judge presiding the chamber of the district court dealing with commercial matters in the district in which the registered office of the company is located, and sitting as in urgent proceedings, at the application of the company or of any bondholder.

**Art. 88.**

*(Law of 09 April 1987; Law of 10 August 2016)*

- (1) Where the representative(s) of the group of bondholders is(are) appointed by the company at the time of the issue, they shall exercise the powers listed below:
  - 1) they implement the resolutions adopted by the general meeting of bondholders;
  - 2) they accept on behalf of the group of bondholders, the collateral intended to secure the company's debt.

They may grant full or partial release of mortgage inscriptions in the event of reimbursement or payment to them of the sales price of the assets from which the charge is to be removed, as well as in the event of total or partial repayment of the bonds;

- 3) they take conservatory measures to protect the bondholders' rights;
- 4) they shall be present at drawings of lot of bonds and shall supervise the proper execution of the amortisation plan and the payment of interest;
- 5) they represent the bondholders in any bankruptcy, suspension of payments, composition with creditors to prevent bankruptcy, controlled management and all similar procedures and declare in any such procedure all claims in the name and in the interest of the bondholders and prove the existence and the amount of such claims by all legal means.

They may be authorised upon their appointment to accept any payment and distribution to bondholders;

- 6) they may be parties to legal proceedings as plaintiffs or defendants acting in the name and in the interests of the represented bondholders, without it being necessary for the latter to be joined to the proceedings.
- (2) The general meeting of bondholders may, after a period of six months, restrict or extend the powers of the representatives of the group of bondholders appointed by the company at the time of the issue.
  - (3) Where the representative(s) of the group of bondholders are appointed by the general meeting of bondholders during the term of the loan, the meeting may freely determine the powers of such representatives.

**Art. 89.**

By way of derogation from Article 88, subparagraph 1, the issuer may, at the time of issue, appoint one or more persons entrusted with specific mandates on behalf of the group of bondholders, without their powers exceeding those provided for in Article 88.

**Art. 90.**

The liability of the representatives of the group of bondholders shall be assessed on the same basis as that of a fee-earning agent.

**Art. 91.**

The costs of convening and holding general meetings of bondholders and the costs of any conservatory measures taken by the representatives of the group shall be borne and advanced by the company.

The fees of the representatives shall be borne by the company. The company may make application for such fees to be reviewed by the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of the company is located.

Other costs and expenses decided upon by the meeting or incurred by the representatives shall be borne by the bondholders without prejudice to the right of the court, before which proceedings have been brought and to which the bondholders are parties, to direct that they are to be joined in respect of costs. The meeting shall determine the manner in which they are to be paid. It may decide that the company is to advance the amount thereof and withhold that amount from the interest payable to the bondholders. In such case, the amount advanced by the company may not exceed one-tenth of the net annual interest. In the event of any dispute as to the appropriateness or amount of the advance, the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of the company is located, shall resolve the matter upon application of the representatives, the parties having been heard or duly summoned to attend.

**Art. 92.**

*(Law of 25 August 2006; Law of 10 August 2016)*

The representatives of the group of bondholders, the board of directors or the management

board, as applicable, as well as the auditor or the panel of auditors may convene the general meeting of bondholders.

The representatives of the group, provided an advance of expenses has been made to them in accordance with Article 91, and the other corporate bodies must convene a meeting in such a manner as to ensure it is held within one month, if they are called upon to do so by bondholders representing one twentieth of the outstanding bonds of the same issue.

**Art. 93.**

*(Law of 09 April 1987)*

The meeting shall comprise the bondholders forming part of the same group. However, where a matter is common to bondholders belonging to several groups, they shall be convened to a single meeting.

**Art. 94.**

*(Law of 10 August 2016)*

Meetings shall be convened in the manner and within the time limits provided for in Articles 70 and 70bis.

*(Law of 09 April 1987)*

**Art. 94-1**

All bondholders, notwithstanding any provision to the contrary, but subject to compliance with the terms and conditions of the issue, shall be entitled to vote personally or by proxy. The voting rights attaching to the bonds shall be commensurate with the portion of the loan which they represent. Each bond shall carry the right to at least one vote.

Members of the corporate bodies of the company and any persons authorised to do so by the meeting may attend the meeting in an advisory capacity.

The meeting shall be chaired by the representatives of the group of bondholders, if any have been appointed.

Any person who has complied with the legal requirements and with the terms and conditions of the issue with a view to taking part in the meeting may, if his right to do so is contested, take part in the vote as to whether he is to be admitted. His agent, bearing a written proxy, shall have the same right.

The company must make available to the bondholders at the commencement of the meeting a statement of the outstanding bonds.

The manner in which meetings are to be conducted shall be determined by the articles of association of the company, the terms and conditions of the issue and the provisions of Article 67.

*(Law of 09 April 1987)*

**Art. 94-2.**

*(Law of 25 August 2006)*

The meeting may:

- 1) in accordance with Article 87, appoint or remove the representatives of the group;
- 2) remove the special agents referred to in Article 89;
- 3) resolve as to the conservatory measures to be taken in the common interest;
- 4) modify or waive the specific collateral granted to bondholders;
- 5) postpone one or more interest payment dates, agree to a reduction of the interest rate or amend the conditions of payment thereof;
- 6) extend the amortisation period, suspend the same and agree to amendments in the conditions thereof;

- 7) agree to the substitution of bonds with shares of the company;
- 8) agree to the substitution of bonds with shares or bonds of other companies;
- 9) resolve to constitute a fund for the purpose of protecting common interests;
- 10) adopt any other measures whose purpose is to ensure the defence of the common interests of the bondholders or the exercise of their rights.

The decisions provided for under points 5, 6, 7 and 8 may only be taken if the share capital has been fully called. (*Law of 18 December 2009*) In such cases, and in the circumstances envisaged under point 4, the meeting may only adopt decisions on the basis of an audited statement, which has been certified by the auditors or the licensed independent auditors, summarising the assets and liabilities of the company at a date which shall not be more than two months before the date of the decision, accompanied by a report of the board of directors or of the management board, as applicable, justifying the proposed measures.

Where the substitution of shares for bonds implies an increase in the capital of the company, it may take effect only if the said increase is resolved upon by the general meeting of shareholders no later than three months after the decision of the meeting of bondholders.

The adopted resolutions shall be published in the form of extracts in accordance with Article 11bis.

(*Law of 09 April 1987*)

#### **Art. 94-3**

(*Law of 25 August 2006*)

- (1) Where the general meeting is called upon to resolve upon the matters provided for under items 1, 2 and 3 of Article 94-2, decisions shall be adopted by a simple majority of the votes cast by the represented security holders.
- (2) In all other cases, the meeting may only validly deliberate if the members thereof represent at least one half of the value of the outstanding securities.

If this condition is not fulfilled, it is necessary to convene a new meeting which shall validly deliberate regardless of the proportion of the value of the securities outstanding which is represented.

Resolutions are adopted by a majority of two thirds of the votes cast by the security holders represented. Votes cast shall not include votes attaching to bonds in respect of which the bondholder has not taken part in the vote or has abstained or has returned a blank or invalid vote.

(*Law of 09 April 1987*)

#### **Art. 94-4**

Where a resolution may change the respective rights of several groups of bondholders it must, in order to be valid, fulfil, as regards each group, the conditions as to attendance and majority provided for by Article 94-3.

#### **Art. 94-5**

Where one or more representatives of the group of bondholders have been appointed in accordance with Article 87, bondholders may no longer exercise their rights individually.

Where one or more representatives of the group of bondholders are appointed during the term of the loan, individual actions already commenced shall be terminated unless the representative or representatives of the group continue the same within six months after their appointment.

Bondholders shall retain the right to pursue the enforcement of final judgements obtained before the appointment of one or more representatives of the group of bondholders.

**Art. 94-6.**

- (1) The company may create a mortgage in order to secure bonds in issue or to be issued.

Any such mortgage shall be registered in the normal form in favour of the group of bondholders or future bondholders, subject to the two restrictions below:

- 1) the designation of the creditor shall be replaced by that of the securities representing the secured debt;
- 2) the provisions as to the election of an address for service shall not apply.

The mortgage shall rank as of the date of inscription irrespective of the date of issue of the bonds.

- (2) The registration shall not require any renewal during the term of the loan.
- (3) The registration shall be reduced or cancelled upon the company's commitments having terminated or upon the consent of the meeting of bondholders.

Any procedure for removal of the mortgage, the expropriation of the charged property or the reduction or cancellation of the mortgage registration shall be brought against the representatives of the group. If no representative has been appointed by the general meeting of bondholders, the procedure provided for in Article 87, subparagraph (2) shall be followed.

- (4) The representatives of the group are obliged, within eight days of receiving any amounts paid to them as a result of the proceedings referred to in the foregoing paragraph, to deposit the same either at the *caisse de consignation* or, with the authorisation of the court, with an authorised credit institution established in Luxembourg. A Grand Ducal Regulation shall determine the rate of interest to be paid, which may exceed the maximum fixed by the law of 12 February 1872 on payments deposited in escrow.

The sums thus held in escrow on behalf of the bondholders may be withdrawn on the basis of proxies bearing specific names or proxies appointing the bearer, issued by the representatives of the group and countersigned by the judge presiding the chamber of the district court dealing with commercial matters. Payment in respect of the proxies bearing specific names shall be made against a receipt given by the payees; bearer mandates shall be paid upon a receipt having been given by the representatives of the group.

No proxies may be issued by the representatives of the group unless the bond is presented. The representatives shall mark on the bond the sum in respect of which they issue a proxy.

**Art. 94-7**

A company indebted on account of bonds which have been called for total or partial redemption and where a holder of such bonds has failed to present himself within the year following the date of payment, is authorised to deposit the sums due in escrow. Such deposit shall be made with the Luxembourg *caisse de consignation* or, with the authorisation of the court, with an authorised credit institution established in Luxembourg.

**Art. 94-8.**

The bankruptcy of the company shall not bring to an end the operation or role of the general meeting of bondholders. Article 87 (2) and (3) shall continue to apply even after the judgement declaring the bankruptcy.

**Art. 95.**

*(Law of 09 April 1987)*

The provisions of Articles 86 to 94-8 shall apply to foreign companies which submit a loan to Luxembourg law unless the conditions of issue of the loan provide otherwise.



Luxembourg companies may derogate from the provisions of Articles 86 to 94-8 if they submit their loan to a foreign law.

**Art. 96.**

*(Law of 10 August 2016)*

– (...)

**Art. 97.**

*(Law of 10 August 2016)*

**(...)Art. 98.**

A termination condition is implicitly included in every loan agreement taking the form of a bond issue in the event of either of the parties failing to satisfy its obligations.

In such case, the contract shall not be terminated ipso jure. The party against whom the obligation is in default shall have the option either of enforcement in kind of the agreement where this is possible or to apply for termination thereof with damages.

Such termination must be sought by application to the courts and the defendant may be granted a grace period, depending on the circumstances.

*(Law of 23 March 2007)*

**Section 9. – The duration and dissolution of *sociétés anonymes* and of *sociétés européennes* (SE)**

**Art. 99.**

*(Law of 07 September 1987; Law of 10 August 2016)*

*Sociétés anonymes* may be incorporated for a limited or unlimited period.

In the former case, the duration of the company may be successively extended in accordance with the provisions of Article 67-1.

In the second case, Articles 1865, 5°, and 1869 of the Civil Code shall not apply. Application for dissolution of the company may, however, be made to the court for just cause. Except in the case of dissolution by court order, dissolution of the company may take place only pursuant to a decision adopted by the general meeting in accordance with the conditions laid down for amendments to the articles of association. Article 1865bis, subparagraphs 2 et seq. of the Civil Code also applies.

**Art. 100.**

*(Law of 25 August 2006; Law of 10 August 2016)*

Without prejudice to stricter provisions in the articles of association, if in the event of a loss the net assets are reduced to less than half the share capital, the board of directors or the management board, as applicable, shall convene a general meeting to be held within a period not exceeding two months from the time the loss was ascertained or should have been ascertained by them, and such meetings shall resolve, as applicable in accordance with the provisions of Article 67-1 on the possible dissolution of the company and any other measures announced on the agenda.

The board of directors or the management board, as applicable, shall explain the reasons for this situation and justify its proposals in a special report made available to the shareholders at the registered office of the company eight days before the general meeting. If the report proposes that the company should continue to exist, it must also state what measures it intends to adopt in order to redress the company's financial situation. This report must be included on the agenda. Every shareholder shall be entitled to obtain free of charge, upon request and upon production of his title, eight days before the meeting, a copy of this report. A copy shall be sent to all registered shareholders at the same time as the convening notice.

Absence of the report required by subparagraph 2 shall result in the voidance of the general meeting's resolution unless all shareholders have waived the need for the report.

The same rules shall be observed where, as a result of a loss, the net assets are reduced to less than one quarter of the share capital, but in such case, dissolution shall take place if approved by one-quarter of the votes cast at the meeting.

In the event of any infringement of the foregoing provisions, the directors or members of the management board, as applicable, may be declared personally and jointly and severally liable vis-à-vis the company for all or part of the increase of the loss.

**Art. 101.**

- (1) The district court dealing with commercial matters may, at the application of the public prosecutor, order the dissolution and the liquidation of a *société européenne* (SE) whose registered office is located in the Grand-Duchy of Luxembourg, but whose head office is not located there.

The application and the procedural deeds within the framework of this Article shall be served through the greffe (registry). If the company cannot be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg.

The company concerned shall, however, be granted a period of six months by the competent court in order to regularise its situation, either:

- a) by re-establishing its head office in the Grand-Duchy of Luxembourg; or
- b) by transferring the registered office by means of the procedure laid down in Articles 101-1 to 101-17.

The action to cause the dissolution is directed against the company.

The decision ordering the dissolution shall take effect as of the date of said decision.

(Law of 27 May 2016)

However, this clause is only enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

The court may either order the immediate closing of the liquidation, or determine the method of liquidation and appoint one or more liquidators. It may render applicable to such extent as it may determine, the rules governing the liquidation of a bankruptcy. Upon the closing of the liquidation, the liquidator shall report to the court and submit a statement on the corporate assets and their application.

- (2) Where it is established either by the court at the application of the public prosecutor, or by any interested party, that a *société européenne* (SE) has its head office within the Grand-Duchy of Luxembourg without its registered office being situated there, the public prosecutor shall immediately inform the Member State in which the registered office of the *société européenne* (SE) is situated.

**Section 10. – Transfer of the registered office of a *société européenne* (SE)**

**Art. 101-1**

The registered office of a *société européenne* (SE) may be transferred from the Grand-Duchy of Luxembourg to another Member State, and from another Member State to the Grand-Duchy of Luxembourg, in accordance with Articles 101-2 to 101-17. Such a transfer shall not give rise to the dissolution or creation of a new legal entity.

**Sub-section 1. - Procedure for the transfer of the registered office from the Grand-Duchy of Luxembourg to another Member State.**

**Art. 101-2**

- (1) The board of directors or management board, as applicable, of the *société européenne* (SE) transferring its registered office shall draw up a transfer proposal in writing.
- (2) The proposal shall indicate:
  - a) the trade name, registered office and registration number of the *société européenne* (SE);
  - b) the proposed registered office of the *société européenne* (SE);
  - c) the proposed articles of association of the *société européenne* (SE) including, where appropriate, its new trade name;
  - d) any consequences the transfer may have on employees' involvement in the *société européenne* (SE);
  - e) the proposed transfer timetable;
  - f) any rights provided for to protect shareholders and/or creditors or holders of securities other than shares.

(Law of 25 August 2006)

**Art. 101-3**

(Law of 23 March 2007; Law of 27 May 2016)

The draft terms of transfer shall be made public as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, at least two months prior to the date of the general meeting called to rule on the proposed transfer.

(Law of 25 August 2006)

**Art. 101-4**

The board of directors or management board, as applicable, shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the consequences of the transfer for shareholders, creditors and employees.

**Art. 101-5**

The shareholders and creditors of the *société européenne* (SE) shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the registered office of the *société européenne* (SE), the transfer proposal and the report drawn up pursuant to Article 101-4 and, on request, to obtain copies of those documents free of charge.

**Art. 101-6**

The transfer requires the approval of the general meeting of the *société européenne* (SE). That decision requires that the conditions as to quorum and majority, laid down for amendments of the articles of association, are fulfilled. No decision may be taken for two months after publication of the proposal pursuant to Article 101-3.

**Art. 101-7**

Creditors of a *société européenne* (SE) which is transferring its registered office, whose claims predate the publication of the transfer proposal pursuant to Article 101-3, may, notwithstanding any agreement to the contrary, within two months of such publication, apply to the judge presiding the chamber of the district court dealing with commercial matters in the district in which the registered office of the debtor company is located and sitting as in urgency matters, for the constitution of security for matured or unmatured

claims, in case the transfer would jeopardise the general lien of such creditors or impede the enforcement of their claims. The court shall reject the application where the creditor already has adequate safeguards, or if such collateral is not necessary, taking into account the location of the company after the transfer. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

If the safeguards are not provided within the time limit prescribed, the debt shall immediately fall due.

**Art. 101-8**

Without prejudice to the rules governing the collective exercise of their rights, Article 101-7 shall apply to holders of bonds of the company transferring its registered office, unless the transfer has been approved by a meeting of the bondholders or by the bondholders individually.

**Art. 101-9**

- (1) The holders of securities, other than shares, to which special rights are attached, must be given rights in the company which has transferred its registered office at least equivalent to those conferred to them in the company prior to such transfer.
- (2) Paragraph (1) shall not apply if the alteration to those rights has been approved by a meeting of such holders passed in accordance with the quorum and majority rules provided for in Article 101-6.

*(Law of 18 December 2009; Law of 23 July 2016)*

- (3) In the event the meeting provided for in the preceding paragraph is not convened or, in case such a meeting refuses the proposed alteration, the securities concerned shall be redeemed at the price corresponding to their valuation in the transfer proposal and verified by an independent expert appointed by the management body and chosen from among the independent auditors.

**Art. 101-10**

- (1) The minutes of the meeting which decides on the transfer shall be established by a notarial deed.
- (2) The notary shall verify and certify the existence and legality of the deeds and formalities incumbent on the company for which he draws up his deed, and of the transfer proposal.
- (3) The notary shall issue a certificate attesting in a conclusive manner the completion of the acts and formalities which need to be accomplished prior to the transfer.

**Sub-section 2. - The effectiveness of the transfer of the registered office**

**Art. 101-11**

The transfer of the registered office of a *société européenne* (SE) and the resulting amendment of its articles of association shall take effect on the date of registration which, in the Grand-Duchy of Luxembourg, is carried out at the register of commerce and companies.

**Art. 101-12**

Where a *société européenne* (SE) transfers its registered office to the Grand-Duchy of Luxembourg, the registration at the register of commerce and companies may not be effected until presentation of the certificate, issued by the competent authority of the Member State in which the *société européenne* (SE) previously had its registered office, attesting the conclusive completion of the acts and formalities to be accomplished prior to the transfer.

**Art. 101-13**

A *société européenne* (SE) which has transferred its registered office to another Member State shall be considered, in respect of any cause of action litigation arising prior to the transfer as determined pursuant to Article 101-11, as having its registered office in the Member State where the *société européenne* (SE) was registered prior to the transfer, even if the *société européenne* (SE) is sued after the transfer.

**Art. 101-14**

The transfer of the registered office of the *société européenne* (SE) will be effective vis-à-vis third parties, excluding shareholders, as from the date of the publication of the new registration of the *société européenne* (SE). However, as long as the deletion of the registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office, unless the *société européenne* (SE) proves that such third parties were aware of the new registered office.

**Art. 101-15**

When the new registration of the *société européenne* (SE) has been effected, the registry for its new registration shall notify the registry for its old registration.

Deletion of the old registration shall be effected on receipt of that notification, but not before.

**Art. 101-16**

*(Law of 27 May 2016)*

The new registration and the deletion of the old registration shall be published, and Articles 10 and 11bis of this law and the provisions of Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply.

**Art. 101-17**

A *société européenne* (SE) which is subject to proceedings for dissolution, liquidation, bankruptcy, composition with creditors or other similar proceedings such as suspension of payments, controlled management or proceedings instituting a special management or supervision may not transfer its registered office.

(Law of 10 August 2016)

**Section IVbis. — Sociétés Par Actions Simplifiées (simplified companies with shares)**

**Art. 101-18.**

(1) A *société par actions simplifiée* is a company whose capital is divided into shares and which is formed by one or more persons who only contribute a specific amount. It is governed by the rules of this section.

Where this section requires a joint decision, the single member shall exercise the powers granted upon the body of shareholders.

On the condition that they are compatible with the special provisions of this section, the rules governing *sociétés anonymes*, excluding Articles 50 to 60bis-18, without prejudice to the requirements of Article 101-23, as well as of Articles 64 to 68 and 70 to 71 of this law, apply to the *société par actions simplifiée*. When applying these rules, the powers of the board of directors or of those entrusted with the day-to-day management shall be exercised by the chairman of the *société par actions simplifiée* or the one or more directors named for this purpose in the articles of association.

**Art. 101-19.**

A *société par actions simplifiée* may not make any public issue of shares.

**Art. 101-20.**

The articles of association set forth the conditions under which the company is managed.

**Art. 101-21.**

The company is represented vis-a-vis third parties and the courts, whether as claimant or defendant, by a chairperson appointed in the manner stipulated in the articles of association. Writs served on behalf of or against the company shall be validly served in the name of the company alone.

The chairperson is vested with the broadest powers to act in all circumstances in the name of the Company, up to the limits of its corporate purpose.

In its relations with third parties, the company is bound even by actions of the chairperson that do not fall within the scope of the corporate purpose, unless it can prove that the third party knew this action exceeded that purpose or that it could not be unaware of it given the circumstances, it being understood that publication of the articles of association cannot alone constitute this proof.

The articles of association may stipulate conditions in which one or more persons other than the chairperson, bearing the title of director, may exercise the powers granted to the chairperson by this article.

Clauses contained within the articles of association limiting the powers of the chairperson shall not be enforceable against third parties. The director has the same powers as the chairperson in his dealings with third parties. "

**Art. 101-22.**

Where a legal entity is appointed as chairperson or director of a *société par actions simplifiée*, it shall designate a permanent representative to exercise that duty in the name and on behalf of the legal entity.

Such representative shall be subject to the same conditions and shall incur the same civil liability as if he fulfilled such duty in his own name and on his own behalf, without prejudice to the joint and several liability of the legal entity which he represents. The revocation by such legal entity of its representative is conditional upon the simultaneous appointment of a successor.

The appointment and termination of the position of a permanent representative are subject

to the same publicity rules as if he would act in his own name and on his own behalf.

**Art. 101-23.**

The chairperson or directors of the *société par actions simplifiée* shall not contract any personal obligation in relation to the company's commitments.

The rules stipulating the liability of the members of the board of directors or of the management board of a *société anonyme* apply to the chairperson and the directors of a *société par actions simplifiée*.

**Art. 101-24.**

The articles of association stipulate which decisions may be taken jointly by the body of shareholders subject to the forms and conditions stated therein.

However, powers delegated to the general meetings of a *société anonyme* concerning increases, amortisations and reductions of share capital, mergers, demergers, dissolution, change of company form, appointment of supervisory auditors, financial accounts and profits shall, in the conditions stated by the articles of association, be exercised jointly by the body of shareholders.

If the company comprises a single member, his decisions shall be recorded in the minutes or in writing.

**Art. 101-25.**

Where the chairperson has a direct or indirect financial interest contrary to the interests of the company in relation to a transaction that falls within his remit to authorise, a note must be made in the minutes of the transaction.

Where a director or directors have a direct or indirect financial interest contrary to the interests of the company, the decision is taken by the chairperson. A note is made in the minutes of the decision.

At the next following general meeting, before any other resolution is put to vote, a special report shall be made on any transactions in which the chairperson may have had an interest conflicting with that of the company.

These provisions do not apply to current operations entered into under normal conditions.

**Art. 101-26.**

Any disposal of shares that is made in breach of the articles of association is void.

**Section V. — Sociétés en commandite par actions (Corporate Partnerships Limited By Shares)**

**Art. 102.**

(Law of 12 July 2013)

A *société en commandite par actions* is a company established by contract, for a limited or unlimited period, between one or more shareholders who are indefinitely and jointly and severally liable for the obligations of the company, and one or more shareholders who only contribute a specific share of capital.

**Art. 103.**

(Law of 25 August 2006)

The provisions regarding *sociétés anonymes* shall apply to *sociétés en commandite par actions*, subject to the modifications indicated in this Section.

Furthermore, a *société en commandite par actions* shall not be subject to the provisions specifically applicable to the *société européenne* (SE)

**Art. 104.**

(...) (Abrogated by the law of 12 July 2013)

**Art. 105.**

*(Law of 23 November 1972)*

All instruments, invoices, notices, publications, letters, order forms and other documents issued by *sociétés en commandite par actions* must contain:

- 1) the trade name of the company;
- 2) the words "*société en commandite par actions*" reproduced legibly and in full;
- 3) a precise indication of the registered office;

*(Law of 19 December 2002)*

- 4) the words "Registre de commerce et des sociétés, Luxembourg" or the initials "R.C.S. Luxembourg" followed by the registration number.

*(Law of 23 November 1972)*

If the above documents state the share capital, that statement shall take into account any decrease which it may have suffered according to the results of the various successive balance sheets and shall indicate both the portion not yet paid-up and, in the case of an increase of capital, the portion which has not yet been subscribed to.

*(Law of 27 May 2016)*

Any change of the registered office shall be published in the Recueil Électronique des Sociétés et Associations; such publication shall be arranged by the management.

The penalties provided for in Article 77 shall apply to any agent acting on behalf of the company in circumstances where these provisions are not complied with.

**Art. 106.**

*(Law of 08 March 1989)*

Bearer shares shall be signed by the managers. Unless otherwise provided for in the articles of association, such signatures or one of them may be handwritten, printed or affixed by means of a stamp.

**Art. 107.**

*(Law of 12 July 2013; Law of 10 August 2016)*

Management of the company is carried out by one or more managers, who may but need not be unlimited partners, designated in accordance with the articles of association. Where one or more managers are legal entities, they are not required to appoint a natural person as their permanent representative.

Managers who are not unlimited partners shall be liable in accordance with Article 59.

The articles of association may allow the managers to delegate their powers to one or more proxies, who are liable only for the performance of their mandate.

Unless otherwise provided for in the articles of association, each manager may, on behalf of the company, take any action necessary or useful to the fulfilment of the corporate purpose. Any restrictions provided for in the articles of association with respect to the powers of the managers are not valid vis-à-vis third parties, even if they are published. However, the articles of association may authorise one or more managers to represent the company, either singly or jointly, and a clause to that effect is valid vis-à-vis third parties, subject to the provisions of Article 9.

The company shall be bound by any acts of the manager(s), even if such acts exceed the corporate purpose, unless it proves that the third party knew that the act exceeded the corporate purpose or could not, in view of the circumstances, have been unaware of it.

Each manager represents the company vis-à-vis third parties and in legal proceedings, either as plaintiff or as defendant.



Writs served on behalf of or against the company shall be validly served in the name of the company alone.

**Art. 108.**

*(Law of 12 July 2013)*

A limited partner may enter into any transaction with the *société en commandite par actions* without his capacity as limited partner affecting his rank as unsecured or preferred creditor under the terms of the relevant transaction.

He shall be prohibited from carrying out any act of management with regard to third parties.

A limited partner shall be jointly and severally liable, vis-à-vis third parties, for any commitments of the company in which he participated in violation of the prohibition contained in the foregoing paragraph.

He shall also be jointly and severally liable vis-à-vis third parties for commitments in which he did not participate, if he has regularly carried out acts of management vis-à-vis such third parties.

The following do not constitute acts of management for which the limited partner is jointly and severally liable vis-à-vis third parties: the exercise of partner prerogatives; the providing of opinions or advice to the company, its affiliates or their managers; the carrying out of any control or supervisory measures; the granting of loans, guarantees or securities; or the giving of any other type of assistance to the partnership or its affiliates, as well as the giving of any authorisation to the managers in the cases provided for in the articles of association, for acts outside their powers.

The limited partner may act as a member of a management body or as a proxy of a manager of the company, even if that manager is an unlimited partner, or may execute documents on the manager's behalf under the latter's corporate signature, even acting in the capacity of a representative of the company, without incurring as a result unlimited and joint and severable liability for the obligations of the partnership, provided that the capacity in which he acts as representative is indicated.

**Art. 109.**

Supervision of the company must be entrusted to at least three auditors.

**Art. 110.**

The supervisory board may give its opinion on any matters which the managers refer to it, and may authorise acts which fall outside their powers.

**Art. 111.**

*(Law of 12 July 2013)*

Subject to any contrary provision of the articles of association, the general meeting of shareholders shall adopt and ratify measures affecting the interests of the company vis-à-vis third parties or amending the articles of association with the agreement of the general partners only.

**Art. 112.**

*(Law of 12 July 2013)*

In the event of the general partner's death, dissolution, legal incapacity, dismissal, resignation, inability to act or bankruptcy or in case the general partner is in another situation affecting the rights of creditors generally, and there is no other general partner and it has been provided that, in such an event, the company would continue to exist, the general partner shall be replaced. Unless otherwise specifically provided for in the partnership agreement, the judge presiding the chamber of the district court dealing with commercial matters may appoint, at the request of any interested parties, a temporary administrator, who may but need not be a partner, who shall take all urgent and purely administrative measures alone, until the resolution of the partners, which this administrator

shall have passed within two weeks following his appointment. The administrator shall be liable only for the performance of his mandate. Any interested party may object to the order; the objection shall be notified both to the company as well as to the person appointed and to the person who applied for the appointment. The proceedings regarding the objection shall be heard as in urgent applications.

## Section VI. — *Sociétés cooperatives (Co-operative Societies)*

(Law of 10 June 1999)

### Sub-section 1. - *On sociétés coopératives (Worker Cooperatives) in general*

#### Section 1. - *On the nature and incorporation of sociétés coopératives*

##### **Art. 113.**

A *société coopérative* is a company made up of partners, the number and the contributions of which are variable and the units of which may not be sold to third parties.

It may have limited or unlimited liability.

##### **Art. 114.**

(Law of 10 August 2016)

The *société coopérative* must be made up of at least two persons.

It shall be managed by one or more authorised representatives, who may or may not be partners and who shall only be liable for the performance of the duties entrusted to them.

A *société coopérative* which has not adopted the form of a *société coopérative européenne* (SEC) may opt for one of the regimes stipulated in Articles 137-23 to 137-41.

The supervision of the company shall be entrusted to one or more auditors, who may or may not be partners. **Art. 115.**

(Law of 10 August 2016)

(1) The deed of incorporation of the company must determine the following items:

1. The name of the company and its registered office;
2. The corporate purpose of the company;
3. The form of the company as a limited or unlimited liability entity;
4. the manner in which the share capital of the company is or will subsequently be made up, and the minimum amount to be subscribed for immediately. In *sociétés coopératives* with limited liability, the articles of association must state the fixed proportion of the share capital.

(2) In addition to the types of infringement stated in Article 4, the voidance of a *société coopérative* may only be declared in the following circumstances:

1. if the deed of incorporation does not contain any information about the items listed in paragraph (1) of this Article;
2. if the corporate purpose is unlawful or contrary to public policy;
3. if there is not at least one founder who is validly committed.
4. if the company has not, within one year from when the number of partners falls to less than two, increased the number of partners to two or more.

If the clauses of the deed of incorporation defining the distribution of profits or the apportionment of losses are contrary to article 1855 of the Civil Code, those clauses shall be deemed excluded. **Art. 116.**

The instrument shall also indicate:

(Law of 07 September 1987; Law of 10 August 2016)

- 1° The duration of the company, which may be limited or unlimited.

In the former case, the duration of the company may be successively extended in

accordance with the provisions of Article 67-1.

In the second case, Articles 1865, 5°, and 1869 of the Civil Code shall not apply. Application for dissolution of the company may, however, be made to the court for just cause. Except in the case of dissolution by court order, dissolution of the company may take place only pursuant to a decision adopted by the general meeting in accordance with the conditions laid down for amendments to the articles of association. Article 1865bis, subparagraphs 2 et seq. of the Civil Code also applies;

2° the conditions for admission to, and resignation from, partnership and for exclusion of partners and withdrawal of contributions;

(Law of 18 December 2009)

3° how and by whom the business of the company is to be managed and controlled and, if appropriate, the method of appointment and removal of the directors, auditors or licensed independent auditors, the extent of their powers and their term of office;

4° the powers of the general meeting, the rights conferred upon partners thereat, the procedure for convening meetings, the majority required for the validity of resolutions and the procedures for voting;

5° the sharing in profits and losses;

6) The exact details of the partners

**Art. 117.**

(Law of 25 August 1986; Law of 18 December 2009; Law of 23 July 2016; Law of 10 August 2016)

In the absence of provisions regarding the matters set out in the foregoing Article, the following provisions shall apply:

1 The company is formed for an indefinite period;

2° partners may be excluded from the company only in the case of non-performance of the contract; the general meeting shall declare exclusions and shall authorise withdrawals of contributions;

3. the company shall be managed by a director and supervised by an auditor or submit its accounts for a statutory audit by an auditing, who shall be appointed, removed and who shall deliberate, in the same manner as in a *société anonyme*;

4° all partners may vote at the general meeting; they shall have equal votes; convening notices shall be in the form of registered letters, signed by management; the powers of the meeting shall be determined and its resolutions shall be adopted in accordance with the rules provided for *sociétés anonymes*;

5° profits and losses shall be shared each year, as to one-half in equal parts between the partners, and as to one-half in proportion with their respective contributions;

6° partners shall be indefinitely and jointly and severally liable.

(Law of 10 August 2016)

**Art. 117bis.**

(1) The subscribers to the deed of incorporation shall be deemed to be founders of the company. However, the deed of incorporation may designate as founder(s) one or more subscribers who together hold at least one-third of the fixed portion of the share capital. In such case, the other parties to the deed who merely subscribe for corporate units for cash without directly or indirectly receiving any specific advantage shall be regarded as mere subscribers.

(2) The founders of a *société coopérative* with limited liability shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:

- 1° any portion of the fixed part of the share capital which will not have been validly subscribed for as well as for any difference between the minimum amount of the capital which must be subscribed to immediately as per Article 115, paragraph (1)(4) and the amount subscribed for; they shall ipso jure be deemed to be subscribers thereof;
- 2 the indemnification of any damage which is the immediate and direct result of either the voidance of the company or the omission or inaccuracy in the deed of incorporation of the items required by Article 115, paragraph (1).
- (3) Any person who enters into a commitment for a third party mentioned by name in the deed and acting either as agent or as surety, shall be deemed to be personally committed if they have no valid mandate or the commitment is not ratified within two months of the commitment.

The founders shall be jointly and severally liable for such commitments.

**Art. 118.**

*(Law of 18 December 2009; Law of 10 August 2016)*

Every *société coopérative* must keep a register containing on the first page the company's deed of incorporation, and indicating thereafter:

- 1° the names, professions and addresses of society members;
- 2° the date of their admission, resignation or exclusion;
- 3° a statement of account of the sums paid or withdrawn by each of them;
- 4° the date of audits carried out and the names of the auditors or licensed independent auditors.

(...)

(...)

Statements as to withdrawals of contributions shall be signed by the society member who made them.

**Section 2. - Changes in membership and in the corporate fund**

**Art. 119.**

The status of society member as well as the number of shares for the time being held by any member shall be evidenced, without prejudice to any other means of evidence under commercial law, by the affixing of their signature, against their name, preceded by the date, in the register of the company.

**Art. 120.**

*(Law of 25 August 1986)*

Partners are always entitled to resign under the conditions and on the terms which may be provided for in the articles of association. They may resign only during the first six months of the company's financial year.

**Art. 121.**

The resignation shall be evidenced by indication of that fact on the partner's certificate and on the register of the company, against the name of the resigning partner.

Such indications shall be dated and signed by the partner and by a director.

**Art. 122.**

If the directors refuse to record the resignation, or if the resigning partner does not know how or is unable to sign, the said resignation shall be recorded at the registry of the magistrate court of the registered office.

The registrar shall prepare an affidavit and give notice thereof to the company by registered

letter, sent within twenty-four hours.

The affidavit shall be on unstamped paper and shall be registered free of charge.

**Art. 123.**

The exclusion from the company shall be recorded in a memorandum prepared and signed by a director. The memorandum shall describe the facts which confirm that the exclusion was ordered in accordance with the articles of association; it shall be transcribed in the register of members of the company, and a conformed copy thereof shall be forwarded within two days to the excluded member by registered letter.

**Art. 124.**

*(Law of 25 August 1986)*

The resigning or excluded partner may not cause the company to be liquidated.

Unless the articles of association provide differently, the resigning or excluded partner is entitled to receive only the par value of his shares. In no circumstances can any part of the balance sheet representing public funds granted to the *société coopérative* be distributed to him. If it results from the balance sheet of the financial year during which the resignation was given or the exclusion has occurred, that the value of the shares is below their par value, the partner's rights will be reduced in that proportion.

**Art. 125.**

In the event of the death or bankruptcy of a partner or of a composition with his creditors, the insolvency of a partner or if he is subject to an order of restraint, his heirs, creditors or representatives shall receive his share in accordance with Article 124.

They may not cause the company to be liquidated.

**Art. 126.**

Any resigning or excluded partner shall remain personally liable, within the limits of his commitment and for a period of five years from publication of his resignation or exclusion, except where a shorter prescription period is provided for by law, for all obligations entered into before the end of the year during which his withdrawal was published.

The same rules shall apply in the circumstances provided for in Article 125.

**Art. 127.**

*(Law of 10 August 2016)*

Irrespective of the representative proportions of the share capital, securities which do not represent the stated capital may be issued, and are referred to in this law as "founder shares". The articles of association shall specify the rights attaching thereto.

Partner shares and founder shares of a *société coopérative* are registered. They bear a serial number.

The issue of bonds and all appertaining rights are governed by the articles of association.

**Art. 128.**

The personal creditors of a partner may arrest only the interest and dividends to which he is entitled and the portion of the assets allotted to him upon dissolution of the company.

### **Section 3. - Measures in the interest of third parties**

**Art. 129.**

Each year, at the time determined in the articles of association, management shall prepare an inventory and the balance sheet and the profit and loss account in the form stipulated in Article 72.

A reserve shall be constituted in the manner stipulated in that Article.

**Art. 130.**

On all instruments, invoices, notices, publications and other documents issued by *sociétés coopératives*, the trade name of the company must appear immediately preceded or followed by the following words, written legibly and in full: "*société coopérative*".

**Art. 131.**

Any agent acting on behalf of a *société coopérative* in an instrument in respect of which the requirements of the foregoing article are not fulfilled may, depending on the circumstances, and in case of default by the company itself, be declared personally liable for the commitments entered into therein by the company.

**Art. 132.**

*(Law of 19 December 2002)*

The annual accounts, as defined by the law of 19 December 2002 concerning the register of commerce and companies and the accounting and annual accounts of undertakings shall be lodged within one month of their approval at the register of commerce and companies.

**Art. 133.**

The persons managing the company must lodge at the register of commerce and companies every six months a list, in alphabetical order, of the names, professions and addresses of all partners, dated and certified as being true and correct by the signatories.

The signatories shall be liable for any incorrect information in the said lists.

**Art. 134.**

*(Law of 19 December 2002)*

Within one month days of their appointment, the managers must lodge at the register of commerce and companies, an extract of the instrument recording their appointment and their powers.

They must appear in person at the register of commerce and companies to record their signature or forward to the register of commerce and companies a notarised form thereof.

**Art. 135.**

The public shall be allowed to inspect the lists of members, the instruments conferring management powers and the annual accounts free of charge. Any person may request a copy thereof, on unstamped paper, against payment of the administrative costs.

**Art. 136.**

*Sociétés coopératives* may form federations in order to jointly pursue, in full or in part, the purposes provided for in their articles of association or in order to ensure the fulfilment of their obligations under the laws and regulations applicable to them.

Federations shall constitute a legal entity distinct from that of the societies comprised therein.

They shall be subject to the provisions applicable to *sociétés coopératives*, except that the said provisions may be supplemented or amended by government regulations, to the extent they apply to federations.

**Art. 137.**

*(Law of 18 December 2009)*

Article 69 (1), (2) and (4) of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings is applicable.

The institution of the auditors provided for in Articles 114, 116 item 3 and 117 item 3 shall not apply to those *coopératives* whose annual accounts are audited by a licensed

independent auditor pursuant to the first paragraph of this Article.

In the event of infringement of the provisions regarding the auditing, the directors of the federations and of the companies shall be personally and jointly and severally liable for any damage resulting from such infringement.

(Law of 10 June 1999)

### **Sub-section 2. - Sociétés coopératives organisées as sociétés anonymes**

#### **Art. 137-1**

(Law of 25 August 2006; Law of 10 August 2016)

- (1) The *société coopérative* may also be organised as a *société anonyme*.
- (2) The *société coopérative* organised as a *société anonyme* is subject to the provisions concerning *sociétés coopératives* except for the amendments contained in this sub-section.
- (3) The *société coopérative* organised as a *société anonyme* is also subject to the provisions concerning *sociétés anonymes* contained in this law, except for the amendments contained in this sub-section.

It shall not be subject to the provisions specifically applicable to the *société européenne* (SE).

(Law of 10 June 1999)

#### **Art. 137-2.**

The capital of a *société coopérative* organised as a *société anonyme* is made up of shares. All references to "units" in sub-section 1 of this section are deemed to be references to "shares" to the extent that the provisions of sub-section 1 apply to the *société coopérative* organised as a *société anonyme* and to the extent the two terms are used with the same meaning.

#### **Art. 137-3**

Article 4, paragraph 2 does not apply to the *société coopérative* organised as a *société anonyme*.

#### **Art. 137-4**

(Law of 10 August 2016)

- (1) Without prejudice to the provisions of Article 137-5, paragraph (1), Article 23 does not apply to the *société coopérative* organised as a *société anonyme*.
- (2) Article 26, paragraphs (1) 2), 3) and 4) and (2) do not apply to the *société coopérative* organised as a *société anonyme*.

The incorporation of a *société coopérative* organised as a *société anonyme* requires in addition to what is mentioned in Article 26(1) 1), the immediate subscription of the corporate fund specified in the corporate deed.

- (3) Articles 26-1 to 26-4 do not apply to the *société coopérative* organised as a *société anonyme*.
- (4) Article 27, 5), 8), 9), 10) and 14) does not apply to the *société coopérative* organised as a *société anonyme*.

Instead of the provisions set out in Article 27, 6) and 7), the corporate deed shall indicate:

- the manner in which the corporate fund is or will subsequently be made up, and the minimum amount to be subscribed for immediately; and
- the number of shares subscribed to, the category of shares if more than one category exists, and the rights of each of such categories.



The corporate deed shall in addition indicate the conditions for admission to, and resignation from, membership and for exclusion of the partners and withdrawal of contributions.

(5) Articles 28 to 32-4 do not apply to the *société coopérative* organised as a *société anonyme*.

(6) In Article 37, paragraph 1, subparagraph 1, the shares mentioned are only registered or book-entry shares in case of a *société coopérative* organised as a *société anonyme*.

In Article 37, paragraph 1, subparagraph 2, the founder shares mentioned may be in registered, bearer or book-entry form in case of a *société coopérative* organised as a *société anonyme*.

Article 37, paragraph 1, subparagraph 3 does not apply to a *société coopérative* organised as a *société anonyme*.

(7) Articles 39 and 40 are not applicable to the *société coopérative* organised as a *société anonyme*.

(8) For a *société coopérative* organised as a *société anonyme*, Articles 41 and 42 will apply only to founder shares and similar securities referred to in paragraph (6) above.

(9) Article 43 does not apply to the *société coopérative* organised as a *société anonyme*.

(10) Article 46, paragraph (1) will apply except to deliberations on share capital reductions.

(11) Article 48 does not apply to the *société coopérative* organised as a *société anonyme*.

(12) Articles 49-1 to 49bis do not apply to the *société coopérative* organised as a *société anonyme*.

(13) Articles 69 to 69-2 do not apply to the *société coopérative* organised as a *société anonyme*.

(14) Articles 72-1 to 72-4 do not apply to the *société coopérative* organised as a *société anonyme*.

(15) In Article 76, paragraph 1, 2), the reference to "*société anonyme*" is replaced by "*société coopérative organisée comme une société anonyme*".

#### **Art. 137-5**

(Law of 10 June 1999; Law of 10 August 2016)

(1) Articles 114 to 117 are not applicable to the *société coopérative* organised as a *société anonyme*.

(2) Any partner may consult the register referred to in Article 118. Article 118, paragraphs 2 and 3 do not apply to the *société coopérative* organised as a *société anonyme*.

(3) The second sentence of Article 120 does not apply to the *société coopérative* organised as a *société anonyme*.

(4) Articles 126 and 129 to 135 do not apply to the *société coopérative* organised as a *société anonyme*.

(5) Article 136 will apply both to the *sociétés coopératives* and the *sociétés coopératives* organised as a *société anonyme*.

#### **Art. 137-6**

Section IX. – *Rights Of Action And Prescription Periods* and Section XI. – *Criminal Law Provisions* are applicable to the *société coopérative* organised as a *société anonyme*.

#### **Art. 137-7**

Section XIII. - *Company Accounts* does not apply to the *société coopérative* organised as a *société anonyme*.

**Art. 137-8**

- (1) Section XIV. – *Mergers* applies to the *société coopérative* organised as a *société anonyme*, subject to the following provisions.
- (2) A *société coopérative* organised as a *société anonyme* may not acquire by way of merger a *société anonyme* or a *société coopérative* organised as a *société anonyme* unless the shareholders or partners of such other company fulfil the conditions required to become a partner of the acquiring company.
- (3) In *sociétés coopératives* organised as *sociétés anonymes*, each member has the right, notwithstanding any provision to the contrary of the articles of association, to withdraw at any time during the financial year and without having to satisfy any other condition, upon the calling of the general meeting for the purpose of deciding on the merger of the company with an acquiring company having the form of a *société anonyme*.

The withdrawal must be notified to the company by registered letter deposited at the post at least five days before the day of the meeting. It will be effective only if the merger is approved.

The notice for the meeting must feature the text of the first and second subparagraphs of this paragraph.

- (4) The provisions of paragraphs (2) and (3) of this Article apply to the merger by incorporation of a new company.

**Art. 137-9**

- (1) Section XV. - *Demergers* applies to the *société coopérative* organised as a *société anonyme*, subject to the following provisions.
- (2) A *société coopérative* organised as a *société anonyme* may not participate in a demerger as a recipient company unless the shareholders or partners of the company being divided fulfil the conditions required to become a partner in the recipient company.
- (3) In *sociétés coopératives* organised as a *société anonyme*, each partner has the right, notwithstanding any provision to the contrary in the articles of association, to withdraw at any time during the financial year and without having to satisfy any other condition, upon the calling of the general meeting for the purpose of deciding on the demerger of the company for the benefit of the recipient companies, at least one of which has another legal form.

The withdrawal must be notified to the company by registered letter deposited at the post at least five days before the day of the meeting. It will be effective only if the demerger is approved.

The notice for the meeting must feature the text of the first and second subparagraphs of this paragraph.

- (4) The provisions of paragraphs (2) and (3) of this Article apply to the demerger by incorporation of new companies.

**Art. 137-10**

Section XVI. – *Consolidated accounts* does not apply to the *société coopérative* organised as a *société anonyme*.

(Law of 10 March 2014)

### **Sub-section 3. – On European Cooperative Societies (SCE)**

#### **Section 1. – General provisions**

##### **Sub-section 1. – Definitions**

###### **Art. 137-11**

For the purposes of this sub-section, "Regulation (EC) No. 1435/2003" shall mean Regulation (EC) No. 1435/2003 of the Council of 22 July 2003 on the statute for a European Cooperative Society (SCE).

##### **Sub-section 2 - Constitution, contributions and registered office**

###### **Art. 137-12**

- (1) The European Cooperative Society (SCE) is created by a special notarial deed, written and published in the manner required for a *société anonyme*.
- (2) Regarding contributions in kind, Articles 26-1 to 26-3 shall apply to the European Cooperative Society (SCE) by analogy.

###### **Art. 137-13**

Where it is established that only the head office is located within the Grand Duchy of Luxembourg, the public prosecutor shall immediately inform the Member State in which the registered office of the European Cooperative Society (SCE) is situated.

##### **Sub-section 3 - Investor members**

###### **Art. 137-14**

The articles of association may provide that persons not entitled to use or produce the goods and services of the European Cooperative Society (SCE) may be admitted as investor (non-user) members.

#### **Section 2. - Formation**

##### **Sub-section 1.– Formation by merger**

###### **A. Procedure**

###### **Art. 137-15**

The draft terms of merger shall be prepared by either the board of directors or management board, as applicable.

###### **Art. 137-16**

The draft terms of merger and the information required by Article 24 of Regulation (EC) No. 1435/2003 shall be published in line with Article 262, paragraph (1).

###### **B. Scrutiny of legality**

###### **Art. 137-17**

The legality of the merger shall be scrutinised and the certificate issued, in accordance with Article 29 of Regulation (EC) No. 1435/2003, by the notary who draws up the deed, as per Article 271.

###### **Art. 137-18**

The scrutinisation of the legality of the merger required by Article 30 of Regulation (EC) No. 1435-2003 shall be performed by the notary who draws up the deed.

## **Sub-section 2. - Conversion of a *société coopérative* into a European Cooperative Society (SCE)**

### **Art. 137-19**

The draft terms for the conversion of a *société coopérative* into a European Cooperative Society (SCE) shall be produced by the management body.

### **Art. 137-20**

The draft terms of conversion shall be made public as per Article 9.

### **Art. 137-21**

The independent expert or experts appointed as per Article 35, paragraph 5 of Regulation (EC) No. 1435/2003 shall be company auditors appointed by the management body from among the members of the Institute of Company Auditors.

## **Sub-section 3. - Participation in a European Cooperative Society (SCE) by a company whose head office is outside the European Community**

### **Art. 137-22**

A company whose head office is not in a Member State may participate in the formation of a European Cooperative Society (SCE), provided that that company is formed according to the law of a Member State, has its registered office in that same Member State and has a real and continuous link with a Member State's economy.

## **Section 4. - Company bodies**

### **Sub-section 1.- Administration**

#### **A. Provisions common to one-tier and two-tier systems**

### **Art. 137-23**

Any legal or regulatory provision regarding commercial companies and which refers to the "board of directors", "director(s)" or "manager(s)" of a *société coopérative* must be construed, within the framework of a European Cooperative Society (SCE) with a management board and supervisory board, as referring to the management board of that society unless, given the nature of the mission involved, it ought to be construed as referring to the supervisory board.

### **Art. 137-24**

The members of the management, supervisory and administrative bodies may, if permitted by the articles of association, be legal persons, in which case Articles 51bis and 60bis-4 apply.

### **Art. 137-25**

The European Cooperative Society (SCE) shall be bound by any acts of the bodies entitled to represent the society, even if such acts exceed the company objects, unless it can prove that the third party knew that the act exceeded the company objects or could not in view of the circumstances have been unaware of it; publication of the articles of association cannot alone constitute this proof.

#### **B. One-tier system**

### **Art. 137-26**

The administrative body is the board of directors.

It may delegate day-to-day management as per Article 60.

Where a delegation of powers in a European Cooperative Society (SCE) has been validly granted and where the holder of such delegation passes a deed which is within the limits of such delegation but belongs to a category of transactions which under the articles of association of the European Cooperative Society (SCE) require the express approval of the board of directors, such deed shall be binding on the society without prejudice to damages,

where applicable.

**Art. 137-27**

The minimum number of directors is three.

**C. Two-tier system**

**C 1. General provisions**

**Art. 137-28**

The management body is the management board. It may comprise one or several members. The supervisory body is the supervisory board. It shall comprise at least three members.

**Art. 137-29**

Subject to the limitations imposed by Regulation (EC) No. 1435/2003, by this law or by the articles of association, the powers of the management board and of its members are the same as those of the board of directors and its directors.

**Art. 137-30**

Any report that this law requires be written by the board of directors shall be written by the management board. Unless otherwise permitted by law and without prejudice to any stricter provision in the articles of association, that report shall be promptly submitted to the supervisory board and shall be subject to the same information and publicity rules as govern reports written by a board of directors.

**Art. 137.31.**

The management board shall have the power to take any action necessary or useful to achieve the company objects, with the exception of those powers reserved by law or the articles of association for the supervisory board or the general meeting. It may delegate day-to-day management as per article 60*bis*-8. The articles of association shall list the categories of transactions for which the management board is required to obtain authorisation from the supervisory board.

Lack of authorisation from the supervisory board shall not be valid with regard to third parties.

Where in a European Cooperative Society (SCE) a delegation of powers has been validly granted and where the holder of such delegation passes a deed which is within the limits of such delegation but belongs to a category of transactions which under the articles of association of the European Cooperative Society (SCE) require authorisation of the management board or the supervisory board, such deed shall be binding on the society without prejudice to damages, where applicable.

**C 2. Management board**

**I. Status of members of the management board**

**Art. 137-32**

The members of the management board shall be appointed by the supervisory board.

The articles of association may nevertheless provide that the general meeting may appoint the members of the management board.

In such case, the general meeting shall have sole authority.

The members of the management board may be dismissed by the supervisory board and, where provided for in the articles of association, by the general meeting.

**II. Powers and functions**

**Art. 137-33**

If they are several in number, the members of the management board shall constitute a single panel which deliberates in the manner established by the articles of association.

**Art. 137-34**

The limits placed on the powers of the management board by either the articles of association or a decision of the competent bodies, shall not be valid with regard to third parties, even if they are made public.

**Art. 137-35**

The management board shall represent the company in dealings with third parties and in legal proceedings, where it may act as claimant or defendant, subject to the terms of Article 39, paragraph (1) of Regulation (EC) No. 1435/2003. Writs served on behalf of or against the company shall be validly served in the name of the company alone.

The articles of association may authorise one or more members of the management board to represent the company in any deed or in legal proceedings, either alone or jointly. A clause in the articles of association to that effect is valid with regard to third parties, subject to the conditions laid down in Article 9. The articles of association may place restrictions on these powers of representation. These restrictions shall not be valid with regard to third parties, even if made public.

**C 3. Supervisory Board**

**I. Status of the members of the supervisory board**

**Art. 137-36**

The provisions of Articles 51, 51bis and 52 shall apply to the supervisory board.

II. Powers and functions

**Art. 137-37**

- (1) The supervisory board shall constitute a single panel which shall deliberate in the manner established in the articles of association.
- (2) The supervisory board shall at all times supervise the management of the company by the management board, but is not authorised to interfere with such management.
- (3) The supervisory board may ask the management board to provide information of any kind which it may require to exercise its duty of supervision in accordance with paragraph (2).

**Art. 137-38**

The supervisory board shall meet at the request of its chairman.

The chairman must convene the board if so requested by at least two of its members or by the management board. The board shall meet at the intervals laid down by the articles of association.

The supervisory board may invite the members of the management board to attend its meetings, in which case they shall have an advisory role only.

**C 4. Rules common to members of the board of directors, management board and supervisory board**

**I. Remuneration**

**Art. 137-39**

The members of the management board and of the supervisory board may be remunerated. The type and amount of remuneration paid to the members of the management board are determined by the supervisory board. The type and amount of remuneration paid to the members of the supervisory board are determined by the articles of association or, failing this, by the general meeting.

II. Liability

**Art. 137-40**

The members of the board of directors, management board and supervisory board shall be liable to the company, in accordance with common law, for the execution of the mandate

given to them and for any misconduct in the performance of their functions.

**Art. 137-41**

The members of the board of directors, management board and supervisory board shall be jointly and severally liable, towards both the company and any third parties, for damages resulting from a breach of Regulation (EC) No. 1435/2003, this law or the articles of association.

They shall be released from that liability in relation to an infringement to which they were not a party, provided no misconduct is attributable to them and they have reported such infringement to the first general meeting after learning of it.

**Sub-section 2. - General meeting of shareholders**

**A. Common provision**

**Art. 137-42**

The board of directors, the management board and, if applicable, the supervisory board and the licensed independent auditors appointed to scrutinise the annual accounts and, if applicable, the consolidated accounts, are each entitled to convene a general meeting.

**B. Ordinary general meeting**

**Art. 137-43**

The general meeting shall be held once a year within six months from the end of the financial year. However, the first general meeting may be held within eighteen months from when the society is formed.

**Art. 137-44**

In a two-tier system, the general meeting shall rule on whether to give discharge to the members of the supervisory board and management board, as per Article 74.

**C. Voting rights**

**Art. 137-45**

- (1) The articles of association may provide that the number of votes owned by a member is determined by that member's participation in the society's activities, excluding any participation in the form of a contribution to the share capital. In this case, the maximum number of votes that may be owned by any single member shall be the lesser of 5 votes or 30% of the total voting rights.

European Cooperative Societies (SCE) who operate in the financial or insurance sectors may provide that the number of votes is determined by the member's participation in the society's activities including any participation in the form of a contribution to the share capital of the European Cooperative Society (SCE). In this case, the maximum number of votes that may be owned by any single member shall be the lesser of 5 votes or 20% of the total voting rights.

The articles of association of European Cooperative Societies (SCE) where the majority of members are cooperatives may provide that the number of votes is determined by the members' participation in the activities of the society, including participation in the form of a contribution to the share capital of the European Cooperative Society (SCE) and/or by the number of members of each constituent entity.

- (2) The investor members determined in Article 137-14 may not own more than 25% of the total voting rights.
- (3) The articles of association of a European Cooperative Society (SCE) may permit worker representatives to participate in general, sectorial or section meetings, on the condition that together, the worker representatives do not control more than 15% of

the total voting rights. This right of participation ceases to apply when the registered office of the European Cooperative Society (SCE) is transferred to a Member State whose laws do not permit the participation of workers.

#### **D. Sectorial or section meetings**

##### **Art. 137-46**

As per Article 63, paragraph (1) of Regulation (EC) No. 1435/2003, the articles of association may permit sectorial or section meetings.

#### **Sub-section 3. - Company acts**

##### **Art. 137-47**

The directors, members of the management board and of the supervisory board are liable as per Article 59.

#### **Section 5. - Transfer of registered office**

##### **Art. 137-48**

The transfer proposal shall be drawn up by either the board of directors or management board, as applicable. The transfer proposal shall be made public as per Article 9.

##### **Art. 137-49**

The board of directors or the management board, as applicable, shall produce the report required by Article 7, paragraph (3) of Regulation (EC) No. 1435/2003.

##### **Art. 137-50**

Creditors of a European Cooperative Society (SCE) which is transferring its registered office, whose claims predate the publication of the transfer proposal pursuant to Article 137-50, may, notwithstanding any agreement to the contrary and within two months of such publication, apply to the chamber of the district court which deals with commercial matters in the district in which the registered office of the debtor company is located, to issue a summary ruling for the constitution of collateral for any matured and unmatured claims, in such cases where the transfer would jeopardise the general lien of such creditors or impede the enforcement of their claims. The court shall reject the application where the creditor already has adequate safeguards, or if such collateral is not necessary, taking into account the location of the company after the transfer. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

If the safeguards are not provided within the time limit prescribed, the debt shall immediately fall due.

##### **Art. 137-51**

As per Article 7, paragraph (8) of Regulation (EC) No. 1435/2003, the notary who draws up the deed shall issue a certificate attesting conclusively to the completion of the acts and formalities to be accomplished before the transfer.

##### **Art. 137-52**

The new registration entry and the deletion of the old entry shall be made public, Articles 9, 10 and 11*bis* of this Law being applicable.

##### **Art. 137-53**

The transfer into the Grand Duchy of Luxembourg of the registered office of a European Cooperative Society (SCE) must be recorded in an official deed.

The registration at the register of commerce and companies may not be effected until presentation of the certificate issued by the competent authority of the Member State in which the European Cooperative Society (SCE) previously had its registered office, attesting conclusively to the completion of the acts and formalities to be accomplished before the transfer.



## **Section 6. - Annual accounts and consolidated accounts, and their audit. Special provisions applicable to the two-tier system**

### **Art. 137-54**

Each year, the supervisory board shall receive from the management board all documents listed in Article 72, which by analogy apply to European Cooperative Societies (SCE), at the time set in that article for their delivery to the auditors, and shall present to the general meeting its comments on the report of the management board and on the annual accounts.

## **Section 7. - Dissolution, liquidation, insolvency and inability to meet current liabilities**

### **Art. 137-55**

Article 101, paragraph (1) of this law applies to a European Cooperative Society (SCE) whose registered office but not necessarily its head office is situated within the Grand Duchy of Luxembourg.

### **Art. 137-56**

As regards the distribution of assets in accordance with the principle of disinterested distribution, as per Article 75 of Regulation (EC) No. 1435/2003, this rule may be overridden if an alternative arrangement is contained in the articles of association of the European Cooperative Society (SCE).

## **Section 8. - Conversion of a European Cooperative Society (SCE) into a société coopérative**

### **Art. 137-57**

The management body shall draw up the draft terms of conversion. The draft terms shall be made public as per Article 9.

### **Art. 137-58**

The independent expert or experts appointed as per Article 76, paragraph 5 of Regulation (EC) No. 1435/2003 shall be licensed independent auditors appointed by the management body from among the members of the Institute of Company Auditors.

### **Art. 137-59**

The general meeting of the European Cooperative Society (SCE) shall rule on the conversion.

## **Section 9. - Criminal law provisions**

### **Art. 137-60**

Section XI. - Criminal law provisions apply to European Cooperative Societies.

### **Art. 137-61**

In a two-tier system, the criminal law provisions applicable to members of the board of directors apply to the members of the management board.

## **Section 10. - Final provisions**

### **Art. 137-62**

Article 76 applies to the European Cooperative Society (SCE) by analogy.

(Law of 10 August 2016)

**Section VII. – Sociétés Momentanées and Associations en Participation.**

**Art. 138.**

(Law of 10 August 2016)

A *société momentanée* is a company whose purpose it is to undertake one or more specific commercial transactions.

The partners are jointly and severally liable vis-à-vis the third parties with whom they have dealt with.

**Art. 139.**

(Law of 10 August 2016)

A *société en participation* is a company by which one or more persons take an interest in transactions managed by one or more other persons in his or their own name.

The managers are jointly and severally liable vis-à-vis the third parties with whom they have dealt with.

**Art. 140.**

(Law of 10 August 2016)

*Sociétés momentanées* and *sociétés en participation* are made between their partners for such purposes, in such form, with such respective interests and on such conditions as may be agreed between them.

## Section VIII. - The liquidation of companies

### Art. 141.

(Law of 25 August 2006; Law of 10 August 2016)

- (1) Civil and commercial companies other than *sociétés commerciales momentanées* and *sociétés commerciales en participation* are, after dissolution, deemed to exist for the purposes of their liquidation.

A *société européenne* (SE) having its registered office in the Grand-Duchy of Luxembourg shall be governed by the provisions applicable to *sociétés anonymes*.

All documents emanating from a dissolved company shall indicate that it is in liquidation.

- (2) Any action for voluntary dissolution by virtue of all units being owned by the same person must, upon penalty of voidance, be accompanied by declarations from:

1) the Centre d'Informatique, d'Affiliation et de Perception des Cotisations Commun aux Institutions de Sécurité Sociale,

2) the Administration des Contributions Directes,

3) the Administration de l'Enregistrement et des Domaines,

These declarations must state that the company has paid all outstanding social security contributions, taxes and duties and be produced no more than three months prior to the action for dissolution and not after the action for dissolution.

- (3) Civil and commercial companies who have met the payment deadlines imposed on them, as per all prevailing laws and regulations, by one of the administrations listed in paragraph (2) items 2) and 3) shall be considered in compliance and may be issued with the statement stipulated in paragraph (2).

### Art. 142.

(Law of 23 November 1972; Law of 12 July 2013; Law of 10 August 2016)

In the absence of any agreement to the contrary, the method of liquidation shall be determined and the liquidators shall be appointed by the general meeting of partners. (Law of 7 September 1987) Where several classes of shares exist in *sociétés anonymes* and *sociétés en commandite par actions*, and the resolution of the general meeting is such as to change the respective rights thereof, the resolution must, in order to be valid, fulfil the conditions as to attendance and majority laid down in Article 67-1 with respect to each class. (Law of 18 September 1933) In *sociétés en nom collectif (...)* and *sociétés à responsabilité limitée*, resolutions shall be validly adopted only with the consent of half of the partners holding three-quarters of the corporate assets; in the absence of such a majority, the matter shall be settled by the courts. (Law of 12 July 2013) In *sociétés en commandite simple*, unless otherwise provided in the partnership agreement, resolutions shall be validly adopted only with the consent of partners representing three-quarters of ownership interests.

(...)

Where there are several liquidators, they shall form a panel which shall deliberate in accordance with Article 64.

Where the liquidator is a legal entity, the natural person representing the liquidator must be named in the deed of appointment.

Any change in the appointment of this natural person must be decided as per subparagraph (1), and filed and published as per Article 11bis, paragraph (1) 3) c).

The liquidation of the *société en commandite spéciale* shall be carried out in the manner laid down in the partnership agreement and, in the absence thereof, pursuant to the rules applicable to the liquidation of *sociétés en commandite simple*.

Articles 1865 3°, 4° and 5° of the Civil Code shall apply neither to the *société en commandite simple* nor to the *société en commandite spéciale*.

**Art. 143.**

(Law of 25 August 2006)

If no liquidators are appointed, the managing members in *sociétés en nom collectif* or in *sociétés en commandite*, the managers in *sociétés à responsabilité limitée* and the directors or members of the management board, as applicable, in *sociétés anonymes* and *sociétés coopératives* shall, vis-à-vis third parties, be deemed to be liquidators.

**Art. 144.**

(Law of 10 August 2016)

Unless the articles of association or the instrument of appointment provide otherwise, the liquidators may bring and defend any action on behalf of the company, receive any payments, grant releases with or without receipt, realise all securities of the company, endorse any negotiable instrument and transact or compromise on any disputes. They may dispose of immovable property of the company by public auction if they consider the sale thereof necessary to pay the debts of the company.

**Art. 145.**

They may, but only with the authorisation of the general meeting of partners, given in accordance with Article 142, continue, until the sale thereof, with the industrial and commercial activity of the company, borrow moneys to pay the debts of the company, issue negotiable instruments, mortgage and pledge the assets of the company, dispose of the immovable property thereof, even by private contract, and contribute the assets of the company to other companies.

**Art. 146.**

The liquidators may require partners to pay-up amounts which they have undertaken to pay to the company and which the liquidators consider necessary for the completion of the liquidation.

(Law of 10 August 2016)

**Art. 146bis.**

The liquidators must convene a general meeting of partners to be held within one month, if they are called upon to do so in writing by partners representing one tenth of the share capital stating the agenda, and they must convene a general meeting of bondholders to be held within one month, if they are called upon to do so by bondholders representing one twentieth of the circulating bonds of the same issue.

**Art. 147.**

Without prejudice to the rights of creditors benefiting from liens or mortgages, the liquidators shall pay all the debts of the company, proportionally and without distinction between debts which have matured and those that have not matured, subject to a discount in the case of the latter.

They may, however, under their personal guarantee, first pay the debts which have matured if the assets significantly exceed the liabilities or if the term debts have the benefit of adequate safeguards and without prejudice to the right of creditors to take recourse to the courts.

**Art. 148.**

(Law of 10 August 2016)

After the payment or the deposit in escrow of the sums necessary for payment of the debts, the liquidators shall distribute to the partners those amounts or assets capable of forming equal shares; they shall deliver to them any property which may have been retained for the

purpose of apportionment.

They may, subject to the authorisation referred to in Article 145, redeem the shares or the corporate units of the company either on the Stock Exchange or by subscription or tender, in which all the partners shall be entitled to participate.

(Law of 20 June 1930)

**Art.148bis.**

(Law of 08 August 1985)

By way of derogation from the provisions of Article 147 and the first paragraph of Article 148, where a *société anonyme* has contributed all of its assets and liabilities to another *société anonyme*, the liquidators of the contributing company may, complying as appropriate with Articles 26-1 and 44 of this Law, distribute amongst the shareholders the shares allotted in consideration of the contribution, without having to first reimburse the bonds or deposit in escrow the amounts required for such reimbursement, the company receiving the contribution being directly liable for the performance of the obligations of the contributing company, in the same way as the latter was liable, all special collateral being maintained for the benefit of the bondholders.

The company which has received and the company which has made the contribution shall both have the Luxembourg nationality, unless the legislation of the jurisdiction of the contributing company allows the contribution to be made in such conditions even to a foreign company.

(Law 02 April 1948)

In case all of the assets and liabilities of a *société anonyme* is taken over by the government, it may pay the shareholders without being required to previously reimburse the bondholders or deposit the necessary amounts for such a reimbursement in escrow.

**Art. 148ter.**

(Law of 12 July 2013; Law of 10 August 2016)

By way of derogation from the provisions of Article 147 and the first paragraph of Article 148, where the shareholders or partners of a civil company or *société commerciale* vested with legal personality have unanimously decided to continue their company within a *société en commandite spéciale*, which shall take over all the assets and liabilities, the liquidators may distribute amongst the shareholders the ownership interests in the *société en commandite spéciale* without having to first reimburse the bonds or deposit in escrow the amounts required for such reimbursement, the *société en commandite spéciale* being directly liable for the performance of the obligations of the civil company or *société commerciale*, in the same way as the latter was liable, all special collateral being maintained for the benefit of the creditors.

(Law of 10 August 2016)

**Art. 148uater.**

In *sociétés anonymes* and *sociétés européennes* (SE), a member of the panel of liquidators or the sole liquidator who has a direct or indirect financial interest that conflicts with the interests of the company in relation to a transaction submitted for the approval of the panel or that falls within its remit, is required to comply with Article 57.

**Art. 149.**

The liquidators shall be liable, both to third parties and to the company, for the execution of the mandate given to them and for any misconduct in the management of the liquidation.

**Art. 150.**

Each year, the results of the liquidation shall be submitted to the general meeting of the company, together with a statement as to the reasons which have prevented completion of the liquidation. In the case of *sociétés anonymes*, the balance sheet shall also be

published.

**Art. 151.**

*(Law of 18 December 2009; Law of 23 July 2016)*

When the liquidation is completed, the liquidators shall make a report to the general meeting regarding the employment of the corporate assets and shall present supporting accounts and documents. The meeting shall appoint auditors to examine such documents and shall determine a further meeting which, after the auditors shall have issued their report, shall deliberate on the management of the liquidators.

*(Law of 27 May 2016)*

The completion of the liquidation must be published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

Such publication must also include:

- 1° an indication of the place designated by the general meeting where the corporate books and documents are to be lodged and retained for at least five years;
- 2° an indication of the measures taken for the deposit in escrow of the sums and assets due to creditors or to members, which it has not been possible to deliver to them.

### Section IX. — Rights of action and prescription periods

#### Art. 152.

(Law of 12 July 2013)

No court order in connection with commitments of the company ruling that members who are jointly and severally liable in a *société en nom collectif*, a *société en commandite simple*, a *société en commandite spéciale*, a *société en commandite par actions* or a *société coopérative* with unlimited liability, shall be personally liable may be delivered before an order has been made against the company itself.

#### Art. 153.

Creditors may, in all companies, obtain a court decision ordering the payments provided for in the articles of association and which are necessary for safeguarding their rights; the company may cause the action to be dismissed by reimbursing its debts vis-à-vis such creditors at their value, after deduction of a discount.

(Law of 25 August 2006)

The managers, directors or members of the management board, as applicable, are personally obliged to execute any order given for that purpose.

Creditors may, in accordance with Article 1166 of the Civil Code, exercise against the members or shareholders the rights of the company as regards any outstanding payments which are due by virtue of the articles of association, corporate resolutions or court orders.

#### Art. 154.

(Law of 10 August 2016)

One or more partners representing at least ten percent of the share capital or ten percent of the votes attached to all existing units, either individually or in any form of grouping they wish, may submit written questions to the management body concerning one or more management actions by the company and, where applicable, of controlled companies in the sense of Article 309 of this law. In the latter case, the request must be assessed in accordance with the interest of the companies in the consolidation obligation. A copy of the response must be delivered to the person in charge of the statutory audit of the accounts.

If no response is received within one month, these partners may ask the judge presiding the chamber of the district court dealing with commercial matters, and sitting as in urgent proceedings, to appoint one or more experts in charge of producing a report on the act or acts of management to which the written question relates.

If the request is admitted, the decision of the court shall determine the scope of the mission and the powers of the experts. It may make the company responsible for the cost.

The judge shall determine whether the report should be published.

The usufructuary of shares or units shall also enjoy the rights stipulated in this Article.

#### Art. 155.

Members of associations *momentanées* shall be summoned directly and individually.

There shall be no direct right of action between third parties and a participant who has confined himself to mere participation.

#### Art. 156.

Actions against companies shall be prescribed after the same period as actions against individuals.

**Art. 157.**

(Law of 23 November 1972; Law of 25 August 2006; Law of 12 July 2013; Law of 10 August 2016)

The following prescribe after five years:

- all actions by third parties against members or shareholders, from the publication of their withdrawal from the company or of an instrument of dissolution or of the expiry of its contractual term;
- all actions by third parties for the recovery of dividends improperly distributed, from the distribution thereof;
- all actions against liquidators, in such capacity, from the publication prescribed by Article 151;
- all actions against managers, directors, members of the management board, members of the management committee, managing directors, members of the supervisory board, auditors or liquidators, for action taken by them in that capacity, as from the time of such action or, if they were fraudulently concealed, from the discovery thereof;
- any action for the voidance of a *société anonyme*, *société à responsabilité limitée* or a *société en commandite par actions*, a civil company, a *société en nom collectif*, a *société en commandite simple*, a *société en commandite spéciale* or a *société coopérative* founded on Articles 4, 12ter, paragraphs (1), items 1) or 2) and paragraph (2), item 2), 22-1 paragraph (8), item a) and 115, paragraph (2), item 1, brought after publication, where the contract has been executed during at least five years, without prejudice to any entitlement to damages;
- all actions for the voidance of a *société coopérative*, from publication where the contract has been performed for at least five years, without prejudice to any damages which may be due.

However, the voidance of *sociétés coopératives* whose existence is contrary to law may be applied for, even after expiry of the prescription period.

All actions for the voidance of acts and resolutions dated after the creation of the company that are brought from the date on which the resolutions at issue are enforceable against the person claiming nullity or are known to him or should have been known to him given the circumstances, shall be prescribed after six months.



## Section X. — Companies constituted in foreign jurisdiction

### **Art. 158.**

All companies or associations incorporated or having their registered office in a foreign country may carry on business and act in the courts in the Grand-Duchy.

### **Art. 159.**

*(Law of 25 August 2006)*

Any company whose head office is in the Grand-Duchy shall be subject to Luxembourg law, even though the deed of incorporation may have been executed in a foreign country.

*(Law of 31 May 1999)*

If a company is domiciled in the Grand-Duchy of Luxembourg, it is of Luxembourg nationality and Luxembourg law is fully applicable to it.

If a company is domiciled abroad but such company has, in the Grand-Duchy of Luxembourg, one or more locations where it conducts operations, the place of its most important establishment in the Grand-Duchy of Luxembourg, which it shall indicate for that purpose in the documents whose publication is required by law, shall constitute the secondary domicile of that company in the Grand-Duchy of Luxembourg.

The absence of a known domicile of a company constitutes a serious contravention of the law, which may lead to its dissolution and court-ordered close-down pursuant to Articles 203 and 203-1.

### **Art. 160.**

The articles relating to the publication of instruments and balance sheets and Articles 76, 105 and 130, shall apply to foreign commercial companies or companies constituted in one of the forms of commercial companies, which establish a branch or any operational seat in the Grand-Duchy.

The persons entrusted with the management of the Luxembourg establishment shall be subject to the same liability towards third parties as if they were managing a Luxembourg company.

The articles mentioned in paragraph 1 shall also apply to foreign companies with a branch or operational seat in the Grand-Duchy at the time this Law comes into force.

*(Law of 27 November 1992)*

### **Art. 160-1**

For the companies referred to in Articles 160-2 and 160-6, Article 160, paragraph 1, is replaced by Articles 160-2 to 160-11.

### **Art. 160-2**

*(Law of 27 May 2016; Law of 10 August 2016)*

Branches opened in the Grand-Duchy of Luxembourg by a company governed by the law of another Member State of the European Union and subject to Directive 2009/101/EC shall disclose, in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the following documents and particulars:

- a) the address of the branch;
- b) particulars on the business activities of the branch;
- c) the register in which the company file mentioned in Article 3 of Directive 2009/101/EC is kept, together with the registration number in that register;
- d) the name and legal form of the company and the name of the branch, if it is different from that of the company;

e) the appointment, termination of office and identity of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings: - :

- as a corporate body constituted pursuant to law or as members of any such body, in accordance with the disclosure by the company pursuant to Article 2(d) of Directive 2009/101/EC; - as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;
- as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

f)

- the dissolution of the company, the appointment of liquidators, the identity of liquidators and their powers and the termination of the liquidation in accordance with the disclosure by the company pursuant to Article 2, items h), j) and k) of Directive 2009/101/EC;
- bankruptcy proceedings, compositions or any analogous proceedings to which the company is subject;

g) the accounting documents in accordance with Article 160-3;

h) the closure of the branch.

#### **Art. 160-3**

*(Law of 10 August 2016)*

The compulsory disclosure provided for by Article 160-2, item g), shall be limited to the accounting documents of the company as drawn up, audited and published pursuant to the law of the Member State by which the company is governed, in accordance with Directives 2013/34/EU and 2006/43/EC.

The documents referred to in the preceding paragraph must be published in the following languages: French, German, English.

*(Law of 27 November 1992)*

#### **Art. 160-4**

*(Law of 19 December 2002)*

Where a company has opened more than one branch in the Grand-Duchy of Luxembourg, the disclosure stipulated in Article 160-3 may be made in the file of the branch of the company's choice.

In that case, the disclosure obligations of the other branches shall consist in indicating the registration number of that branch in that register.

*(Law of 27 November 1992)*

#### **Art. 160-5**

*(Law of 10 August 2016)*

Letters and order forms used by a branch shall state, in addition to the information prescribed by Article 5 of Directive 2009/101/EC, the register in which the branch's file is kept, together with the registration number of the branch in that register.

#### **Art. 160-6**

*(Law of 27 May 2016; Law of 10 August 2016)*

Branches opened in the Grand-Duchy of Luxembourg by a company not governed by the law of another Member State of the European Union but whose legal form is comparable to those stipulated in Directive 2009/101/EC shall disclose, in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the following

documents and particulars:

- a) the address of the branch;
- b) particulars on the business activities of the branch;
- c) the law of the State by which the company is governed;
- d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;
- e) the deed of incorporate and the articles of association, if they are contained in a separate deed, as well as all the amendments to these documents;
- f) the legal form, registered office and purpose of the company and, at least annually, the amount of subscribed capital, if these particulars are not given in the documents referred to in item e);
- g) the name of the company and the name of the branch, if it is different from that of the company;
- h) the appointment, termination of office and identity of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:
  - as a corporate body constituted pursuant to law or as members of any such body;
  - as permanent representatives of the company for the activities of the branch.

The extent of the powers of those persons must be stated, together with whether they may act alone or must act jointly.

- i)
  - the dissolution of the company and the appointment, identity and powers of liquidators, as well as the termination of the liquidation;
  - bankruptcy proceedings, compositions or any analogous proceedings to which the company is subject;
- j) the accounting documents in accordance with Article 160-7;
- k) the closure of the branch

#### **Art. 160-7**

*(Law of 10 August 2016)*

The compulsory disclosure provided for by Article 160-6, item j), shall apply to the accounting documents of the company as drawn up, audited and published pursuant to the law of the State which governs the company.

If these documents are not drawn up in accordance with, or in a manner equivalent to, Directive 2013/34/EC, accounting documents relating to the activities of the branch shall be drawn up and published in accordance with Luxembourg law. Where the branch exceeds the criteria for a small company, as set out in Article 35 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more licensed independent auditors is compulsory. Article 36 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings also applies.

The appointment of the licensed independent auditor(s) shall be made by the person entrusted with the management of the branch.

Article 160-3, paragraph 2, and Article 160-4 apply to the documents referred to in Article 160-7, paragraph 1, and to the documents referred to in Article 160-6, item e).

If these documents are not drawn up in accordance with, or in a manner equivalent to, Directive 2013/34/EC, accounting documents relating to the activities of the branch shall be drawn up and published in accordance with Luxembourg law. Where the branch exceeds the criteria for a small company, as set out in Article 35 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the audit of the accounting documents by one or more licensed independent auditors is compulsory. Article 36 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings also applies.

*(Law of 27 November 1992)*

**Art. 160-8**

Article 160-5. shall apply to letters and order forms used by the branches referred to in Article 160-6.

**Art. 160-9**

The persons entrusted with the management of the Luxembourg branches are responsible for compliance with the obligations stipulated in Articles 160-2 to 160-8.

**Art. 160-10**

If the disclosure made at the branch is different from the disclosure made at the company, the former shall prevail for dealings made with the branch.

**Art. 160-11**

Article 160-3, paragraph 1, and Article 160-7, paragraphs 1 and 2, do not apply to Luxembourg branches set up by credit institutions and financial institutions subject to Directive 89/117/EEC.

The same applies to branches established by foreign insurance companies.

**Art. 161.**

*(Law of 10 July 2005)*

– (...)

## Section XI. - Criminal law provisions

### Art. 162.

(Law of 11 July 1988)

Persons who, purporting to be the owner of shares or bonds which do not belong to them, participate in any vote at a general meeting of shareholders or bondholders in a company incorporated under this Law, and persons who have delivered shares or bonds so that they may be used for the purpose described above are punishable by a fine of 500 to 25,000 euros.

### Art. 163.

(Law of 25 August 2006; Law of 23 March 2007; Law of 18 December 2015; Law of 27 May 2016; Law of 10 August 2016)

The same penalty shall be imposed upon:

- 1° persons who fail to include the information required by Articles 26, 27 and 31 in the deeds, draft deeds or notices published in the Recueil Électronique des Sociétés et Associations or filed as required by Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, in subscription forms, prospectuses, circulars addressed to the public, announcements and notices published in newspapers
- 2° managers and directors who have failed to submit to the general meeting within six months after the end of the financial year, the annual accounts, the consolidated accounts, the management report, the certificate of the person entrusted with the audit as well as the managers and directors who have failed to publish such documents in violation of the requirements of Articles 75, 132, 197 and 341 of this Law and Article 79 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
- 2bis managers and directors who have failed to publish the report on payments made to governments or the consolidated report on payments made to governments, in breach of the requirements of Article 340sexies of this law and of Article 72septies of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
- 3° directors, auditors or liquidators who have failed to convene, within three weeks of being requested to do so, the general meeting provided for in Article 70, paragraph 2;
- 4° persons who contravene the regulations adopted in implementation of Article 137, paragraph 1, on the audit of *sociétés coopératives*;
- 5° managers of *sociétés à responsabilité limitée* and of civil companies and, in the latter, in the absence of managers, members who have failed to publish changes of membership in accordance with Article 11bis, §2, 3);
- 6° managers who, directly or through intermediaries, have opened a public subscription for corporate units or founder shares of a *société à responsabilité limitée*; likewise, the directors of a *société par actions simplifiée* who have opened a public subscription for shares;
- 7° directors of *sociétés anonymes* who fail to lodge the report referred to in Article 49-5, paragraph (2), or who present a report not containing the minimum information prescribed by that Article;
- 8° persons referred to in Article 160-9 who have failed to carry out the publications required by Articles 160-2 to 160-4, 160-6 and 160-7.

### Art. 164.

A person shall be regarded as guilty of fraud and shall be subject to the penalties laid down in the Criminal Code if said person causes any subscriptions or payments to be made, or

shares, bonds or other securities of companies to be purchased:

by simulating subscriptions or payments to a company;

by publishing subscriptions or payments which they know do not exist;

by publishing the names of persons described as being now or in the future associated with the company on any basis whatsoever, when they know that such description is untruthful;

by publishing any other facts which they know to be false.

**Art. 165.**

*(Law of 11 July 1988)*

A person shall be subject to a jail term of between one month to two years and a fine of 5,000 to 125,000 euros if said person causes or attempts to cause, by any fraudulent means whatsoever, the price of a company's shares, bonds or other securities to rise or fall.

**Art. 166.**

*(Law of 11 July 1988; Law of 10 July 2005; Law of 25 August 2006; Law of 10 August 2016)*

The following shall be subject to a jail term of between one month to two years and a fine of 5,000 to 125,000 euros, or to either one of those penalties:

1° managers or directors who have fraudulently given incorrect information in the statement of bonds outstanding referred to in Article 94-1;

2° managers or directors who, with fraudulent intent, have failed to publish the annual accounts, consolidated accounts, management report and certificate of the person entrusted with the audit, as provided for by Articles 75, 132 and 341 and by Article 79 of the Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;

3° directors who contravene Article 26-4.

**Art. 167.**

*(Law of 11 July 1988; Law of 10 August 2016)*

Managers or directors who, in the absence of inventories, or notwithstanding inventories or by means of fraudulent inventories, have caused dividends or interest to be distributed to shareholders which was not taken from the actual profits, and directors or managers who contravene Articles 72-2 and 198bis, shall be subject to the same penalty.

**Art. 168.**

*(Law of 24 April 1983; Law of 12 March 1998; Law of 10 August 2016)*

The same penalties shall apply to any person who, in his capacity as director, auditor, manager or member of the supervisory committee, knowingly:

- redeemed shares or corporate units by decreasing the share capital or the legal reserve, contrary to the provisions of Article 49-2 in the case of *sociétés anonymes*, and of Article 182 paragraphs (2) to (7) in the case of *sociétés à responsabilité limitée*;
- made loans or advances using company funds, or granted guarantees with a view to the acquisition of shares or corporate units, or received a pledge of own shares or corporate units, contrary to Articles 49-6 and 49-7 in the case of *sociétés anonymes*.
- ordered, authorised or accepted that another company, as defined in Article 49bis, paragraph (1), sub-paragraphs a) and b), subscribes, acquires or holds shares under the conditions referred to in the provisions of sub-paragraphs a) and b) of paragraph (1) of Article 49bis and in violation of Article 49-2;

- made by any means whatsoever, at the expense of the company, payments on shares or corporate units or acknowledged payments to have been made which have not in fact been made in the prescribed manner and at the prescribed times.

**Art. 169.**

*(Law of 11 July 1988)*

A person shall be subject to a criminal jail term of between five and ten years and a fine of 5,000 to 250,000 euros if said person has committed forgery with fraudulent intent or the intent to cause damage, in the balance sheets or the profit and loss accounts of companies prescribed by law or by the articles of association,

by means of false signatures,

by the forgery or alteration of records or signatures, or

by the fabrication of agreements, provisions, obligations or discharges, or by insertion thereof in the balance sheets or profit and loss accounts after the event, or

by the addition or alteration of clauses, declarations or facts which these deeds are intended to include and record.

**Art. 170.**

Any person making use of such false deeds shall be punished as if he had committed the forgery.

**Art. 171.**

The balance sheet shall exist, for the purpose of application of the foregoing articles, as from the time it is submitted to the shareholders or members for inspection.

*(Law of 21 July 1992)*

**Art. 171-1.**

A legally appointed or de facto director shall be subject to a jail term of between one and five years and a fine of 500 to 25,000 euros, or either one of those penalties, if said legally appointed or de facto director has, in bad faith,

- made a use of the assets or credit of the company which they knew was contrary to its interests, for personal purposes or for the benefit of another company or undertaking in which they had a direct or indirect interest;
- made a use of the power they held or the votes they could cast, in that capacity, which they knew was contrary to the interests of the company, for personal purposes or for the benefit of another company or undertaking in which they had a direct or indirect interest.

*(Law of 28 July 2014)*

**Art. 171-2.**

(1) Managers or directors must pay a fine of between €5,000 and €125,000 if they knowingly:

1. fail to keep a register of registered shares as required by Article 39;

2. do not appoint a custodian or do not deposit bearer shares with the custodian, as required by Article 42;

3. recognise the rights attached to bearer shares in breach of Article 42, paragraph 5.

(2) The custodian or, if the custodian is a legal person, its managers or directors, must pay a fine of between €500 and €25,000 if they knowingly breach the requirements of Article 42, paragraphs 3, 4 and 6.

**Art. 172.**

The provisions of the Book I of the Criminal Code and the provisions of Articles 130-1 to 132-1 of the Code of Criminal Procedure on attenuating circumstances shall apply to the offences provided for in this Law.

**Art. 173.**

(Law of 25 August 2006)

Evidence of the accusations made against managers, directors and auditors of *sociétés en commandite par actions*, *sociétés anonymes* and *sociétés coopératives*, by reason of facts relating to their management or supervision, shall be admitted, either against such persons or against the company, by all ordinary methods of proof unless the opposite is proven by the same methods, all in accordance with the Law of 8 June 2004 on the freedom of expression in the media.

**Art. 173bis.**

The sanctions prescribed by Articles 162 to 173 are applicable, depending on their respective duties, to the members of the management board and to the members of the supervisory board of *sociétés anonymes* governed by Articles 60bis-1 to 60bis-19.

### Additional Provisions

**Art. 174.**

Title III of Book I of the Commercial Code, insofar as it has not been abrogated by the Law of 16 April 1879, is repealed as from the date of application of this Law.

**Art. 175.**

The provisions of Articles 11 (Law of 10 July 2005) (...), 39 to 42, 48, 62, 63, 67 to 69, 71, 72 to 75, 76, 78, (Law of 10 July 2005) (...), 84 with the exception of the last paragraph, 85 and 152 shall apply to companies incorporated under the previous legislation. — The foregoing list is not exhaustive.

Articles 86 to 95 inclusive shall not apply to bonds issued before the date this Law comes into force, except with regard to the granting of special collateral to the holders of such bonds and the adoption of provisions consequential thereto.

Article 98 shall not apply to bonds issued prior to the date this Law came into force.

The prescription period of five years laid down in Article 157 shall apply even to acts done under the previous law and which would take more than five years to prescribe under this Law.

**Art. 176.**

Commercial companies and civil companies, incorporated in the form of any of the five commercial companies provided for in Article 3, which existed before the date this Law came into force may not be continued beyond the term fixed for their duration unless all the provisions in their articles of association which are contrary to this Law are removed and the company is made subject to all the provisions hereof.

They may not, before the expiry of that period, make any changes to their articles otherwise than by bringing the clauses affected by the said changes into line with the provisions of the present law.

In such cases, if the relevant company is a *société anonyme*, it shall be exempted from governmental authorisation only if it proceeds in the manner laid down in paragraph 1.

*Sociétés anonymes* enjoying concessions in respect of railways or other works of public utility shall remain subject, in all cases, to the control and supervisory measures laid down in their current articles of association.



**Art. 177.**

No company which, after the date this Law enters into force, has duly operated for a period of one year without the validity thereof being contested, may no longer be declared void under Articles 42 and 46 of the Commercial Code of 1807.

**Art. 178.**

Private powers of attorney, subscription forms and receipts, as provided for in this Law, shall be exempt from stamp duty.

*(Law of 18 September 1933)*

## Section XII. - *Sociétés à responsabilité limitée* (Private Limited Companies)

### Sub-section 1. General provisions

#### **Art. 179.**

*Sociétés à responsabilité limitée* are those in which a limited number of members contribute a specific amount, and the corporate units of which, exclusively represented by non-negotiable securities, may be transferred only in accordance with the terms and conditions provided for in this Section.

(Law of 28 December 1992)

A *société à responsabilité limitée* may have a single member at incorporation or when all of its corporate units come to be held by a single person (single-member company).

If all of the corporate units are held by a single person, this does not result in the dissolution of the company. Moreover, the death of the sole member does not result in the dissolution of the company.

(Law of 18 September 1933)

#### **Art. 180.**

They may be incorporated to pursue any purpose whatsoever.

However, insurance, capitalisation and savings companies may not be incorporated in that form.

#### **Art. 180-1**

(Law of 07 September 1987; Law of 10 August 2016)

*Sociétés à responsabilité limitée* may be incorporated for a limited or unlimited duration.

In the first case, the duration of the company may be successively extended in accordance with Article 199.

In the second case, Articles 1865, 5°, and 1869 of the Civil Code shall not apply. Application for dissolution of the company may, however, be made to the court for just cause. Except in the case of dissolution by court order, dissolution of the company may take place only pursuant to a decision adopted by the general meeting in accordance with the conditions laid down for amendments to the articles of association. Article 1865bis, subparagraphs 2 et seq. of the Civil Code applies.

#### **Art. 181.**

(Law of 18 September 1933; Law of 18 April 1984; Law of 28 December 1992; Law of 10 August 2016)

The maximum permitted number of members is one hundred. If for any reason whatsoever the number of members increases to over one hundred, the company must be converted to another form within one year from when the permitted number was exceeded.

The legal guardian of a minor or of an incapacitated person may not, without the consent of the family council, participate on behalf of the minor or of the incapacitated person in a *société à responsabilité limitée*.

The legal representatives may not, even jointly, allocate the assets of a minor to a participation in a *société à responsabilité limitée*, unless authorised to do so by the guardianship judge.

A company in which the minor or the incapacitated person or the person having authority over them are members, is lawful.

(Law of 18 September 1933)

**Art. 182.**

(Law of 28 April 1988; Law of 10 August 2016)

- (1) The share capital must be at least 12,000 euros. It shall be divided into corporate units, with or without mention of value.

Securities which do not represent the stated capital may be issued to a given person, and are referred to in this law as "founder shares". The articles of association shall specify the rights attached thereto."

- (2) Without prejudice to the option for the company to decide to redeem corporate units with the consent of the members in question, the share capital may be comprised entirely or partly by redeemable corporate units for which the terms and conditions of redemption are stated in the articles of association. Redemption must be authorised by the articles of association before the redeemable shares are subscribed.
- (3) The redemption of corporate units may not result in the nominal value or, as applicable, the aggregate accountable par of the units owned by persons other than the company falls to below the minimum share capital value stated in paragraph (1).
- (4) The company managers may decide to not pay all or some of the distributions upon redemption of units, if it is foreseeable that by doing so the company would not be able to honour its debts upon maturity. The decision by the managers to not pay the distributions in this manner entails, until a decision to the contrary by the managers, the suspension of the obligation of the company towards the members concerned.
- (5) The company may only redeem corporate units if it honours the principle of equal treatment of all members in the same situation.
- (6) The voting rights and the financial rights attached to the redeemed shares shall be suspended whilst they are owned by the company. The same applies if the company orders the redemption of its units by a subsidiary undertaking in the sense of Article 309 paragraph (2).
- (7) The articles of association may authorise the managers to cancel the units redeemed by the company and to decide to reduce the share capital accordingly. In this case, the managers shall record the capital reduction in a notarised deed. The notarised deed must be produced within one month from the cancellation and capital reduction decided by the managers.

**Art. 183.**

(Law of 18 September 1933; Law of 24 April 1983; Law of 28 December 1992; Law of 10 August 2016)

- (1) The incorporation of a *société à responsabilité limitée* requires that:

1°the capital be subscribed for in full;

2°the corporate units be fully paid-up at the time of incorporation of the company. Where a share premium is provided for, the amount thereof must be paid up in full.

The subscribers to the deed of incorporation shall be deemed to be founders of the company. However, the deed of incorporation may designate as founder(s) one or more subscribers who together hold at least one-third of the share capital. In such case, the other parties to the deed who merely subscribe for corporate units for cash without directly or indirectly receiving any specific advantage shall be regarded as mere subscribers.

- (2) The notary, drawing up the deed, shall verify that these conditions and those set out in Article 184, paragraph 1, subparagraph 1 have been satisfied and shall expressly ascertain compliance therewith.
- (3) Where applicable, the articles of association shall state the conditions under which corporate units may be subscribed using contributions of skills.

Contributions of skills do not help constitute the share capital but result in an allocation of units carrying a right to a share in the profits and net assets, and the duty to contribute to losses.

Units issued in return for contributions of skills may not be sold and may not be transferred.  
(*Law of 18 September 1933*)

**Art. 184.**

(*Law of 18 September 1933; Law of 23 November 1972; Law of 18 December 2009; Law of 10 August 2016*)

(1) The deed shall state:

- 1) the identity of the natural or legal person or persons by whom or on whose behalf it has been signed;
- 2) the form of the company and its name;
- 3) the registered office;
- 4) the corporate purpose;
- 5) the amount of the subscribed capital;
- 6) the categories of units, if more than one, the rights pertaining to each of those categories and the number of units subscribed;
- 7) details of each contribution in kind, the conditions under which it was made, the name of the contributor;
- 8) the reason for, and the extent of, any special advantages conferred at the time of incorporation of the company upon any person who participated in the incorporation of the company;
- 9) if applicable, the number of securities or units which do not represent the stated capital, as well as the rights attaching thereto, in particular the right to vote at general meetings;
- 10) insofar as they are not provided for by law, the rules determining the number and method of appointment of the members of the corporate bodies responsible for representing the company with regard to third parties, managers, the supervision or control of the company and the allocation of powers among such corporate bodies;
- 11) the duration of the company;
- 12) at least the approximate amount of the costs, expenses and remuneration or charges of whatever form, which are payable by the company or chargeable to it by reason its incorporation.

(2) Contributions in kind may only be remunerated by shares representing the share capital if they comprise assets for which an economic valuation can be produced, excluding assets which comprise undertakings to perform work or supply services.

(3) The founders within the meaning of Article 28, paragraph 2, and, in the event of an increase of the share capital, the managers, shall be jointly and severally liable towards all interested parties, notwithstanding any provision to the contrary for:

- 1° any portion of the capital which will not have been validly subscribed for as well as for any outstanding balance between the minimum capital required by Article 182 and the amount subscribed for; they shall ipso jure be deemed to be subscribers thereof;
- 2° the effective payment of the corporate units and of the portion of the capital for which they are deemed to be subscribers pursuant to 1° above;
- 3° the indemnification of any damage which is the immediate and direct result of either the voidance of the company by application of Article 12ter or the

omission or inaccuracy of the statements prescribed by paragraph 1.

Any person who enters into a commitment for a third party mentioned by name in the deed and acting either as agent or as surety, shall be deemed to be personally committed if they have no valid mandate or the commitment is not ratified within two months of the commitment. The founders shall be jointly and severally liable for such commitments.

**Art. 185.**

*(Law of 18 September 1933; Law of 10 August 2016)*

Every *société à responsabilité limitée* must maintain a register containing completed and true copies of:

- 1° the deed of incorporation of the company;
- 2° the deeds amending the deed of incorporation.

A list of the names, professions and addresses of the members, a record of transfers of corporate units and the date of service or acceptance thereof shall appear thereafter.

Every member may view said register.

**Art. 186.**

*(Law of 28 December 1992; Law of 10 August 2016)*

If there are several owners of a unit, the company shall be entitled to suspend the exercise of the rights attached thereto, excluding the right of information as per Article 73, until one person is designated, for the purposes of the company, as being the owner of the unit.

(...)

*(Law of 18 September 1933)*

**Art. 187.**

*(Law of 23 November 1972; Law of 28 April 1988; Law of 19 December 2002; Law of 10 August 2016)* All deeds, invoices, notices, publications, letters, order notes and other documents issued by *sociétés à responsabilité limitée* must state:

- 1) the trade name of the company;
- 2) the phrase "*société à responsabilité limitée*" written in full or the acronym "SARL" written legibly, immediately before or after the trade name;
- 3) exact details of the registered office;
- 4) the words "*Registre de commerce et des sociétés, Luxembourg*" or the acronym "R.C.S. Luxembourg" followed by the registration number.

Article 76, paragraphs 2 and 3, and Articles 77 and 78 shall apply thereto.

**Art. 188.**

*(Law of 18 September 1933; Law of 10 August 2016)*

No public issue of corporate units or founder shares may be made.

Neither corporate units nor founder shares may be represented by negotiable securities, whether in registered or bearer form or to order, but only by participation certificates in the name of a specific person. They may be transferred only in accordance with the substantive and procedural conditions provided for in the two Articles below.

**Art. 189.**

*(Law of 10 August 2016)*

- (1) Neither corporate units nor founder shares with voting right may be the subject of an inter vivos transfer to persons other than members or owners of founder shares carrying a voting right, without consent, given as per Article 193, from members representing at least three quarters of the corporate units. However, the articles of

association may lower this majority to one half of the corporate units. The same rule applies to the following operations involving such units or shares:

- granting usufruct; or
- selling bare ownership or usufruct.

The company must be informed of the proposed transfer.

If the company does not consent to the transfer, the members may, within three months from the refusal, purchase or have purchased the units at a price established as per paragraph (3), unless the disposing entity decides not to dispose of his units. The expert fees will be paid by the company. At the petition of the manager, this deadline may be extended by the judge presiding the chamber of the district court dealing with commercial matters and sitting as in urgent proceedings, but by no more than six months.

The company may also, with the consent of the disposing member, decide, within the same deadline, to reduce its share capital by the nominal value of the units held by that member and to redeem those units at a price determined in the manner stated in paragraph (3). The court may grant the company a payment deadline of no more than two years, if there is demonstrably good cause. The outstanding amounts shall accrue interest at the legal rate for commercial transactions.

If at the end of the deadline none of the solutions stated in the third and fourth subparagraphs above has occurred, the member may go ahead with the sale that was initially proposed.

- (2) Neither corporate units nor founder shares carrying a voting right may be sold mortis causa, whether whole or in bare ownership, to persons other than members or owners of founder shares with voting right without consent from members representing at least three quarters of the corporate units held by surviving members. However, the articles of association may lower this majority to one half of the corporate units held by surviving members.

Unless otherwise provided in the articles of association, no consent shall be required where the corporate units are transferred to heirs compulsorily entitled to a portion of the estate or to the surviving spouse or partner, insofar as the articles of association so provide, to other legal heirs.

Heirs or beneficiaries of last will provisions or contractual instruments affecting the estate who have not been approved and who have not found a transferee fulfilling the requisite conditions may cause the company to be prematurely dissolved, three months after giving formal notice, served on the manager by process-server and notified to the members by registered letter.

However, within that three-month deadline, the deceased's corporate units and founder shares with voting right may be purchased, either by the members, subject to the requirement stated in the final sentence of Article 199, or by a third party approved by them, or by the company itself.

The redemption price of the corporate units or founder shares with voting right shall be calculated on the basis of the average balance sheet for the last three years and, if the company has not been operating for three financial years, on the basis of the balance sheet of the last year or of the last two years.

If no profit has been distributed, or if no agreement is reached as to the application of the basis for redemption referred to in the foregoing paragraph, the price shall, in the event of disagreement, be determined by the courts.

The deceased's corporate units and founder shares with voting right may not be exercised until the transfer of those rights becomes enforceable against the company.

- 3) The terms and conditions for the redemption must be laid down in the articles of association. If the parties disagree over the sale price, the price shall be determined

by the judge presiding the chamber of the district court dealing with commercial matters, and sitting as in urgent proceedings. The value of the units shall be fixed on the day of the notification of sale, in cases of inter vivos transfers, or on the date of death in cases of transfers mortis causa.

- (4) For the purposes of paragraphs (1) and (2), where founder shares with voting right have been issued, such shares shall be counted as corporate units and their holders shall have the same rights as members.
- (5) Any clause that contradicts the requirements of this Article shall be deemed excluded.

**Art. 190.**

Transfers of corporate units must be recorded by a notarial deed or private deed.

*(Law of 21 December 1994)*

Transfers shall not be valid vis-à-vis the company or third parties until they are notified to the company or accepted by it in accordance with the provisions of Article 1690 of the Civil Code.

*(Law of 18 September 1933)*

**Art. 191.**

*(Law of 23 November 1972)*

*Sociétés à responsabilité limitée* shall be managed by one or more agents, who may but are not required to be members and who may or may not receive a salary.

They shall be appointed by the members, either in the deed of incorporation or in a subsequent deed, for a limited or unlimited period. Unless otherwise provided for in the articles of association, they may be removed, regardless of the method of their appointment, for legitimate reasons only.

**Art. 191 bis.**

*(Law of 23 November 1972; Law of 10 August 2016)*

- (1) Each manager may take any actions necessary or useful to realise the corporate purpose, with the exception of those reserved by law or the articles of association to be decided upon by the members. Subject to the requirements of subparagraph 4, the articles of association may however state that, where there are several managers, they may form a panel.

Each manager shall represent the company with regard to third parties and in legal proceedings, either as plaintiff or as defendant.

Writs served on behalf of or against the company shall be validly served in the name of the company alone.

Any limitations to the powers conferred upon the managers by the preceding subparagraphs resulting either from the articles of association of the company or from a decision of the competent corporate bodies are not valid with regard to third parties, even if they are published.

However, the articles of association may authorise one or more managers to represent the company in any deed or in legal proceedings, either alone or jointly. This clause is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

- (2) Decisions taken by the panel of managers may, if permitted by the articles of association, be unanimous decisions by the members of the panel, expressed in writing.

Resolutions adopted in this manner shall be deemed to have been adopted at the

registered office of the company.

- (3) If the managers have formed a panel, and unless otherwise provided in the articles of association, any managers who attend meetings of that panel by videoconference or by other means of telecommunication whereby their identity can be confirmed shall be deemed present for the purposes of calculating quorum and majority. Such means must satisfy technical characteristics which ensure an effective participation in the meeting of the panel, whose deliberations shall be transmitted without interruption.

The meeting held at a distance by way of such communication means shall be deemed to have taken place at the registered office of the company.

- (4) The day-to-day management of the company's business and the power to represent the company with respect thereto may be delegated to one or more managers, directors or other agents, who may but are not required to be members, acting either alone or jointly.

Their appointment, their removal from office and their powers and duties shall be governed by the articles of association or by a decision of the competent corporate bodies; however, no restrictions placed upon their powers to represent the company in the day-to-day management will be valid with regard to third parties, even if they are published.

This clause, by virtue of which the day-to-day management is delegated to one or more persons acting either alone or jointly, is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

The delegation in favour of a manager shall entail the obligation for the managers to report each year to the general meeting or to the members on the salary, fees and any advantages granted to the delegate.

The liability of persons entrusted with day-to-day management shall be governed by the general rules on mandates with respect to such management.

- (5) The company shall be bound by any acts of the managers, of the manager with capacity to represent the company in accordance with paragraph (1), subparagraph 4, or of the person entrusted with day-to-day management, even if such acts exceed the corporate purpose, unless it can prove that the third party knew that the act exceeded the corporate purpose or could not in view of the circumstances have been unaware of it, without the mere publication of the articles constituting such proof.
- (6) Articles 57 and 66 apply to managers (*Law of 18 September 1933*)

**Art. 192.**

The managers shall be liable in accordance with Article 59.

**Art. 193.**

(*Law of 10 August 2016*)

Resolutions of the members shall be adopted at general meetings.

Unless the articles of association are amended, the holding of general meetings shall not be mandatory where the number of members does not exceed sixty. In such case, each member shall receive the precise wording of the text of the resolutions or decisions to be adopted and shall give his vote in writing.

**Art. 194.**

No decision shall be validly adopted in the two cases envisaged in the foregoing Article unless it has been adopted by members representing more than half of the share capital. Unless otherwise provided for in the articles of association, if that figure is not reached at the first meeting or first written consultation, the members shall be convened or consulted a



second time, by registered letter, and the decisions shall be adopted by a majority of the votes cast, regardless of the portion of capital represented.

**Art. 195.**

*(Law of 10 August 2016)*

Notwithstanding any provision to the contrary in the articles of association, every member shall be entitled to take part in the decisions. Each member shall have a number of votes equal to the number of corporate units held by him.

The articles of association state that the managers may suspend the voting rights of any partner who has not fulfilled the obligations incumbent on him by virtue of the articles of association or his subscription or undertaking documentation.

Any partner may personally agree to not exercise all or some of his voting rights on a temporary or permanent basis. Such a waiver is binding on the partner as well as on the company from when it is notified of the fact.

**Art. 195bis.**

*(Law of 10 August 2016)*

- (1) Partner agreements may be drawn up to govern the exercise of voting rights.

However:

1. agreements which are contrary to the requirement of this law or the interests of the company;
  2. agreements whereby a partner agrees to vote as instructed by the company, a subsidiary or one of the bodies of those companies;
  3. agreements whereby a partner agrees with those same companies or bodies to approve all motions originating from the company's bodies,
- are void.

- (2) Votes cast during a general meeting or in application of the written procedure described in Article 193, subparagraph 2, by virtue of one of the agreements listed in paragraph (1), subparagraph 2, are void. These votes shall entail the voidance of the resolutions to which they relate unless they had no influence on the outcome of the vote.

Claims for voidance shall become prescribed six months after the vote.

**Art. 196.**

*(Law of 10 August 2016)*

- (1) In companies with more than sixty members, at least one general meeting must be held each year at the time determined in the articles of association.

Other general meetings may always be convened by the manager or managers or, failing that, by the supervisory board if one exists or, failing that, by members representing more than half the share capital.

- (2) Subject to the articles of association providing therefore, partners participating in the meeting by way of video conference or by way of telecommunication means allowing their identification, shall be deemed to be present for the calculation of quorum and majority. Such means must satisfy technical characteristics which ensure effective participation in the meeting whose deliberations shall be transmitted without interruption. When applying this subparagraph, the member or agent must however be physically present at the registered office of the company.

Where, in accordance with the preceding subparagraph, the meeting is held between partners who are not physically present, the meeting is deemed to have been held at the registered office of the company.

- (3) The articles of association may authorise any partner to cast its vote by mail, by means of a voting form, the details of which shall be laid down in the articles of associations.

Voting forms which indicate neither the direction of a vote nor an abstention shall be considered void.

For the calculation of the quorum, only those voting forms which have been received by the company prior to the general meeting within the period provided for in the articles of association shall be taken into account.

An attendance register is kept for every general meeting.

**Art. 196bis.**

*(Law of 10 August 2016)*

Where there is more than one class of unit and the resolution of the general meeting is such as to change the respective rights thereof, the resolution must, in order to be valid, fulfil the conditions as to attendance and majority laid down in the Article 199 with respect to each class.

**Art. 197.**

Each year, management must prepare an inventory indicating all the movable and immovable assets of, and all debts owed to and by, the company, with an annex summarising all its commitments, and the debts of the managers, auditors and members towards the company.

Management prepares the balance sheet and the profit and loss account, in which the necessary depreciation charges must be made.

The balance sheet shall separately mention fixed assets and the current assets and, on the liability side, the debts of the company towards itself, bonds, indebtedness secured by mortgages or pledges and indebtedness without the benefit of securities on assets. It shall specify on the liability side the amount of the indebtedness towards members.

Each year, at least one-twentieth of the net profits shall be allocated to the creation of a reserve; the allocation shall cease to be compulsory when the reserve has reached an amount equal to one-tenth of the share capital, but shall again become compulsory if the reserve falls below one-tenth of the share capital.

The balance sheet and profit and loss account shall be submitted to the members for approval, and the partners shall vote specifically as to whether discharge is to be given to the management and the members of the supervisory board, if any.

**Art. 198.**

*(Law of 10 August 2016)*

Every member, either personally or through an appointed agent, may obtain communication at the registered office of the inventory, the balance sheet and the report of the supervisory board set-up in accordance with Article 200.

In companies with more than sixty members, such communication shall be permitted only during the fifteen days preceding said general meeting.

This right is also granted to every owner of a jointly-owned unit, and to usufructuaries and bare owners of corporate units and founder shares.

**Art. 198bis.**

*(Law of 10 August 2016)*

- (1) No interim dividends may be paid unless the articles of association authorise the managers to do so. Any such payment shall in addition be subject to the following conditions:
- a) an accounting statement shall be drawn up showing that the funds available for

distribution are sufficient;

b) the amount to be distributed may not exceed total profits made since the end of the last financial year for which the annual accounts have been approved, plus any profits carried forward and sums drawn from reserves available for this purpose, less losses carried forward and any sums to be paid into the reserves pursuant to the requirements of the law or of the articles of association;

c) the decision of the managers to distribute an interim dividend may not be taken more than two months after the date at which the accounting statement referred to under a) above has been drawn up;

d) the supervisory auditor or company auditor, if there is one, verifies that the conditions stated above have been met.

- (2) Where the interim dividend payments exceed the amount of the dividend subsequently decided upon by the partners, they shall, to the extent of the overpayment, be deemed to have been paid as an advance on the next dividend.

**Art. 199.**

*(Law of 10 August 2016)*

Unless otherwise provided in the articles of association, members representing three quarters of the share capital may amend any provision of the articles of association. Nevertheless, the commitments of the partners may only be increased with the unanimous consent of the partners.

The articles of association may authorise the managers to transfer the registered office of the company from one town to another or within the same town and to make the corresponding modifications to the articles of association.

The provisions of Article 32, paragraph (2) et seq. apply on the condition that the corporate parts in question are issued for the benefit of existing members of third parties who have received consent as per Article 189.

**Art. 200.**

*(Law of 10 August 2016)*

In all *sociétés à responsabilité limitée* with more than sixty members, supervision of the company must be entrusted to one or more auditors, who may or may not be members.

The supervisory board shall be appointed in the deed of incorporation. It shall be subject to re-election at the times specified in the articles of association.

The powers of the members of the supervisory board and their responsibility shall be determined by Article 62, paragraphs 1 and 3 of the law.

*(Law of 28 December 1992)*

**Art. 200-1**

Articles 194 to 196 and Article 199 are not applicable to companies with one sole member.

**Art. 200-2**

The sole member exercises the powers of the general meeting.

The decisions of the sole member which are taken in the scope of paragraph 1 are recorded in minutes or drawn up in writing.

Also, contracts entered into between the sole member and the company represented by him are recorded in minutes or drawn up in writing. This provision is not applicable to current operations entered into under normal conditions.

(Law of 18 September 1933)

**Art. 201.**

An action for recovery of dividends not corresponding to profits actually earned may be taken against the members who have received them. The action for recovery shall prescribe five years after the date of distribution.

**Art. 202.**

Unless otherwise stipulated in the articles of association, the company shall not be dissolved by the fact that any of its members becomes subject to such order of restraint, or is declared bankrupt, or becomes insolvent or dies.

Article 128 shall apply to *sociétés à responsabilité limitée*.

(Law of 23 July 2016)

**Sub-section 2. - Special provisions applicable to the *société à responsabilité limitée simplifiée***

**Art. 202-1.**

The provisions relating to the *société à responsabilité limitée* also apply to the *société à responsabilité limitée simplifiée*, except where indicated in this sub-section.

**Art. 202-2.**

(1) On pain of nullity, natural persons may only be partners of a *société à responsabilité limitée simplifiée*.

(2) A natural person may not be a partner of more than one *société à responsabilité limitée simplifiée* at any one time, except if the shares are transferred mortis causa.

A natural person who is a partner of a *société à responsabilité limitée simplifiée* is considered the joint and several guarantor of the obligations of any other *société à responsabilité limitée simplifiée* of which that person subsequently becomes partner, insofar as those obligations are born after the person becomes a partner, except in cases of transfers mortis causa.

The natural person shall no longer be considered the joint and several guarantor of the companies referred to in the previous subparagraph once the provisions of this sub-section no longer apply or upon publication of the dissolution of those companies.

**Art. 202-3.**

The purpose of the *société à responsabilité limitée simplifiée* falls within the scope of the amended Law of 2 September 2011 governing access to the professions of artisan, trader, manufacturer and certain independent professional service providers.

**Art. 202-4.**

The share capital must be between €1 and €12,000.

The contributions of the partners to the company shall be in the form of contributions in cash or in kind.

Each year at least one-twentieth of the net profits shall be allocated to a reserve fund; this allocation shall cease to be compulsory when the share capital plus the value of the reserve fund has reached the amount stated in Article 182.

**Art. 202-5.**

The trade name of *sociétés à responsabilité limitée simplifiées* must be followed by the words "*société à responsabilité limitée simplifiée*" or by the abbreviation "S.à r.l.-S". The words "*société à responsabilité limitée simplifiée*" or the acronym "S.à r.l.-S" must be

written legibly on all documents listed in Article 187.

**Art. 202-6.**

Managers shall be natural persons.

*(Law of 31 May 1999)*

**Section XII bis. Court-ordered dissolution and close-down of commercial companies**

**Art. 203.**

*(Law of 19 May 1978)*

*(Law of 31 May 1999)*

- “(1) The district court dealing with commercial matters may, at the application of the Public Prosecutor, order the dissolution and the liquidation of any company governed by Luxembourg law which pursues activities contrary to criminal law or which seriously contravenes the provisions of the Commercial Code or the laws governing commercial companies, including those laws governing authorisations to do business.
- (2) The application and the procedural deeds within the framework of this Article shall be served through the greffe. If the company cannot be contacted at its legal domicile in the Grand-Duchy of Luxembourg, an extract of the application shall be published in two newspapers printed in Luxembourg.
- (3) Upon ordering the liquidation, the court shall appoint a supervisory judge and one or more liquidators. It shall determine the method of liquidation. It may render applicable to such extent as it may determine, the rules governing the liquidation of a bankruptcy. The method of liquidation may be changed by subsequent decision, either of the court's own motion or at the request of the liquidator or liquidators.
- (4) Court decisions announcing the dissolution and ordering the liquidation of a company shall be published in extract form in the Recueil Électronique des Sociétés et Associations, in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The court may, in addition, and regardless of the publications to be made in newspapers printed in Luxembourg, order publication thereof, by extract, in such foreign newspapers as it may designate.
- The publications shall be arranged by the liquidator or liquidators.
- (5) The court may decide that the judgement ordering dissolution and liquidation shall be enforceable on a provisional basis.
- (6) In case the absence or an insufficiency of assets is ascertained by the supervisory judge, the expenses and fees of the liquidators, which shall be ruled upon by the court, shall be borne by the State and paid as legal expenses.
- (7) Actions against liquidators shall prescribe five years after publication of the completion of the liquidation”.

*(Law of 31 May 1999)*

**Art. 203-1**

- (1) The district court dealing with commercial matters may, at the application of the Public Prosecutor, order the close-down of any establishment in the Grand-Duchy of Luxembourg of a foreign company which pursues activities contrary to criminal law or which seriously contravene the provisions of the Commercial Code or the laws governing commercial companies, including those laws governing authorisations to do business.
- (2) The application and the procedural deeds within the framework of this Article shall be served through the greffe. If the company cannot be contacted at its legal domicile in the Grand-Duchy of Luxembourg, the application is published by way of extract in two newspapers printed in Luxembourg. The court may, in addition, order publication thereof, by extract, in such foreign newspapers as it may designate.

*(Law of 27 May 2016)*

- (3) Court decisions ordering the close-down of an establishment of a foreign company shall be published in extract form in the Recueil Électronique des Sociétés et Associations, in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The court may, in addition, and regardless of the publications to be made in newspapers printed in Luxembourg, order publication thereof, by extract, in such foreign newspapers as it may designate. The publications shall be arranged by the Public Prosecutor.
- (4) Judgements ordering the close-down of the establishment in the Grand-Duchy of Luxembourg of a foreign company shall be enforceable on a provisional basis.
- (5) A person shall be subject to a jail term of between eight days and five years and a fine of 1,250 to 125,000 euros<sup>1</sup>, or to one of those penalties, if said person is in breach of a judgement ordering a close-down pursuant to this Article.

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<sup>1</sup> Implicitly amended by the Law of 1 August 2001 (Mem. A - 117 of 18/09/2001, p. 2440).

*(Law of 04 May 1984)*

*(Law of 19 December 2002)*

**Section XIII. (...)**

**Sub-section 1. - (...)**

**Art. 204. (...)- Art. 205. (...)**

**Sub-section 2. - (...)**

**Art. 206. (...) - Art. 211. (...)**

**Sub-section 3. - (...)**

**Art. 212. (...)- Art. 218. (...)**

**Sub-section 4. - (...)**

**Art. 219. (...) - Art. 224. (...)**

**Sub-section 5. - (...)**

**Art. 226. (...) - Art 231. (...)**

**Sub-section 6. - (...)**

**Art. 232. (...) - Art. 234. (...)**

**Sub-section 7. - (...)**

**Art. 235. (...)- Art. 247. (...)**

**Sub-section 8. - (...)**

**Art. 248. (...) - Art. 250. (...)**

**Sub-section 9. - (...)**

**Art. 251. (...)**

**Sub-section 10. - (...)**

**Art. 252. (...) - Art. 255-1. (...)**

**Sub-section 11. - (...)**

**Art. 256. (...)**

**Sub-section 12. - (...)**

**Art. 256 bis. (...) - Art. 256.-3. (...)**

**Sub-section 13. - (...)**

**Art. 256ter. - (...)**



*(Law of 07 September 1987)*

## **Section XIV. - Mergers**

### **Art. 257.**

*(Law of 23 March 2007)*

This section shall apply to all companies with legal personality pursuant to this Law and to economic interest groupings.

A merger can also occur where one or more of the companies or economic interest groupings which are acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to composition with creditors or a similar procedure such as the suspension of payments, controlled management or proceedings instituting special management or supervision of one or more of such companies or economic interest groupings.

*(Law 10 June 2009)*

A company or economic interest grouping as referred to in paragraph 1 may also enter into a merger transaction with a foreign company or economic interest grouping, provided the latter's national law does not prohibit such a transaction and such foreign company or economic interest grouping complies with the provisions and formalities of the national law by which it is governed, without prejudice to the provisions of Article 21 of Regulation (EC) No. 139/2004 of 20 January 2004 on the control of the concentrations between undertakings. These mergers shall hereinafter be referred to as "Cross-border Mergers".

The foreign law provisions and formalities referred to in the previous paragraph concern in particular the decision-making process relating to the merger and, taking into account the cross-border nature of the merger, the protection of the creditors of the merging companies, bondholders and holders of securities or corporate units, as well as employees with respect to rights other than those concerning employee participation.

If one of the merging companies is managed under an employee participation system and the company resulting from the cross-border merger is governed by Luxembourg law and governed by a system in accordance with the provisions referred to in Articles L.426-13 and L. 426-14 of the Labour Code, that company shall be required to take the form of a *société anonyme*.

*(Law of 23 March 2007)*

If reference is made in the provisions below to a "company" or "companies", that term shall be understood as also referring to an "economic interest grouping" or "economic interest groupings", save where specified differently.

*(Law of 07 September 1987)*

### **Art. 258.**

A merger shall be carried out by the acquisition of one or more companies by another, or by the incorporation of a new company.

### **Art. 259.**

*(Law of 10 June 2009)*

- (1) A merger by acquisition is an operation whereby one or more companies, following their dissolution without liquidation, transfer to another pre-existing company, all their assets and liabilities in exchange for the issue, to the members of the company or companies being acquired, of shares or units in the acquiring company and, where applicable, a cash payment which shall not exceed 10% of the nominal value of the shares or units issued or, in the absence of a nominal value, of their accounting par value.

(Law of 23 March 2007)

- (2) A merger by acquisition may also take place where one or more of the companies being acquired are in liquidation, provided that those companies have not yet begun to distribute their assets to their members.

(Law of 25 August 2006)

- (3) If a *société européenne* (SE) is formed by way of a merger by acquisition, the acquiring company shall take the form of a *société européenne* (SE) when the merger takes place.

(Law of 07 September 1987)

**Art. 260.**

(Law of 23 March 2007)

- (1) A merger by incorporation of a new company is the operation whereby several companies, following their dissolution without liquidation, transfer to a company which they incorporate, all their assets and liabilities in exchange for the issue to their members of shares or units in the new company and, where applicable, a cash payment which shall not exceed 10% of the nominal value of the shares or units issued or, in the absence of a nominal value, of their accounting par value.
- (2) A merger by incorporation of a new company may also take place where one or more of the companies which are ceasing to exist are in liquidation, provided that those companies have not yet begun to distribute their assets to their members.

(Law of 25 August 2006)

- (3) Where a *société européenne* (SE) is formed by way of a merger by the formation of a new company, the *société européenne* (SE) shall be the newly formed company.

(Law of 07 September 1987)

**Sub-Section I. - Merger by acquisition**

**Art. 261.**

(Law of 10 June 2009)

- (1) The administrative or management bodies of each of the merging companies shall draw up common draft terms of merger in writing.
- (2) The common draft terms of merger shall specify:
  - a) the form, name, and registered office of the merging companies and those proposed for the company resulting from the merger;
  - b) the share or unit exchange ratio and, where appropriate, the amount of any cash payment;
  - c) the terms for the delivery of the shares or units in the acquiring company;
  - d) the date as from which those shares or corporate units shall carry the right to participate in the profits, and any special conditions relating to that right;
  - e) irrespective of the effective date of the merger pursuant to Articles 272, 273, 273bis and 273ter, the date from which the operations of the company being acquired shall be treated for accounting purposes as being carried out on behalf of the acquiring company;
  - f) the rights conferred by the acquiring company to partners having special rights and to the holders of securities other than shares or units, or the measures proposed concerning them;
  - g) any special advantages granted to the experts in accordance with Article 266, to the

members of the administrative, management, supervisory or control bodies of the merging companies.

- (3) Where a *société européenne* (SE) is formed by way of a merger, the draft terms shall also include:
- a) the articles of association of the *société européenne* (SE);
  - b) information on the procedures according to which arrangements for employee involvement are determined in implementation of Council Directive 2001/86/EC of 8 October 2001 supplementing the status for a *société européenne* (SE) with regard to the involvement of employees.
- (4) In the event of a cross-border merger, the common draft terms of merger shall also include:
- a) the articles of association of the acquiring company;
  - b) a description of the likely repercussions of the merger on employment;
  - c) where appropriate, information on the procedures according to which arrangements for the involvement of employees are determined by the implementation of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on Cross-border Mergers of business corporations;
  - d) information on the evaluation of the assets and liabilities transferred to the acquiring company;
  - e) dates of the merging companies' accounts used to establish the conditions of the merger.

*(Law of 07 September 1987)*

**Art. 262.**

*(Law of 10 June 2009; Law of 27 May 2016; Law of 10 August 2016)*

- (1) The common draft terms of merger shall be published as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, and in the national bulletins of the other Member States concerned, for each of the merging companies, at least one month prior to the date of the general meeting called to rule on the common draft terms of merger.
- (2) In the case of a cross-border merger, the publication must also include following particulars:
- a) the form, name and registered office of the merging company;
  - b) the register of commerce and companies in which the deeds referred to in Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings are filed by the acquiring company and the registration number of the entry in that register, if it is a Luxembourg company; if the legislation of the State of the foreign company provides for a register, the register in which the deeds referred to in Article 3, paragraph 3, of Directive 2009/101/EC have been filed by the foreign company and, if the legislation of the State of the foreign company provides for a registration number in that register, the registration number in that register.
  - c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors of the company in question and the address where complete information on those arrangements may be obtained free of charge.

(Law of 07 September 1987)

**Art. 263.**

(Law of 10 June 2009)

- (1) A merger shall require the approval of the general meetings of each of the merging companies and, where appropriate, of the holders of securities other than shares or units, after examination of the reports referred to in Articles 265 and 266. That decision requires that the conditions as to quorum and majority, laid down for amendments of the articles of association, are fulfilled.

(Law of 23 March 2007)

- (2) In *sociétés en commandite simple* and in *sociétés coopératives*, the voting rights of members are in proportion to their share in the corporate assets, and the quorum will be calculated in terms of the corporate assets.
- (3) The consent of all members is required:
  1. in acquiring companies and in companies being acquired which are *sociétés en nom collectif*, *sociétés coopératives* whose members have unlimited and joint liability, civil companies or economic interest groupings;
  2. in companies being acquired, if the acquiring company is:
    - a) a *société en nom collectif*;
    - b) a *société en commandite simple*;
    - c) a *société coopérative* whose members have unlimited and joint liability;
    - d) a civil company;
    - e) an economic interest grouping.

In the cases referred to in paragraph 1, items 1° and 2°, a), b) and c), the unanimous consent of the holders of corporate units not representing capital will be required.

- (4) In *sociétés en commandite simple* and in *sociétés en commandite par actions*, the consent of all the unlimited members will, in addition, be required.
- (5) If there is more than one category of shares, securities or units, whether representing capital or not, and if the merger results in a modification to their respective rights, Article 68 shall be applicable.

(Law of 25 August 2006)

- (6) If a *société européenne* (SE) is formed by way of a merger, employee involvement in the *société européenne* (SE) shall be decided pursuant to the provisions implementing Directive 2001/86/EC. The general meeting of each of the merging companies may reserve the right to make registration of the *société européenne* (SE) conditional upon its express ratification of the arrangements so decided.

(Law of 10 June 2009)

- (7) In the case of a cross-border merger, the general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional upon express ratification by it of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger.

(Law of 07 September 1987)

**Art. 264.**

(Law of 23 March 2007)

Except in the cases referred to in Article 263, paragraphs (2) to (4), approval of the merger by the general meeting of the acquiring company is not necessary if the following

conditions are fulfilled:

*(Law of 10 June 2009)*

a) the publication provided for in Article 262 is made, on behalf of the acquiring company, at least one month before the date of the general meeting of the company or companies being acquired convened to decide on the common draft terms of merger;

b) all the members of the acquiring company are entitled, at least one month before the date indicated in a), to examine, at the registered office of that company, the documents indicated in Article 267, paragraph (1);

c) one or more members of the acquiring company holding at least 5% of the shares or units in the subscribed capital are entitled, up to the day following the holding of the general meeting of the company being acquired, to require the convening of a general meeting of the acquiring company to decide whether to approve the merger. The meeting must be convened in such a manner as to be held within one month of the request for it to be held.

*(Law of 03 August 2011)*

For the purposes of paragraph 1, b), Article 267, paragraphs (2), (3) and (4) shall apply.

*(Law of 07 September 1987)*

**Art. 265.**

*(Law of 03 August 2011)*

- (1) The administrative and management bodies of each of the merging companies shall draw up a detailed written report addressed to the members explaining the common draft terms of merger and setting out the legal and economic grounds for them, in particular for the share or unit exchange ratio.

In addition, the report shall indicate any special valuation difficulties which may have arisen.

In the case of a cross-border merger, the report shall be made available to the members and representatives of the employees or, where there are no such representatives, to the employees themselves, no less than one month before the date of the general meeting which shall decide on the common draft terms of merger. The report shall explain the implications of that merger for members, creditors and employees. Where the management or administrative body of any of the merging companies receives, in good time, an opinion from the representatives of their employees, that opinion shall be appended to the report.

- (2) The administrative or management bodies of each of the companies involved shall inform the general meeting of their company and the administrative or management bodies of the other companies involved, so that the latter may inform their respective general meetings of any material change in the assets and liabilities between the date the draft common terms of merger are established and the date of the general meetings which are to vote on the draft common terms of merger.
- (3) However, the report referred to in paragraph (1) and the information referred to in paragraph (2) shall not be required if all the members and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

*(Law of 07 September 1987)*

**Art. 266.**

*(Law of 18 December 2009; Law of 23 July 2016)*

- (1) The common draft terms of merger must be the subject of an examination and a written report addressed to the members. The examination shall be carried out and the

report shall be drawn up for each of the merging companies by one or more independent experts to be appointed by the management body of each of the merging companies. The experts must be chosen from among the independent auditors. However, it is possible to cause the report to be drawn up by one or more independent experts for all the merging companies. In such case, the appointment shall be made, at the joint request of the merging companies, by the judge presiding the chamber of the district court dealing with commercial matters, in the district where the registered office of the acquiring company is located, sitting as in urgent proceedings.

*(Law of 10 June 2009)*

In the case of a cross-border merger, that report must be made available one month before the date of the general meeting convened to decide on the common draft terms of merger.

In the case of the formation of a *société européenne* (SE) by way of a merger or in the case of a cross-border merger, the merging companies may jointly apply for the appointment of one or more independent experts to the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of one of the companies is located, sitting as in urgent proceedings or to a judicial or administrative authority in another State of one of the merging companies, or mandate one or more independent experts approved by such an authority.

- (2) In the report mentioned in paragraph (1), the experts must in any case declare whether, in their opinion, the share exchange ratio is or is not fair and reasonable. This declaration shall:
- a) indicate the method or methods used to arrive at the proposed share exchange ratio;
  - b) indicate whether such method or methods are adequate in the circumstances and indicate the values arrived at by each of such methods, and give an opinion as to the relative importance attributed to such methods in determining the value actually adopted.

In addition, the report shall describe any particular valuation difficulties which may have arisen.

*(Law of 03 August 2011)*

- (3) The rules laid down in Article 26-1, paragraphs (2) to (4), shall not apply if an expert report is drawn up on the draft common terms of merger, or if the circumstances envisaged by Article 26-1, paragraphs (2) to (4), are not fulfilled.
- (4) Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary verifications.

*(Law of 10 June 2009)*

- (5) Neither an examination of the common draft terms of merger by independent experts nor an expert report shall be required if all the members and holders of other securities conferring voting rights of each of the companies involved in the merger have so agreed.

*(Law of 07 September 1987)*

**Art. 267.**

*(Law of 10 June 2009)*

- (1) Every member shall be entitled to inspect the following documents at the registered office at least one month before the date of the general meeting convened to decide on the common draft terms of merger:
- a) the common draft terms of merger;
  - b) the annual accounts and management reports of the merging companies for the last

three financial years;

(Law of 03 August 2011)

c) where applicable, an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the common draft terms of merger, if the last annual accounts relate to a financial year which ended more than six months before that date;

d) where applicable, the reports of the administrative or management bodies of the merging companies referred to in Article 265;

e) where applicable, the reports referred to in Article 266.

(Law of 03 August 2011)

For the purposes of paragraph 1, c), an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 4 of the Law of 11 January 2008 on transparency requirements for issuers of securities and makes it available to the members in accordance with this paragraph, or if all the members and holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

- (2) The accounting statement provided for in paragraph (1), c), shall be drawn up using the same methods and following the same presentation as the last annual balance sheet.

It shall, however, not be necessary to take a fresh physical inventory.

Moreover, the valuations shown in the last balance sheet shall be modified only to reflect entries in the books of account; the following shall nevertheless be taken into account:

- interim depreciation and provisions;
- material changes in actual value not shown in the books.

- (3) A full copy or, if so desired, a partial copy of the documents referred to in paragraph (1) may be obtained by any member upon request and free of charge.

(Law of 03 August 2011)

If a member has consented to the use by the company of electronic means for communicating information, such copies may be provided by electronic mail.

- (4) A company shall be exempt from the requirement to make the documents referred to in paragraph (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting called to decide on the draft common terms of merger and ending no earlier than the conclusion of that meeting, it makes them available on its website.

Paragraph (3) shall not apply if the website gives members the possibility, throughout the period referred to in the first sub-paragraph of this paragraph, of downloading and printing the documents referred to in paragraph (1). In that case, however, the company shall make those documents available at its registered office where they can be viewed by the members.

(Law of 23 March 2007)

**Art. 267 bis.**

- (1) A *société à responsabilité limitée*, a *société coopérative* or an economic interest grouping can only acquire another company or economic interest grouping if the partners or members of the other company or economic interest grouping fulfil the conditions for becoming a partner or member of the acquiring company or economic interest grouping.

- (2) In *sociétés coopératives*, each member has the right, notwithstanding any provision

to the contrary of the articles of association, to resign at any time and without having to satisfy any other condition, as from the time the general meeting is called in order to resolve on the merger of the company with an acquiring company having a different legal form.

The resignation must be notified to the company by registered letter, deposited at the post office at least five days before the date of the meeting. Such resignation will be effective only if the merger is approved.

The notice for the meeting must feature the text of the first and second subparagraphs of this paragraph.

(Law of 07 September 1987)

**Art. 268.**

(Law of 03 August 2011)

- (1) Creditors of the merging companies, whose claims predate the date of publication of the deeds recording the merger provided for in Article 273 may, notwithstanding any agreement to the contrary, apply within two months of that publication to the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of the debtor company is located and sitting as in urgent proceedings, to obtain adequate safeguard of collateral for any matured or unmatured debts, where they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company. The president of the court shall reject the application if the creditor is already in possession of adequate safeguards or if such safeguards are unnecessary, having regard to the financial situation of the company after the merger. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

If the safeguards are not provided within the time limit prescribed, the debt shall immediately fall due.

(Law of 23 March 2007)

- (2) If the company being acquired is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* whose members have unlimited and joint liability, a civil company or an economic interest grouping, the members of the *société en nom collectif*, the unlimited members of the *société en commandite simple* or of the *société en commandite par actions* or the members of the *société coopérative*, of the civil company or of the economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which predate the effectiveness against third parties of the merger deed pursuant to Article 273.
- (3) If the acquiring company is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* whose members have unlimited and joint liability, a civil company or an economic interest grouping, the members of the *société en nom collectif*, the unlimited members of the *société en commandite simple* or *société en commandite par actions* or the members of the *société coopérative*, of the civil company or of the economic interest grouping will be severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the merger. They may nevertheless be relieved of such liability by an express provision included in the draft terms of the merger and in the merger deed, which will be effective vis-à-vis third parties in accordance with Article 273.

(Law of 07 September 1987)

**Art. 269.**

Without prejudice to the rules governing the collective exercise of their rights, Article 268



shall apply to the bondholders of the merging companies, unless the merger has been approved by a meeting of the bondholders or by the bondholders individually.

(Law of 07 September 1987)

**Art. 270.**

(Law of 10 June 2009)

- (1) The holders of securities, other than shares or units, to which special rights are attached must be given rights in the acquiring company at least equivalent to those they possessed in the acquired company.
- (2) Paragraph (1) shall not apply if the modification to those rights was approved by a meeting of the holders of such securities proceeding in accordance with the conditions as to quorum and majority provided for in Article 263.

(Law of 10 June 2009)

- (3) In the event of failure to convene the meeting provided for in the foregoing paragraph or, if such a meeting refuses to accept the proposed modification, the securities in question shall be redeemed at the price corresponding to their valuation in the common draft terms of merger, as verified by the independent experts provided for in Article 266.

(Law of 07 September 1987)

**Art. 271.**

(Law of 10 June 2009)

- (1) The minutes of the general meetings which decide upon the merger shall be drawn up in the form of a notarial deed; the same shall apply to the common draft terms of merger where the merger need not to be approved by the general meetings of all the merging companies.
- (2) The notary must verify and certify the existence and the validity of the legal deeds and formalities required of the company in respect of which he is acting and of the common draft terms of merger.

In the case of the formation of a *société européenne* (SE) by way of a merger or in the case of a cross-border merger, the notary shall, without delay, issue a certificate conclusively attesting the correct completion of the pre-merger acts and formalities for the part of the procedure relating to the company governed by Luxembourg law.

If a *société européenne* (SE), formed by way of a merger, is intended to establish its registered office in the Grand-Duchy of Luxembourg, or if the cross-border merger is carried out through the acquisition by a Luxembourg-law-governed company of a foreign-law-governed company, the notary, in order to carry out the legality control incumbent upon him, shall receive from each merging company, the certificate referred to in the foregoing paragraph established by a notary or any competent authority in accordance with the national legislation of each merging company within a period of six months from its issuance, together with a copy of the common draft terms of merger approved by each company. The notary verifies in particular that the merging companies have approved the common draft terms of merger in the same terms and, where appropriate, that arrangements relating to employee participation have been adopted in accordance with the legal provisions implementing Council Directive 2001/86/EC of 8 October 2001 supplementing the status of a *société européenne* with regard to the involvement of employees in Article 16 of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of business corporations.

- (3) In the case of a cross-border merger, if the law of a State to which a merging company is subject provides for a procedure to analyse and amend the ratio applicable to the exchange of securities or corporate units, or a procedure to

compensate minority members without preventing the registration of the cross-border merger, such procedure shall apply only if the other merging companies situated in a State which does not provide for such procedure explicitly accept, when approving the draft terms of the cross-border merger, the possibility for the members of that merging company to have recourse to such procedure to be initiated before the authority having jurisdiction over that merging company. In such cases, the notary or competent authority referred to in the previous paragraph may issue the certificate referred to in the previous paragraph even if such procedure has commenced. The certificate must, however, indicate that the procedure is pending. The decision at the end of the procedure shall be binding on the company resulting from the cross-border merger and all its members.

*(Law of 07 September 1987)*

**Art. 272.**

The merger shall take effect when the concurring decisions of the companies involved are adopted.

*(Law of 07 September 1987)*

**Art. 273.**

*(Law of 10 June 2009; Law of 27 May 2016)*

- (1) The merger shall have no effect vis-à-vis third parties until after the publication in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, of the minutes of the general meetings which decide on the merger for each merging company or, in the absence of such a meeting, after the publication in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, of a notary certificate drawn up at the request of the company in question, noting that the conditions of Article 279 or of Article 281 have been fulfilled.
- (2) The acquiring company may carry out the publication formalities in respect of the acquired company or companies.

*(Law of 25 August 2006)*

**Art. 273bis.**

- (1) By way of exception to Articles 272 and 273, the merger and simultaneous formation of a *société européenne* (SE) shall take effect on the date on which the *société européenne* (SE) is registered on the register of commerce and companies.
- (2) The *société européenne* (SE) may not be registered until all the formalities provided for in Article 271 have been completed.

*(Law of 10 June 2009)*

(...)

*(Law of 10 June 2009)*

**Art. 273ter.**

- (1) By way of exception to Articles 272 and 273, the merger by acquisition of a foreign-law governed company shall take effect and shall be effective against third parties from the date of the publication in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings of the minutes of the general meeting of the acquiring company which decides on the merger. This date must be after the completion of the verifications referred to in Article 271.
- (2) The register of commerce and companies shall, without delay, notify to the register in which each merging company was required to file documents, that the cross-border

merger has taken effect.

- (3) In the case of a merger by acquisition of a company governed by Luxembourg law, the company being acquired shall be de-registered on receipt, by the register of commerce and companies, of the notification by the register having jurisdiction over the acquiring Company that the merger has taken place, but not before.

*(Law of 07 September 1987)*

**Art. 274.**

*(Law of 23 March 2007)*

- (1) The merger shall have the following consequences ipso jure and simultaneously:
  - a) the universal transfer, both between the company being acquired and the acquiring company and vis-à-vis third parties, of all the assets and liabilities of the company being acquired to the acquiring company;
  - b) the members of the company being acquired shall become members of the acquiring company;
  - c) the company being acquired shall cease to exist;
  - d) the cancellation of the shares or corporate units of the company being acquired held by the acquiring company or by the company being acquired or by any person acting in his own name but on behalf of either of those companies.
- (2) By way of derogation from paragraph (1) a), the transfer of industrial and intellectual property rights and of ownership or other rights on assets other than collateral established on movable and immovable property will be valid vis-à-vis third parties under the conditions provided for in the specific laws governing such operations. The formalities may be completed within a period of six months after the date on which the merger takes effect.

*(Law of 25 August 2006)*

- (3) The rights and obligations of the participating companies with respect to the terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships, and existing on the date of the registration shall, by reason of such registration, be transferred to the *société européenne* (SE) following its registration.

*(Law of 10 June 2009)*

- (4) In the case of cross-border mergers, the rights and obligations of the participating companies arising from contracts of employment or from employment relationships and existing on the date the cross-border merger takes effect in accordance with Article 273ter, paragraph (1), are transferred to the acquiring company on the date the cross-border merger takes effect.

*(Law of 07 September 1987)*

**Art. 275.**

*(Law of 10 June 2009)*

The members of the acquired company may individually take proceedings and exercise a liability action against the members of the administrative or management bodies and the experts provided for in Article 266 to obtain indemnification for any damage which they may have suffered as a result of the misconduct of the members of the administrative or management bodies in preparing for and carrying out the merger, or of the experts in the discharge of their duties. Any liability shall be joint and several for the members of the administrative or management bodies or the experts of the acquired company or, where appropriate, for all combined. However, each of them may relieve himself of any liability if he proves that no misconduct is attributable to him personally.

(Law of 07 September 1987)

**Art. 276.**

(Law of 10 June 2009)

- (1) The avoidance of a merger may occur only in the following circumstances:
  - a) the avoidance must be ordered by a court decision;
  - b) if a merger has taken effect pursuant to Article 272, it may be avoided only on the grounds that there was no notarial deed or private deed, as the case may be, or if it is established that the resolution of the general meeting of either of the companies participating in the merger is void;
  - c) an action for an avoidance may not be brought after the expiry of a period of six months from the date the merger took effect vis-à-vis the person alleging nullity thereof, or if the situation has been rectified;
  - d) if it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation;

(Law of 27 May 2016)

- e) the decision announcing the merger void must be published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
  - f) a third-party application to set aside the decision announcing the merger void will become inadmissible after six months from when the decision is published as per Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
  - g) the court order declaring a merger void shall not of itself affect the validity of the obligations owed by or to the acquiring company which arose before the publication of the court order and after the date referred to in Article 272;
  - h) the companies which have been party to the merger shall be jointly and severally liable for the obligations of the acquiring company referred to in g).
- (2) By way of exception to paragraph (1), item b), a merger intended for the formation of a *société européenne* (SE) may not be declared void once the *société européenne* (SE) has been registered on the register of commerce and companies.

The *société européenne* (SE) may be dissolved in the case of absence of scrutiny of the legality of the merger pursuant to Article 271 (2).
- (3) By way of exception to paragraph (1), item c), the avoidance of a merger by acquisition of a company governed by foreign law which has become effective in accordance with Article 273ter may not be ordered.

(Law of 07 September 1987)

**Sub-section II. - Merger by incorporation of a new company**

**Art. 277.**

- (1) Articles 261, 262 and 263 as well as Articles 265 to 276 shall apply to mergers by the incorporation of a new company. For such purpose, the expressions "merging companies" and "company being acquired" shall refer to the companies which cease to exist, and the expression "acquiring company" shall refer to the new company.
- (2) Article 261, paragraph 2 a) shall also apply to the new company.

(Law of 10 June 2009)

- (3) The common draft terms of merger containing the draft deed of incorporation for the new company must be approved by the general meeting of each of the companies which will cease to exist. The new company shall exist as from the last approval.

*(Law of 03 August 2011)*

- (4) The rules laid down in Article 26-1, paragraphs (2) to (4), shall not apply to the incorporation of the new company if an expert report is drawn up on the draft common terms of merger or if the conditions of Article 26-1, paragraphs (2) to (4), are not fulfilled.

*(Law of 10 June 2009)*

- (5) If the new company resulting from a cross-border merger is a company governed by Luxembourg law, the legality control of the notary referred to in Article 271, paragraph (2), also covers the part of the procedure regarding the formation of that company.

*(Law of 10 June 2009)*

**Sub-section III. - Acquisition of one company by another which holds 90% or more of the shares, corporate units and securities conferring voting rights in the first company**

*(Law of 07 September 1987)*

**Art. 278.**

*(Law of 10 June 2009)*

If the acquiring company holds all the shares, corporate units and other securities conferring voting rights in the companies to be acquired, those companies transfer all of their assets and liabilities to the acquiring company at the moment of their dissolution without liquidation. The operation shall be subject to the provisions of Section XIV, sub-section 1., with the exception of Article 261, paragraph (2) b), c) and d), Articles 265 and 266, Article 267, paragraph (1) d) and e), Article 274, paragraph (1) b) and Article 275.

The first paragraph shall not apply to *sociétés européennes* (SE).

In the case of a cross-border merger, the provisions of Article 265 and Article 267, paragraph (1) d), remain applicable.

*(Law of 07 September 1987)*

**Art. 279.**

*(Law of 23 March 2007)*

- (1) Article 263, paragraph (1), shall not apply where, in the circumstances described in the foregoing Article
- a) the publication prescribed in Article 262 is made as regards each of the companies involved in the operation, at least one month before the operation takes effect between the parties;
  - b) all the members of the acquiring company are entitled, at least one month before the operation takes effect between the parties, to inspect, at the registered office of that company, the documents specified in Article 267, paragraph (1) a), b) and c).

*(Law of 03 August 2011)*

(...)

- c) one or more members of the acquiring company holding at least 5% of the shares or corporate units in the subscribed capital are entitled, during the period provided for in b), to require that a general meeting of the acquiring company be called in order to decide whether to approve the merger. The meeting must be convened so as to be held within one month of the request for it to be held.

*(Law of 03 August 2011)*

For the purpose of paragraph 1, point b), Article 267, paragraphs (2), (3) and (4) are applicable.

*(Law 10 June 2009)*

- (2) In the case of a cross-border merger, Article 263, paragraph (1), shall not apply to the company or companies being acquired.

*(Law of 07 September 1987)*

**Art. 280.**

*(Law of 23 March 2007)*

Articles 278 and 279 shall also be applicable to the acquisition operations where all the shares, corporate units and other securities referred to in Article 278 in the company or companies being acquired belong to the acquiring company and/or to persons holding such shares, corporate units and securities in their own name but on behalf of that company.

*(Law 07 September 1987)*

**Art. 281.**

*(Law of 03 August 2011)*

- (1) If a merger by acquisition is carried out by a company which holds at least 90%, but not all, of the shares, corporate units and other securities conferring the right to vote at general meetings of the company or companies being acquired, the approval of the merger by the general meeting of the acquiring company shall not be necessary if the following conditions are fulfilled:

a) the publication prescribed in Article 262 is made, for the acquiring company, at least one month before the date of the general meeting of the company or companies being acquired which has been convened to decide whether to approve the draft terms of merger.

The provisions of this item a) shall not apply to cross-border mergers of companies;

b) all the members in the acquiring company are entitled, at least one month before the date indicated in a), to inspect, at the company's registered office, the documents indicated in Article 267, paragraph (1) a) and b) and, where applicable, in Article 267, paragraph (1) c), d), and e).

c) Article 264 c) shall apply.

For the purpose of paragraph 1, point b), Article 267, paragraphs (2), (3) and (4) are applicable.

- (2) If a cross-border merger by acquisition is carried out by a company which holds at least 90%, but not all, of the shares, corporate units and other securities conferring the right to vote at general meetings of the company or companies being acquired, the reports by an independent expert or experts and the documents necessary for verification shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

*(Law of 07 September 1987)*

**Art. 282.**

*(Law of 23 March 2007)*

Articles 265, 266 and 267 shall not apply in the case of a merger such as that referred to in the foregoing article, if the following conditions are fulfilled:

a) the minority members of the company being acquired are entitled to have their shares or corporate units acquired by the acquiring company;

b) in that case, they shall be entitled to receive consideration corresponding to the

value of their shares or corporate units;

c) in the event of disagreement regarding such consideration, it shall be determined by the judge presiding the chamber of the district court dealing with commercial matters, in the district where the registered office of the acquiring company is located and sitting as in urgent proceedings.

*(Law 07 September 1987)*

**Art. 283.**

*(Law of 23 March 2007)*

Articles 281 and 282 shall also apply to acquisition operations where at least 90%, but not all, of the shares, corporate units and other securities referred to in Article 281 in the company or companies being acquired are held by the acquiring company and/or by persons who hold such shares, corporate units and securities in their own name but on behalf of that company.

*(Law 07 September 1987)*

**Sub-section IV. - Other operations assimilated to mergers**

**Art. 284.**

*(Law of 23 March 2007)*

If, notwithstanding the provisions of Articles 259 and 260, the cash balance exceeds 10%, sub-sections I and II and Articles 281, 282 and 283 shall continue to apply.

They shall also apply if one or more companies enters into liquidation and transfers their assets and liabilities to another company against the issue of shares or corporate units in the latter company to the members of the former company, with or without a cash balance.

*(Law 07 September 1987)*

## **Section XV. – Demergers**

### **Art. 285.**

*(Law of 23 March 2007)*

This section shall apply to all companies with legal personality pursuant to this Law and to economic interest groupings.

A demerger can also occur if the company or economic interest grouping which is acquired or will cease to exist is the subject of bankruptcy proceedings, proceedings relating to composition with creditors or a similar procedure such as the suspension of payments, controlled management or a similar procedure instituting special management or supervision of one or more of those companies or economic interest groupings.

A company or an economic interest grouping as referred to in paragraph 1 may also enter into a demerger transaction with a foreign company or economic interest grouping, provided the latter's national law does not prohibit such a transaction.

If, in the provisions below, reference is made to a "company" or "companies", the term shall be understood, save where specified differently, as also referring to an "economic interest grouping(s)".

*(Law 07 September 1987)*

### **Art. 286.**

A demerger shall be carried out by acquisition, by the incorporation of new companies or by a combination of the two procedures.

*(Law 07 September 1987)*

### **Art. 287.**

*(Law of 10 June 2009)*

- (1) A demerger by acquisition is an operation whereby a company, following its dissolution without liquidation, either transfers all of its assets and liabilities to several companies or transfers, without dissolution, to one or more companies, part or all of its assets and liabilities in exchange for the allocation to the members of the company being demerged of shares or corporate units in the companies receiving contributions as a result of the demerger and, where applicable, a cash payment not exceeding 10% of the nominal value of the shares or corporate units allocated or, in the absence of a nominal value, of their accounting par value.

*(Law of 23 March 2007)*

- (2) A demerger by acquisition may also take place if the company being acquired is in liquidation, provided that it has not yet begun the distribution of its assets amongst its members.

*(Law of 07 September 1987)*

### **Art. 288.**

*(Law of 10 June 2009)*

- (1) A demerger by the incorporation of new companies is an operation whereby a company either transfers, following its dissolution without liquidation, all of its assets and liabilities to several newly incorporated companies or transfers, without dissolution, part or all of its assets and liabilities, to one or more newly incorporated companies in exchange for the allocation to its members of shares or corporate units in the receiving companies and, where applicable, a cash payment not exceeding 10% of the nominal value of the shares or corporate units allocated or, in the absence of a nominal value, of their accounting par value.



*(Law of 23 March 2007)*

- (2) A demerger by the incorporation of new companies may also take place where the company which will cease to exist is in liquidation, provided that it has not yet begun distribution of its assets amongst its members.

*(Law of 07 September 1987)*

### **Sub-section I. - Demerger by acquisition**

#### **Art. 289.**

*(Law of 23 March 2007)*

- (1) The management bodies of the companies involved in the demerger shall draw up draft terms of demerger.
- (2) The draft terms of demerger shall specify:
  - a) the form, name and registered office of the companies involved in the demerger;
  - b) the share or corporate unit exchange ratio and, where appropriate, the amount of the cash payment;
  - c) the terms for the delivery of shares or corporate units in the receiving companies;
  - d) the date as from which those shares or corporate units shall carry the right to participate in the profits, and any special conditions relating to that right;
  - e) the date from which the operations of the company being demerged shall be treated, for accounting purposes, as being carried out on behalf of one or other of the receiving companies;
  - f) all the rights conferred by the recipient company to members having special rights and to the holders of securities other than shares or corporate units, or the measures proposed concerning them;
  - g) any special advantage granted to the experts referred to in Article 294, to the members of the management bodies and to the auditors of the companies involved in the demerger;
  - h) the precise description and allocation of the assets and liabilities to be transferred to each of the receiving companies;
  - i) the allocation amongst the members of the company being demerger of shares or corporate units in the recipient companies, and the criterion upon which such allocation is based.
- (3)
  - a) If an asset is not allocated in the draft terms of demerger and if the interpretation of these terms does not make a decision on its allocation possible, the asset or the amount corresponding to the value thereof shall be allocated to all the receiving companies in proportion to the assets allocated to each of them in the draft terms of demerger.
  - b) If a liability is not allocated in the draft terms of demerger and if the interpretation of these terms does not make a decision on its allocation possible, each of the receiving companies shall be jointly and severally liable therefor.

The joint and several liability of the receiving companies shall, however, be limited to the net assets allocated to each of them.

*(Law of 7 September 1987; Law of 27 May 2016)*

#### **Art. 290.**

The draft terms of demerger shall be made public as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, for each of the demerging companies, at

least one month prior to the date of the general meeting called to rule on the proposed demerger.

(Law of 07 September 1987)

**Art. 291.**

(Law of 23 March 2007)

- (1) A demerger shall require the approval of the general meeting of each of the companies involved in the demerger and, where appropriate, of the holders of securities other than shares or corporate units. The decision requires that the conditions as to quorum, presence and majority laid down for amendments to the articles of association are fulfilled.
- (2) In *sociétés en commandite simple* and in *sociétés coopératives*, the voting rights of members are in proportion to their share in the corporate assets, and the quorum will be calculated in terms of the corporate assets.
- (3) The consent of all members is required:
  - 1° in the companies being demerged and in the receiving companies which are *sociétés en nom collectif*, *sociétés coopératives* whose members have unlimited and joint liability, civil companies or economic interest groupings;
  - 2° in the companies being demerged, if at least one of the receiving companies is:
    - a) a *société en nom collectif*;
    - b) a *société en commandite simple*;
    - c) a *société coopérative* whose members have unlimited and joint liability;
    - d) a civil company;
    - e) an economic interest grouping.

In the cases referred to in paragraph 1, items 1° and 2°, a), b) and c), the unanimous consent of the holders of corporate units not representing capital will be required.
- (4) In *sociétés en commandite simple* and in *sociétés en commandite par actions*, the consent of all the unlimited members will, in addition, be required.
- (5) If there is more than one category of shares, securities or corporate units, whether representing capital or not, and if the demerger results in a modification to their respective rights, Article 68 shall be applicable.

(Law of 07 September 1987)

**Art. 292.**

(Law of 23 March 2007)

Except in the cases referred to in Article 291, paragraphs (2) to (4), approval of the demerger by the general meeting of a receiving company is not necessary if the following conditions are fulfilled:

- a) the publication provided for in Article 290 is made, for the receiving company, at least one month before the date of the general meeting of the company being demerged convened to decide on the draft terms of demerger;
- b) all the members of the receiving company are entitled, at least one month before the date indicated in a), to inspect, at the registered office of that company, the documents indicated in Article 295, paragraph (1);
- c) one or more members of the receiving company holding at least 5% of the shares or corporate units of the subscribed capital are entitled, until the day following the holding of the general meeting of the company being demerged, to require the convening of a general meeting of the receiving company to decide whether to approve the demerger. The meeting must be convened so as to be held within one

month of the request for it to be held.

*(Law of 03 August 2011)*

For the purposes of paragraph 1, b), Article 295, paragraphs (2), (3) and (4) shall apply.

*(Law of 07 September 1987)*

**Art. 293.**

*(Law of 23 March 2007; Law of 27 May 2016; Law of 10 August 2016)*

- (1) The management bodies of each of the companies involved in the demerger shall draw up a detailed written report explaining the draft terms of demerger and setting out the legal and economic grounds for them and, in particular, the share or corporate unit exchange ratio and the criterion determining their allocation.
- (2) The report shall also indicate any special valuation difficulties which may have arisen. It shall also mention, if applicable, the production of the report on the verification of the contributions in kind, as per Article 26-1, paragraph (2), and its filing as per Chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
- (3) The management bodies of the company being demerged must inform the general meeting of the company being demerged and the management bodies of the receiving companies, so that they can inform the general meetings of their respective companies of any material change in the assets and liabilities which have occurred between the date of the preparation of the draft terms of demerger and the date of the general meeting of the company being demerged which is called to decide on the draft terms of demerger.

*(Law of 07 September 1987)*

**Art. 294.**

*(Law of 23 March 2007; Law of 23 July 2016)*

- (1) The draft terms of demerger must be the subject of an examination and written report addressed to the members. The examination shall be carried out and the report shall be drawn up, for each of the companies involved in the demerger, by one or more independent experts to be appointed by the management body of each of the companies involved in the demerger. *(Law of 18 December 2009)* The experts must be chosen from among the independent auditors.

However, it is possible to have the report to be drawn up by one or more independent experts for all the companies involved in the demerger. In that case, the appointment shall be made, at the joint request of the companies involved in the demerger, by the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of the company being demerged is located and sitting as in urgent proceedings.

- (2) In the report mentioned in paragraph (1), the experts must in any case declare whether, in their opinion, the share exchange ratio is or is not fair and reasonable. This declaration shall:
  - a) indicate the method or methods used to arrive at the proposed share exchange ratio;
  - b) indicate whether the method or methods are adequate in the circumstances and indicate the values arrived at by each of such methods, and give an opinion as to the relative importance attributed to such methods in determining the value adopted.

In addition, the report shall indicate any special valuation difficulties which may have arisen.

*(Law of 03 August 2011)*

- (3) The rules laid down in Article 26-1, paragraphs (2) to (4), shall not apply if an expert report is drawn up on the draft terms of demerger or if the circumstances envisaged by Article 26-1, paragraphs (2) to (4), are not fulfilled.
- (4) Each expert shall be entitled to obtain from the companies involved in the demerger all relevant information and documents and to carry out all necessary verifications.

*(Law of 07 September 1987)*

**Art. 295.**

*(Law of 23 March 2007)*

- (1) Every member shall be entitled to inspect the following documents at the registered office at least one month before the date of the general meeting convened to decide on the draft terms of demerger:
  - a) the draft terms of demerger;
  - b) the annual accounts and management reports for the three last financial years of the companies involved in the demerger;

*(Law of 03 August 2011)*

- c) where applicable, an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of demerger if the last annual accounts relate to a financial year which ended more than six months before that date;
- d) where applicable, the reports of the management bodies of the companies involved in the demerger, referred to in Article 293, paragraph (1).

*(Law of 10 June 2009)*

- e) where applicable, the reports referred to in Article 294.

*(Law of 03 August 2011)*

For the purposes of paragraph 1, c), an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 4 of the Law of 11 January 2008 on transparency requirements for issuers of securities, and makes it available to members in accordance with this paragraph.

*(Law of 23 March 2007)*

- (2) The accounting statement provided for in paragraph (1) c) shall be drawn up using the same methods and following the same presentation as the last balance sheet.

It shall not, however, be necessary to take a fresh physical inventory.

Moreover, the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:

- interim depreciation and provisions;
- material changes in actual value not shown in the books.

- (3) A full copy or, if so desired, a partial copy of the documents referred to in paragraph (1) may be obtained by any members on request and free of charge.

*(Law of 03 August 2011)*

If a member has consented to the use by the company of electronic means for communicating information, such copies may be provided by electronic mail.

- (4) A company shall be exempt from the requirement to make the documents referred to in paragraph (1) available at its registered office if, for a continuous period beginning at least one month before the day fixed for the general meeting called to decide on the

draft terms of demerger and ending no earlier than the conclusion of that meeting, it makes them available on its website.

Paragraph (3) shall not apply if the website gives members the possibility, throughout the period referred to in the first sub-paragraph of this paragraph, of downloading and printing the documents referred to in paragraph (1). In that case, however, the company shall make those documents available at its registered office where they can be viewed by the members.

*(Law of 07 September 1987)*

**Art. 296.**

*(Law of 10 June 2009)*

- (1) An examination of the draft terms of demerger and the expert report provided for in Article 294, paragraph 1, shall not be required if all the members and holders of other securities conferring the right to vote in each of the companies involved in the demerger have so agreed.
- (2) The requirements of Articles 293 and 295, paragraph (1), (c) and (d), do not apply if all the members and the holders of other securities conferring the right to vote in each of the companies involved in the demerger have so agreed.

*(Law of 23 March 2007)*

**Art. 296bis.**

- (1) A *société à responsabilité limitée*, a *société coopérative* or an economic interest grouping can participate in a demerger operation as a receiving company or economic interest grouping only if the shareholders or members of the company or economic interest grouping to be demerged fulfil the conditions required to become shareholder or member of such receiving company or economic interest grouping.
- (2) In *sociétés coopératives*, each member has the right, notwithstanding any provision to the contrary in the articles of association, to resign at any time and without having to satisfy any other condition, from the time the general meeting is called in order to decide on the demerger of the company for the benefit of receiving companies, at least one of which has a different legal form.

The resignation must be notified to the company by registered letter, deposited at the post office at least five days before the date of the meeting. Such resignation will be effective only if the demerger is approved.

The notice for the meeting must feature the text of the first and second sub-paragraphs of this paragraph.

*(Law of 07 September 1987)*

**Art. 297.**

*(Law of 03 August 2011)*

- (1) Creditors of the companies involved in the demerger whose claims pre-date the date of publication of the deeds recording the demerger provided for in Article 302 may, notwithstanding any agreement to the contrary, apply within two months of such publication to the judge presiding the chamber of the district court dealing with commercial matters in the district where the registered office of the debtor company is located and sitting as in urgent proceedings, to obtain adequate safeguards for any matured or unmatured debts where they can credibly demonstrate that, due to the demerger, the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company. The application shall be rejected if the creditor already has adequate safeguards or if such safeguards are not necessary, taking into account the financial situation of the companies involved in the demerger. The debtor company may cause the application to be turned down by paying the creditor, even if it is a term debt.

If the safeguards are not provided within the time limit prescribed, the debt shall immediately fall due.

(Law of 23 March 2007)

- (2) Insofar as a creditor or bondholder of the company being demerged has not obtained satisfaction from the company to which the obligation has been transferred in accordance with the draft terms of demerger, the receiving companies shall be jointly and severally liable for that obligation.

The joint and several liability of the receiving companies shall, however, be limited to the net assets allocated to each of them.

- (3) If the company being demerged is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* whose members have unlimited and joint liability, a civil company or an economic interest grouping, the members of the *société en nom collectif*, the unlimited members of the *société en commandite simple* or *société en commandite par actions* or the members of the *société coopérative*, civil company or economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the effectiveness vis-à-vis third parties of the deed of demerger pursuant to Article 302.
- (4) If the receiving company is a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative* whose members have unlimited and joint liability, a civil company or an economic interest grouping, the members of the *société en nom collectif*, the unlimited members of the *société en commandite simple* or *société en commandite par actions* or the members of the *société coopérative*, civil company or economic interest grouping remain severally or jointly liable, as applicable, vis-à-vis third parties for the obligations of the dissolved company which pre-date the effectiveness vis-à-vis third parties of the demerger and which, in this latter case, have been transferred to the receiving company in accordance with the draft terms of demerger and Article 289, (3), b).

They may, however, be exempted from this liability by an express provision to this effect in the draft terms of demerger and the deed of demerger, which will be valid vis-à-vis third parties in accordance with Article 302.

(Law of 07 September 1987)

**Art. 298.**

Without prejudice to the rules governing the collective exercise of their rights, Article 297 shall apply to bondholders of the companies involved in the demerger, unless the demerger has been approved by a meeting of the bondholders or by the bondholders individually.

(Law of 07 September 1987)

**Art. 299.**

(Law of 23 March 2007)

- (1) The holders of securities, other than shares or corporate units, to which special rights are attached must be given rights in the receiving companies against which such securities may be invoked in accordance with the draft terms of demerger, at least equivalent to those they possessed in the company being demerged.
- (2) Paragraph (1) shall not apply if the modification to those rights was approved by a meeting of the holders of such securities, proceeding in accordance with the conditions as to quorum and majority provided for in Article 291.
- (3) In the event of failure to convene the meeting provided for in the foregoing paragraph or if such a meeting refuses to accept the proposed alteration, the securities concerned shall be redeemed at the price corresponding to their valuation in the draft terms of demerger, and verified by the experts provided for in Article 294.

*(Law of 07 September 1987)*

**Art. 300.**

*(Law of 23 March 2007)*

- (1) The minutes of the general meetings which decide upon the demerger shall be drawn up in the form of a notarial deed; the same shall apply to the draft terms of demerger if the demerger does not need to be approved by the general meetings of all the companies involved in the demerger.
- (2) The notary must verify and certify the existence and validity of the legal deeds and formalities required of the company in respect of which he is acting and of the draft terms of demerger.
- (3) *Sociétés en nom collectif, sociétés en commandite simple, sociétés coopératives*, civil companies and economic interest groupings shall, for the establishment of the deeds referred to in (1), adopt the form of a notarial deed or private deed, as is provided for in relation to their incorporation.

*(Law of 07 September 1987)*

**Art. 301.**

The demerger shall take effect when the concurring decisions of the companies involved have been adopted.

**Art. 302.**

*(Law of 27 May 2016)*

- (1) The demerger shall have no effect vis-à-vis third parties until after the publication in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, for each of the demerging companies.
- (2) Any receiving company may carry out the publication formalities in respect of the company being demerged.

**Art. 303.**

*(Law of 23 March 2007)*

- (1) The demerger shall have the following consequences, ipso jure and simultaneously:
  - a) the transfer, both between the company being demerged and the receiving companies and vis-à-vis third parties, of all the assets and liabilities of the company being demerged to the receiving companies; such transfer shall be made with the assets and liabilities being divided in accordance with the allocation provided for in the draft terms of demerger or in Article 289, paragraph (3);
  - b) the members of the company being demerged become members of one or more of the receiving companies, in accordance with the allocation provided for in the draft terms of demerger;
  - c) the company being demerged ceases to exist;
  - d) the cancellation of the shares or corporate units of the company being demerged held by the receiving company or companies or by the company being demerged or by a person acting in his own name but on behalf of those companies.
- (2) By way of derogation from paragraph (1) a), the transfer of industrial and intellectual property rights and of ownership or other rights on assets other than collateral established on movable and immovable property will be valid vis-à-vis third parties under the conditions provided for in the specific laws governing such operations. The receiving company or companies may complete such formalities themselves.

*(Law of 07 September 1987)*

**Art. 304.**

*(Law of 25 August 2006)*

The shareholders of the company being demerged may individually take proceedings and exercise a liability action against the members of the management bodies and the experts of the company being demerged to obtain compensation for any damage which they may have suffered as a result of the misconduct of the members of the management bodies in preparing for and carrying out the demerger, or of the experts in the discharge of their duties. Any liability shall be joint and several for the members of the management bodies or the experts of the company being demerged or, where appropriate, for all combined. However, each of them may relieve himself of any liability if he proves that no misconduct is attributable to him personally.

*(Law 07 September 1987)*

**Art. 305.**

*(Law of 23 March 2007)*

The avoidance of a demerger may occur in the following circumstances:

- a) the avoidance must be ordered by a court decision;
- b) where the demerger has taken effect pursuant to Article 301, it may be avoided only on the grounds that there was no notarial deed or private deed, as applicable, or if it is established that the resolution of the general meeting of any of the companies involved in the demerger is void;
- c) an action for avoidance may not be brought after the expiry of a period of six months as from the date on which the demerger took effect vis-à-vis the person alleging nullity, or if the situation has been rectified;
- d) where it is possible to remedy a defect liable to render the demerger void, the competent court shall grant the companies concerned a period of time within which to rectify the situation;

*(Law of 27 May 2016)*

- e) the decision announcing the demerger void must be published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
- f) a third-party application to set aside the decision announcing the demerger void will become inadmissible after six months from when the decision is published as per Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
- g) the court order declaring a demerger void shall not of itself affect the validity of obligations owed by or to the receiving companies which arose before publication of the court order and after the date referred to in Article 301;
- h) each of the receiving companies shall be liable for its obligations which arose after the date on which the demerger took effect and before the date on which the court order declaring the demerger void was published. The company being demerged shall also be liable for such obligations. The liability of the recipient company shall, however, be limited to the net assets allocated to it.

*(Law of 07 September 1987)*

**Art. 306.**

*(Law of 03 August 2011)*

Without prejudice to Article 292, where the receiving companies are together the holders of



all the shares or corporate units in the company being demerged and of all other securities conferring the right to vote at general meetings, the approval of the demerger by the general meeting of the company being demerged in accordance with Article 291, paragraph (1), shall not be necessary if the following conditions are fulfilled:

- a) the publication prescribed in Article 290 is made as regards each of the companies involved in the operation, at least one month before the operation takes effect between the parties;
- b) all the members of the companies involved in the operation are entitled, at least one month before the operation takes effect between the parties, to inspect at the registered office of their company the documents indicated in Article 295, paragraph (1);
- c) if a general meeting of the company being demerged is not convened to decide whether to approve the demerger, the information provided for in Article 293, paragraph (3), shall cover any material change in the assets and liabilities occurring after the date of preparation of the draft terms of demerger.

For the purpose of paragraph 1, b), Article 295, paragraphs (2), (3) and (4) as well as Article 296 are applicable.

*(Law of 07 September 1987)*

#### **Sub-section II. - Demerger by the incorporation of new companies**

##### **Art. 307.**

*(Law of 23 March 2007)*

- (1) Articles 289, 290, 291, 293, and Article 294, paragraphs (1), (2) and (4), and Articles 295 to 305 shall apply to demergers by the incorporation of new companies.

For such purpose, the expression "companies involved in the demerger" shall refer to the company being demerged, and the expression "receiving company" shall refer to each of the new companies.

- (2) The draft terms of demerger shall indicate, in addition to the information referred to in Article 289, paragraph (2), the form, name, and registered office of each of the new companies.
- (3) The draft terms of demerger containing the draft deed of incorporation for each of the new companies must be approved by the general meeting of the company being demerged.

*(Law of 03 August 2011)*

- (4) The rules laid down in Article 26-1, paragraphs (2) to (4), shall not apply if an expert report is drawn up on the draft terms of demerger or if the circumstances envisaged by Article 26-1, paragraphs (2) to (4), are not fulfilled.
- (5) The rules laid down in Articles 293, 294 and 295, paragraph (1), c), d) and e), shall not apply to the incorporation of new companies where the shares or corporate units in each of the new companies are allocated to the members of the company being demerged in proportion to their rights in the capital of that company.

*(Law of 07 September 1987)*

**Sub-section III. - Other operations assimilated to demerger**

**Art. 308.**

*(Law of 23 March 2007)*

If, notwithstanding the provisions of Articles 287 and 288, the cash payment exceeds 10%, sub-sections I and II shall continue to be applicable.

The same shall apply where a company enters into liquidation and transfers its assets and liabilities to more than one company against the issue of shares or corporate units in the latter companies to the members of the former company, with or without a cash payment.

*(Law of 23 March 2007)*

**Section XVbis. Transfers of assets, branch of activity transfers and all assets and liabilities transfers**

**Art. 308bis-1.**

This section shall apply to all companies with legal personality pursuant to this Law and to economic interest groupings.

If, in the provisions below, reference is made to a "company" or "companies", that term shall be understood, as also referring to an "economic interest grouping(s)", save where specified differently.

**Art. 308bis-2.**

The company contributing a part of its assets to another company, and the receiving company, may jointly determine to submit the transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results ipso jure in the transfer to the receiving company of the assets and liabilities attached thereto.

**Art. 308bis-3.**

The contribution of a branch of activity is a transaction by which a company contributes, without dissolution, to another company, one of its branches of activity as well as the liabilities and assets attached thereto in exchange for the issue of shares or corporate units in the receiving company.

The company which contributes a branch of activity to another company, and the receiving company, may jointly determine to submit the transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results ipso jure in the transfer to the receiving company of the assets and liabilities attached thereto.

A branch of activity is a division which, from a technical and organisational point of view, exercises an independent activity and is capable of functioning by its own means.

**Art. 308bis-4.**

An all assets and liabilities contribution is a transaction by which a company contributes, without dissolution, all its assets and liabilities to one or more existing or new companies in exchange for the issue of shares or corporate units in the receiving company(ies).

The company making the all assets and liabilities contribution to another company, and the receiving company, may submit the transaction to the provisions of Articles 285 to 308, with the exception of Article 303. In such case, the contribution results ipso jure in the transfer to the receiving company of the assets and liabilities attached thereto.

**Art. 308bis-5.**

In the case of a transfer of assets or a branch of activity transfer or an all assets and liabilities transfer, with or without consideration, falling within the definitions of Articles 308bis-3 and 308bis-4, the parties may submit the transaction to the regime provided for in Articles 285 to 308, with the exception of Article 303. In such case, the transfer results ipso jure in the transfer to the receiving company of all of the assets and liabilities attached thereto.

This determination is expressly mentioned in the draft terms of transfer established pursuant to Article 289, and in the transfer deed filed pursuant to Article 302. Such draft terms and such deed are, where applicable, drawn up in the form of a notarial deed.

## Section XVter. – Transfers of business assets

### Art. 308bis-6.

Companies, economic interest groupings and natural persons may transfer all or part of their business assets, comprising all assets and liabilities, to another person within the framework of a professional assignment.

Articles 285 to 308, with the exception of Article 303, shall apply where the transferring and the receiving persons are companies with legal personality pursuant to this Law or economic interest groupings, and where the members of the transferring company or grouping receive shares or corporate units in the receiving company or grouping.

A company, economic interest grouping or natural person, as referred to in the paragraph 1, may also enter into a transaction for the transfer of their business assets with a foreign company, economic interest grouping or natural person, provided the latter's national law does not prohibit such a transaction.

The transfer of business assets results ipso jure in the transfer to the receiving company of the assets and liabilities attached thereto.

### Art. 308bis-7.

The persons participating in the transfer enter into the transfer agreement, if applicable, following approval of their general meeting, subject to the quorum, presence and majority conditions provided for the amendment of the articles of association. The provisions of Article 291, paragraphs (2) to (5), as well as of Article 292 shall, as the case may be, be complied with.

Such agreement must be in writing. The provisions of Article 300 must be complied with.

### Art. 308bis-8.

- (1) The management bodies of the persons involved in the transfer shall draw up draft terms of transfer.
- (2) The draft terms of transfer shall specify: a) the legal form, corporate denomination or name, and registered office or domicile of the persons involved in the transfer; b) an inventory clearly indicating the assets and liabilities to be transferred; c) the total value of the assets and liabilities to be transferred; d) the consideration, if any.
- (3) The transfer of the assets is authorised only if the inventory shows an excess of assets.
- (4) a) If an asset cannot be allocated on the basis of the draft terms of transfer, and if the interpretation of these terms does not make it possible to make a decision as to its allocation, said asset shall remain with the transferring person.  
b) If a liability cannot be allocated on the basis of the draft terms of transfer, and if the interpretation of those terms does not make it possible to make a decision as to its allocation, the transferring person and the receiving person shall be jointly and severally liable therefor.

The joint and severable liability of the receiving person shall, however, be limited to the net assets allocated to it.

### Art. 308bis-9.

*(Law of 27 May 2016)*

The transfer proposal shall be made public as per chapter Vbis, Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, for each of the companies participating in the transfer, at least one month prior to the signing of the transfer contract, in other words, where applicable, at least one month prior to the general meeting called to rule on the transfer proposal.

**Art. 308bis-10.**

The management bodies of each of the persons involved in the transfer shall draw up, in order to allow for the decision to be taken, a detailed written report explaining the drafts terms of transfer and setting up the legal and economic grounds for them, namely:

- a) the purpose and consequences of the transfer of the assets;
- b) the transfer agreement;
- c) the consideration for the transfer.

**Art. 308bis-11.**

- (1) The transferring person shall be jointly and severally liable during three years with the receiving person for the satisfaction of the debts which pre-date the transfer of the assets.
- (2) Any action against the transferring person prescribes at the latest three years after the publication of the transfer of the assets. If the claim matures after that publication, the prescription runs as from that maturity.
- (3) The persons involved in the transfer of the assets must, upon the request of their creditors referred to in (1), provide security:
  - a) if the joint and severable liability terminates before the end of the three-year period; or
  - b) if the creditors establish that it is likely that the joint and severable liability is an insufficient safeguard.

The creditors shall formulate their claim to that end in accordance with the procedure provided for in Article 297, which shall be applicable by analogy.

- (4) The creditors of the transferring person and of the receiving person whose claims are not comprised in the transferred assets and pre-date the publication of the transfer provided for in Article 308bis-12, may also apply for the provision of security in accordance with the procedure provided for in Article 297.
- (5) The persons involved in the transfer of the assets who are ordered to provide security may instead pay the claim to the extent that this does not cause any damage to the other creditors.

**Art. 308bis-12.**

*(Law of 27 May 2016)*

The transfer of assets shall take effect when the concurring decisions of the persons concerned have been adopted.

The transfer of assets shall have no effect vis-à-vis third parties until after the publication in accordance with Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, for each of the companies participating in the transfer.

**Art. 308bis-13.**

- (1) The transfer of assets shall give rise, ipso jure, to the transfer to the receiving person(s) of all the assets and liabilities specified in the inventory.
- (2) By way of exception to paragraph (1), the transfer of industrial and intellectual property rights and the ownership or other rights on assets other than collateral, established on moveable and immovable property, will be valid vis-à-vis third parties under the conditions provided for in the specific laws governing such transactions. The receiving person(s) may complete such formalities themselves.

**Art. 308bis-14.**

The avoidance of a transfer of business assets may occur only in the following

circumstances:

- a) the avoidance must be ordered by a court decision;
- b) if the transfer of the assets has taken effect pursuant to Article 308bis-12, paragraph 1, it may be avoided only on the grounds that there was no written deed or, if applicable, in case of breach of the provisions of Article 300, or if it is established that the resolution of the general meeting of either of the companies involved in the transfer of the assets is void;
- c) an action for avoidance may not be brought after the expiry of a period of six months from the date on which the transfer of assets took effect vis-à-vis the person alleging nullity, or if this situation has been rectified;
- d) if it is possible to remedy a defect liable to render the transfer of assets void, the competent court shall grant the companies in question a period of time within which to rectify the situation;

(Law of 27 May 2016)

- e) the decision announcing the void of the asset transfer must be published in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
- f) a third-party application to set aside the decision announcing the void of the asset transfer will become inadmissible after six months from when the decision is published as per Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings;
- g) the court order declaring a transfer of assets void shall not of itself affect the validity of the obligations owed by or to the receiving person which arose before the publication of the court order and after the date referred to in Article 308bis-12, paragraph 1;
- g) the receiving person shall be liable for its obligations which arose after the date on which the transfer of assets took effect and before the date on which the court order declaring the transfer of assets void was published. The transferring person shall also be liable for such obligations. The liability of the receiving person shall, however, be limited to the net assets allocated to it.

(Law of 10 August 2016)

### Section XVquater. - Conversion

#### Art. 308bis-15.

This section governs the different types of conversion listed in Article (3), excluding:

- the conversion of a *société européenne* (SE) into a *société anonyme*, and the conversion of a *société anonyme* into a *société européenne* (SE), covered respectively in Articles 31-1 and 31-2; and
- the conversion of a *société coopérative* into a *société coopérative européenne* (SEC), and the conversion of a *société coopérative européenne* (SEC) into a *société coopérative*, covered respectively by Articles 137-20 to 137-22 and 137-59 to 137-61.

When applying the following provisions, a *société coopérative* organised as a *société anonyme* is governed by the rules for a *société coopérative*.

Articles 308bis-17 to 308bis-19 only apply to conversions:

- of a civil company, an economic interest grouping, a *société en nom collectif*, a *société en commandite simple* or a *société coopérative* into a *société anonyme*, or into a *société en commandite par actions*; and

- of a *société à responsabilité limitée* into a *société anonyme* or into a *société en commandite par actions*, where the *société à responsabilité limitée* has received a contribution in kind or a quasi-contribution as per Article 26-2 in the two years prior to the decision by the partners to undertake the conversion into a *société anonyme* or a *société en commandite par actions*, and where this contribution or quasi contribution has not been the subject of a report by a company auditor produced as per Article 26-1(2) or Article 26-2 and where such report would be required for a *société anonyme* or a *société en commandite par actions*.

**Art. 308bis-16.**

Prior to the conversion, a report shall be produced summarising the assets and liabilities of the company, as of a date no more than six months prior to the date of the general meeting called to rule on the conversion; if the most recent annual statements are for a financial year which ended less than six months before the date of the meeting called to rule on the conversion those annual statements will be used to summarise the assets and liabilities of the company.

If Articles 308-bis-17 to 308bis-19 do not apply by virtue of the provisions of Article 308bis-15, the financial report described in the previous subparagraph shall not be required if all members and the holders of other units with voting right so decide.

If in companies other than *sociétés en nom collectif*, *sociétés coopératives à responsabilité illimitée*, civil companies and economic interest groupings, the net assets are less than the share capital stated in the aforementioned report, the report shall in its conclusion state the difference.

In *sociétés en nom collectif*, *sociétés coopératives à responsabilité illimitée*, civil companies and economic interest groupings, this report shall state the share capital of the company after its conversion. This share capital may not be higher than the net assets as stated in the aforementioned report.

**Art. 308bis-17.**

A company auditor appointed by the management body or, in *sociétés en nom collectif*, *sociétés coopératives à responsabilité illimitée*, civil companies and economic interest groupings, by the general meeting, shall comment on this report and in particular state whether the net assets have been overestimated.

If, in the case stated in Article 308bis-16, subparagraph 3, the net assets are less than the share capital stated in the report summarising the company's assets and liabilities, the report shall in its conclusion state the difference.

**Art. 308bis-18.**

Unless all members and holders of other units with voting right decide otherwise, the management body shall produce a report on the draft terms of conversion, and such report shall be announced on the agenda of the meeting called to rule on it. This report shall enclose either the report summarising the company's assets and liabilities or the most recent annual accounts, as applicable.

**Art. 308bis-19.**

Any member or any other person authorised by law to attend the meeting and who has completed the formalities required by the articles of association for admission to the meeting has the right to obtain, fifteen days prior to the meeting, and where such documents are required, a free copy of the financial report or the most recent annual accounts, a copy of the report by the management body and the report from the company auditor, as well as the draft changes to the articles of association.

**Art. 308bis-20.**

The omission of any of the reports required by Articles 308bis-17 and 308bis-18 shall entail the voidance of the decisions adopted by the general meeting.

**Art. 308bis-21.**

- (1) Without prejudice to the special provisions stated in this Article and unless the articles of association contain stricter provisions, the general meeting may only decide to convert the company if it meets the following quorums for presence and majority:
  1. a conversion proposal is only approved if it meets the presence and majority requirements for amending the articles of association;
  2. In *sociétés en commandite simple* and in *sociétés coopératives*, the voting rights of members are in proportion to their share in the corporate assets, and the quorum will be calculated in terms of the corporate assets.
- (2) If there is more than one category of shares or corporate units, whether representing capital or not, and if the conversion results in a modification to their respective rights, Article 68 shall be applicable.
- (3) The conversion of a *société en commandite simple* or of a *société en commandite par actions* also requires the approval of all general partners.

For the conversion into a *société en commandite par actions* or into a *société en commandite simple*, the approval of all partners named as general partners is required.
- (4) The consent of all members is also required:
  1. for decisions to convert into a *société en nom collectif*, *société en commandite simple*, economic interest grouping or civil company;
  2. for decisions to convert into a *société coopérative à responsabilité illimitée* from a *société en commandite simple*, *société en commandite par actions*, *société à responsabilité limitée* or a *société anonyme*;
  3. for decisions to convert from a *société en nom collectif*, *société coopérative à responsabilité illimitée*, economic interest grouping or civil company;
  4. if the articles of association state that it cannot adopt another form. Such clause in the articles of association may only be amended in the same conditions;
- (5) In *sociétés coopératives* each member has the right, notwithstanding any provision to the contrary of the articles of association, to withdraw at any time during the financial year and without having to satisfy any other condition, upon the calling of the general meeting for the purpose of deciding on the conversion of the company.

The resignation must be notified to the company by registered letter, deposited at the post office at least five days before the date of the meeting. Such resignation will be effective only if the conversion is approved.

The convening notice to the meeting must transcribe the contents of this paragraph, subparagraphs 1 and 2.

**Art. 308bis-22.**

Immediately after the conversion decision, the articles of association of the company in their new form shall be ratified subject to the same presence and majority requirements as those required for the conversion.

Otherwise the conversion decision shall be null.

**Art. 308bis-23.**

On pain of nullity, the conversion shall be formalised in a notarised deed, except for conversion between two forms of a company or grouping which may be constituted by private deed. The deed of conversion shall, if applicable, transcribe the conclusion of the report produced by the company auditor.

The deed of conversion shall be published in full, and the articles of association shall be published simultaneously, in full or as an extract, as per Articles 5 to 8.



The conversion is enforceable against third parties in accordance with the rules laid down in Chapter Vbis of Title I of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

For conversions into an economic interest grouping, Article 7 of the amended Law of 25 March 1991 on economic interest groupings shall apply. "

**Art. 308bis-24.**

Provisions concerning the requirements and audit of contributions in kind, the liability of the founders or managers in cases of capital increases or of constituting a company by means of subscriptions, do not apply to conversions into a *société à responsabilité limitée*, a *société coopérative à responsabilité limitée*, a *société anonyme* or a *société en commandite par actions*."

**Art. 308bis-25.**

The partners or members of a *société en nom collectif*, a *société coopérative à responsabilité illimitée*, an economic interest grouping or a civil company and the members of the management body of the company to be converted are required, individually or jointly and severally as applicable, towards all interested parties, notwithstanding any provision to the contrary, for an overestimation of the net assets in the report described in Article 308bis-16.

**Art. 308bis-26.**

For conversions of a *société en nom collectif*, a *société en commandite simple*, a *société en commandite par actions*, a *société coopérative à responsabilité illimitée*, an economic interest grouping or a civil company, the members of the *société en nom collectif*, of the *société en commandite simple*, of the *société coopérative*, of the economic interest grouping and of the civil company remain liable, individually or jointly and severally, as applicable, towards third parties, for undertakings made by the company prior to when the deed of conversion became enforceable against third parties as per the requirements of Chapter Vbis, Title 1 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

For conversions into a *société en nom collectif*, a *société commandite simple*, a *société en commandite par actions*, a *société coopérative à responsabilité illimitée*, an economic interest grouping or a civil company, the members of the *société en nom collectif*, of the *société en commandite simple*, of the *société coopérative*, of the economic interest grouping and of the civil company shall be liable individually or jointly and severally, as applicable, towards third parties, for undertakings made by the company prior to the deed of conversion.

For conversions into a *société coopérative à responsabilité limitée* from a *société anonyme*, a *société en commandite par actions* or a *société à responsabilité limitée*, the fixed part of the share capital is equal to the amount of the share capital of the company prior to its conversion.

(Law of 11 July 1988)

## Section XVI. - Consolidated accounts

### Sub-section 1. - Conditions for the preparation of consolidated accounts

#### Art. 309.

(Law of 10 December 2010; Law of 10 August 2016)

- (1) Each *société anonyme*, *société en commandite par actions*, *société par actions simplifiée* or *société à responsabilité limitée* and each company referred to in Article 77, paragraph 2, items 2° and 3° of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, except for credit institutions, insurance and reinsurance companies and pension savings companies with variable capital, must draw up consolidated accounts and a consolidated management report if it:
  - a) has a majority of the shareholders' or members' voting rights in another undertaking; or
  - b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and is, at the same time, a shareholder in or member of that undertaking; or
  - c) is a shareholder in or member of an undertaking, and controls alone, pursuant to an agreement entered into with other shareholders in or members of that undertaking, a majority of shareholders' or members' voting rights in that undertaking.

(Law of 25 August 2006)

A *société européenne* (SE) having its registered office in the Grand-Duchy of Luxembourg shall be governed by the provisions applicable to *sociétés anonymes*.

(Law of 11 July 1988)

- (2) For the purposes of this section, the company having the rights set out in paragraph (1) shall be referred to as the parent company. The undertakings with regard to which the rights set out above are held shall be referred to as subsidiary undertakings.

(Law of 18 December 2015)

- (3) Credit institutions and insurance and reinsurance companies are excluded from the scope of this section, with the exception of sub-section 4bis concerning the consolidated report on payments made to governments, which does apply to them.

(Law of 11 July 1988)

#### Art. 310.

- (1) For the purposes of Article 309, paragraph (1), the voting rights and the rights of appointment and removal of any subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent company or of any other subsidiary undertaking must be added to those of the parent company.
- (2) For the purposes of Article 309, paragraph (1), the rights mentioned in paragraph (1) of this Article must be reduced by the rights:
  - a) attaching to shares or corporate units held on behalf of a person who is neither the parent company nor a subsidiary undertaking thereof;or
  - b) attaching to shares or corporate units held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

- (3) For the purposes of Article 309, paragraph (1), items a) and c) the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attached to the shares or corporate units held by that undertaking itself, by a subsidiary undertaking of that undertaking, or by a person acting in their own name but on behalf of those undertakings.

**Art. 311.**

- (1) Without prejudice (Law of 10 December 2010) to Article 317, a parent company and all of its subsidiary undertakings shall be consolidated, regardless of where the registered offices of such subsidiary undertakings are situated.
- (2) For the purposes of paragraph (1), any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent company which is the parent of the undertakings to be consolidated.

*(Law of 10 December 2010)*

- (3) Each parent company referred to in Article 309 which principally holds one or more subsidiary undertakings to be consolidated which are credit institutions or insurance undertakings may apply the provisions of Part III of the amended Law of 17 June 1992 relating to the annual accounts and consolidated accounts of credit institutions governed by Luxembourg law and the obligations regarding publication of the accounting documents of branches of credit institutions and financial institutions governed by foreign law for the purpose of consolidation or the provisions of Part III of the amended Law of 8 December 1994 on the annual accounts and consolidated accounts of insurance and reinsurance undertakings governed by Luxembourg law – the obligations regarding the drawing up and publication of the accounting documents of branches of insurance undertakings governed by foreign law, respectively. The parent company which elects this option is exempted from drawing up consolidated accounts in accordance with Article 309.

**Art. 312.** (Law of 18 December 2015)

(...)

**Art. 313.**

*(Law of 10 December 2010; Law of 18 December 2015)*

- (1) By way of derogation from Article 309, paragraph (1), a parent company shall be exempted from the obligation to draw up consolidated accounts and a consolidated management report if, at the balance sheet date of the parent company, the undertakings who would have to be consolidated do not together, on the basis of their latest annual accounts, exceed at least two of the three criteria below:
- balance sheet total: 20 million euros
  - net turnover: 40 million euros
  - average number of full-time staff employed during the financial year: 250.
- (2) The figures of the criteria relating to the balance sheet total and net turnover may be increased by 20%, if the set-off referred to in Article 322, paragraph (1), and the elimination referred to in Article 329, paragraph (1), items (a) and (b), are not effected.
- (3) This exemption shall not apply to those companies if one of the companies to be consolidated is a company whose securities are admitted to official trading on a regulated market of a Member State of the European Community within the meaning of Article 1, item 11 of the amended law of 13 July 2007 on markets in financial instruments.
- (4) Article 36 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply.

(5) The amounts indicated above may be amended by Grand-Ducal Regulation.

*(Law of 11 July 1988)*

**Art. 314.**

(1) By way of derogation from Article 309, paragraph (1), any parent company which is also a subsidiary undertaking shall be exempted from the obligation to draw up consolidated accounts and a consolidated management report if its own parent undertaking is governed by the law of a Member State of the European Community, in the following two cases:

a) if that parent company holds all of the corporate units or shares in the exempted company. The corporate units or shares in that company held by members of its administrative, management or supervisory bodies pursuant to a legal obligation or the articles of association shall be ignored for this purpose.

b) if that parent company holds 90% or more of the corporate units or shares in the exempted company and the remaining shareholders in or members of that company have approved the exemption.

(2) The exemption shall be conditional upon compliance with all of the following conditions:

a) the exempted company and, without prejudice to (Law of 10 December 2010) Article 317, all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State of the European Community.

b) aa) the consolidated accounts referred to in item a) and the consolidated management report of the larger body of undertakings must be drawn up by the parent company of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed.

*(Law of 27 May 2016)*

bb) the consolidated accounts referred to in item a) and the consolidated management report referred to in item aa) and the report (Law of 10 December 2010) by the person or persons responsible for auditing those accounts shall be published for the exempted company in the manner prescribed by Article 11bis of this Law.

c) the notes to the annual accounts of the exempted company must include:

aa) the name and registered office of the parent company which draws up the consolidated accounts referred to in item a); and

bb) the exemption from the obligation to draw up consolidated accounts and a consolidated management report.

*(Law of 10 December 2010)*

(3) This exemption shall not apply to the companies whose securities are admitted to official trading on a regulated market of a Member State of the European Community within the meaning of Article 4, paragraph (1), item 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

*(Law of 11 July 1988)*

**Art. 315.**

In cases not covered by Article 314, paragraph (1), any parent company which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated management report, provided that all the

conditions set out in Article 314, paragraph (2), are fulfilled and that the shareholders in or members of the exempted undertaking who own at least 10% of the subscribed capital of that undertaking, if the exempted undertaking is a *société anonyme* or a *société en commandite par actions*, and at least 20%, if the exempted undertaking is a *société à responsabilité limitée*, have not requested the preparation of consolidated accounts at least six months before the end of the financial year.

**Art. 316.**

By way of derogation from Article 309, paragraph (1), any parent company which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State of the European Community, is exempted from the obligation to draw up consolidated accounts and a consolidated management report if all of the following conditions are fulfilled:

- a) the exempted company and, without prejudice to (Law of 10 December 2010) Article 317, all of its subsidiary undertakings are consolidated in the accounts of a larger body of undertakings;
- b) the consolidated accounts referred to in item a) and, where appropriate, the consolidated management report must be drawn up in accordance with the provisions of this section or in a manner equivalent thereto,
- c) the consolidated accounts referred to in item a) must have been audited by one or more person authorised to audit accounts under the national law governing the undertaking which drew them up.

*(Law of 30 July 2013)*

Article 314, paragraph (2), item b) bb and item c), and paragraph (3), as well as Article 315 shall apply.

**Art. 317.**

*(Law of 18 December 2015)*

- (1) An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 319, paragraph (3).
- (2) If two or more undertakings satisfy the requirements of paragraph (1), they must nevertheless be included in consolidated accounts if they are material for the purposes of Article 319, paragraph (3).

*(Law of 30 July 2013; Law of 18 December 2015)*

*(2bis) (...)*

- (3) In addition, an undertaking need not be included in consolidated accounts if:
  - a) severe long-term restrictions substantially hinder the parent company in the exercise of its rights over the assets or management of that undertaking.
  - b) the information necessary for the preparation of consolidated accounts in accordance with this Law cannot be obtained without disproportionate expense or undue delay.
  - c) the shares or corporate units of that undertaking are held exclusively with a view to their subsequent resale.

**Art. 318.** *(Law of 10 December 2010; Law of 18 December 2015)*

Without prejudice to Article 51, paragraph (1), point (b) of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, or to Article 313 of this section, any parent company, including a public interest entity in the sense of sub-section 4bis, is exempted from the obligation imposed by Article 309 if:

- a) it only has subsidiary undertakings, who present a non material interest, whether

individually or collectively; or

b) all its subsidiary undertakings may be excluded from the scope of consolidation by virtue of Article 317.

## **Sub-section 2. - Manner of preparation of consolidated accounts**

### **Art. 319.**

- (1) Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts.

These documents shall constitute a composite whole.

*(Law of 10 December 2010)*

Each company referred to in Article 309, paragraph (1), may include other statements in the consolidated accounts in addition to the documents referred to in the first subparagraph.

- (2) Consolidated accounts shall be drawn up clearly and in accordance with this Law.
- (3) Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included in the scope of consolidation.
- (4) If the application of the provisions of this section would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.
- (5) If, in exceptional cases, the application of a provision of Articles 320 to 338 and Article 342 is incompatible with the obligation provided in paragraph (3), that provision must be departed from in order to give a true and fair view within the meaning of paragraph (3).

Any such departure must be disclosed in the notes to the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss.

*(Law of 18 December 2015)*

- (6) For the purposes of this section, the term "material" means the status of information whose omission or inaccuracy can be reasonably assumed to carry a risk of affecting the decisions taken by users based on the group's consolidated accounts. The materiality of each element is assessed in comparison with similar elements.

### **Art. 320.**

- (1) With respect to the layout of the consolidated accounts, (Law of 10 December 2010) Articles 28 to 34, 37 to 46 and 48 to 50 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply, without prejudice to the provisions of this section and taking account of the indispensable adjustments resulting from the particular characteristics of consolidated accounts compared with annual accounts.
- (2) Stocks may be combined in the consolidated accounts if detailed disclosure in accordance with the layout provided (Law of 10 December 2010) in Article 34 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings can be made only at disproportionate expense.

*(Law of 30 July 2013; Law of 18 December 2015)*

- (3) For the purpose of paragraphs (1) and (2), the balance sheet layouts referred to in Articles 10 and 11 and the profit and loss account layouts referred to in Article 13, paragraphs 1 and 2 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 may also be used. Companies are also permitted to apply the

provisions of Article 9, paragraphs 2 and 3 of Directive 2013/34/EU concerning subdivision, layout, nomenclature and terminology of items in the consolidated balance sheet and the consolidated profit and loss account.

**Art. 321.**

The assets and liabilities of undertakings included in the scope of consolidation shall be incorporated in full in the consolidated balance sheet.

**Art. 322.**

(1) The book values of shares or corporate units in the capital of the undertakings included in the scope of consolidation shall be set off against the proportion of the capital and reserves of the undertakings included in the scope of consolidation which they represent:

a) That set-off shall be made on the basis of book values as at the date at which such undertakings are included in the scope of consolidation for the first time.

Differences arising from such set-off shall, as far as possible, be entered directly against those items in the consolidated balance sheet which have values above or below their book values.

b) Such set-off may also be made on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or corporate units or, in the event of an acquisition in two or more stages, as at the date on which the undertaking became a subsidiary undertaking.

c) Any difference remaining after the application of item a) or resulting from the application of item b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes as compared to the preceding financial year must be explained in the notes to the accounts. Positive and negative differences may be set-off provided that a breakdown is given in the notes to the accounts.

*(Law of 30 July 2013)*

(2) However, paragraph (1) above shall not apply to shares or corporate units in the capital of the parent company held either by that company itself or by another undertaking included in the scope of consolidation. In the consolidated accounts such shares or corporate units shall be treated as own shares or corporate units in accordance with Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

**Art. 323.**

*(Law of 18 December 2015)*

(1) Undertakings may offset the book values of shares or corporate units held in the capital of an undertaking included in the scope of consolidation only against the corresponding percentage of capital, provided that the grouped companies are ultimately audited by the same party both before and after the regrouping and that the audits are not provisional.

(2) Any difference arising as a result of the application of paragraph (1) shall be added to or deducted from consolidated reserves, as appropriate.

(3) The application of the method described in paragraph (1), the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes to the consolidated accounts. **Art. 324.**

The amounts attributable to shares or corporate units in subsidiary undertakings included in the scope of consolidation held by persons other than the undertakings included in the scope of consolidation shall be indicated in the consolidated balance sheet as a separate item with the heading "Minority interests".

**Art. 325.**

The income and expenditure of undertakings included in the scope of consolidation shall be incorporated in full in the consolidated profit and loss account.

**Art. 326.**

The amount of any profit or loss attributable to shares or corporate units in subsidiary undertakings included in the scope of consolidation held by persons other than the undertakings included in the scope of consolidation shall be indicated in the consolidated profit and loss account as a separate item with the heading "Minority interests".

**Art. 327.**

The consolidated accounts shall be drawn up in accordance with the principles provided for in Articles 328 to 331.

**Art. 328.**

*(Law of 18 December 2015)*

- (1) The methods of consolidation must be applied consistently from one financial year to another.
- (2) Derogations from the provisions of paragraph (1) shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes to the accounts and the reasons for them must be given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of all of the undertakings included in the scope of consolidation.

**Art. 329.**

*(Law of 18 December 2015)*

- (1) The consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in the scope of consolidation as if the latter were a single undertaking. In particular:
  - a) debts and claims between the undertakings included in the scope of consolidation shall be eliminated from the consolidated accounts;
  - b) income and expenditure relating to transactions between the undertakings included in the scope of consolidation shall be eliminated from the consolidated accounts;
  - c) if profits and losses resulting from transactions between the undertakings included in the scope of consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. These eliminations may be effected in proportion to the percentage of the capital held by the parent company in each of the subsidiary undertakings included in the scope of consolidation.
- (2) Derogations may be made from the provisions of paragraph 1, item c), if a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail disproportionate expenses. Any such derogations must be disclosed and, where the effect on the assets, liabilities, financial position and profit or loss of all the undertakings included in the scope of consolidation is material, that fact must be disclosed in the notes to the consolidated accounts.
- (3) Derogations from the provisions of paragraph (1), items a), b) and c), shall be permitted if the amounts concerned are not material for the purposes of Article 319, paragraph (3).

**Art. 330.**

- (1) Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent company.
- (2) However, consolidated accounts may be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the



undertakings included in the scope of consolidation. Where use is made of this derogation, that fact shall be disclosed in the notes to the consolidated accounts together with the reasons therefore. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in the scope of consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.

*(Law of 18 December 2015)*

- (3) If the balance sheet date of an undertaking included in the scope of consolidation precedes or succeeds the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

**Art. 331.**

If the composition of the undertakings included in the scope of consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. If such a change is a major one, that obligation may be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit and loss account.

**Art. 332.**

*(Law of 30 July 2013)*

- (1) Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with sections 7 and 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.
- (2) a) The company which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, other methods of valuation complying with the aforementioned Articles may be used in consolidated accounts.

*(Law of 30 July 2013)*

b) If use is made of these derogations, that fact shall be disclosed in the notes to the consolidated accounts and the reasons therefor given.

*(Law of 18 December 2015)*

- (3) Where the assets and liabilities recorded in the consolidated accounts have been valued by undertakings included within the scope of consolidation on different bases than those used for the consolidation, these elements must be revalued using the same methods as used for the consolidation.

Exceptional derogations to this obligation may be granted. If use is made of such a derogation, the fact must be disclosed in the notes to the consolidated accounts and an explanation given.

- (4) Account shall be taken in the consolidated balance sheet and in the consolidated profit and loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

*(Law of 18 December 2015)*

- (5) Where assets included in consolidated accounts have been the subject of value adjustments solely for tax purposes, they shall be stated in the consolidated accounts only after those adjustments shall have been eliminated.

**Art. 333.**

*(Law of 18 December 2015)*

When the elements The item referred to in Article 322, paragraph (1), item c), if it corresponds to a positive consolidation difference, shall be dealt with in accordance with the rules laid down in Article 59, paragraphs (1) and (2), of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

**Art. 334.**

An amount shown as a separate item, referred to in Article 322, paragraph (1), item c), if it corresponds to a negative consolidation difference may be transferred to the consolidated profit and loss account only:

a) if that difference corresponds to the expectation, at the date of acquisition, of unfavourable future results in the relevant undertaking, or to the expectation of costs which that undertaking would incur, insofar as such an expectation materialises;

or

b) insofar as such a difference corresponds to a realised gain.

**Art. 335.**

- (1) If an undertaking included in the scope of consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, that other undertaking may be included in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.
- (2) Articles 317 to 344 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph (1).
- (3) If this Article is applied, Article 336 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 336.

**Art. 336.**

- (1) If an undertaking included in the scope of consolidation exercises a significant influence over the management and financial policy of an undertaking not included in the scope of consolidation (an associated undertaking) in which it holds a participating interest, as defined in (Law of 10 December 2010) Article 41 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20% or more of the shareholders' or members' voting rights in that undertaking. Article 310 shall apply.

- (2) If this Article is applied for the first time to a participating interest covered by paragraph (1), that participating interest shall be shown in the consolidated balance sheet either:

*(Law of 30 July 2013)*

a) at its book value calculated in accordance with the valuation rules laid down in Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time; or

b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall be disclosed separately in the consolidated balance sheet or in the notes to the accounts. That difference shall be calculated as at the date at which that method is used for the first time.

c) The consolidated balance sheet or the notes to the accounts must indicate whether item a) or b) has been used.

d) For the purposes of the application of items a) and b), the difference may be calculated as at the date of acquisition of the shares or corporate units or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.

- (3) Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 332, paragraph (2), they may, for the purpose of calculating the difference referred to in paragraph (2), item a) or b), be revalued by the methods used for consolidation. Where such revaluation has not been carried out, that fact must be disclosed in the notes to the accounts.
- (4) The book value referred to in paragraph (2), item a), or the amount corresponding to the proportion of the associated undertaking's equity and reserves referred to in paragraph (2), item b), shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's equity and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.
- (5) Insofar as the positive difference referred to in paragraph (2), item a) or b), cannot be related to any category of assets or liabilities, it shall be dealt with in accordance with Article 333 and Article 342, paragraph (3).
- (6) The proportion of the profit or loss of the associated undertaking attributable to such participating interests shall be shown in the consolidated profit and loss account as a separate item under an appropriate heading.
- (7) The eliminations referred to in Article 329, paragraph (1), item c), shall be effected insofar as the facts are known or can be ascertained. Article 329, paragraphs (2) and (3), shall apply.
- (8) If an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the equity and reserves shown in such consolidated accounts.

*(Law of 18 December 2015)*

- (9) This Article need not be applied where the participating interests in the capital of the associated undertaking is not material for the purposes of Article 319, paragraph (3)

**Art. 337.**

*(Law of 18 December 2009; Law of 10 December 2010; Law of 30 July 2013; Law of 18 December 2015; Law of 23 July 2016)*

In addition to the information required under other provisions of this section, the notes to the accounts must set out information in respect of the following matters, presented in the order in which the items to which they refer are presented in the consolidated balance sheet and in the consolidated profit and loss account:

1. Accounting and valuation methods.
2. a) The names and registered offices of the undertakings included in the scope of

consolidation; the proportion of the capital held in undertakings included in the scope of consolidation, other than the parent company, by the undertakings included in the consolidation or by a person acting in their own name but on behalf of those undertakings; which of the conditions referred to in Article 309 following application of Article 310 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 309, paragraph (1), item a), and where the proportion of the capital and the proportion of the voting rights held are the same.

b) The same information must be given in respect of undertakings excluded from the scope of consolidation pursuant to Article 317, and an explanation of the reasons for the exclusion of the undertakings referred to in Article 317 must be given.

c) If using Article 318, the notes to the financial statements of the exempted company must include the information required by Article 337, paragraph (2), point b).

3. a) The names and registered offices of undertakings associated with an undertaking included in the scope of consolidation as described in Article 336, paragraph (1), and the proportion of their capital held by undertakings included in the scope of consolidation or by a person acting in their own name but on behalf of those undertakings.  
b) The same information must be given in respect of the associated undertakings referred to in Article 336, paragraph (9), together with the reasons for applying that provision.
4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 335, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the scope of consolidation or by a person acting in their own name but on behalf of those undertakings.
5. The name and registered office of each of the undertakings, other than those referred to in paragraphs (2), (3) and (4), in which undertakings included in the scope of consolidation either themselves or through a person acting in their own name but on behalf of those undertakings, hold at least 20% of the capital, showing the proportion of the capital held, the amount of the equity and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 319, paragraph (3), it is of negligible importance only. Mention of the equity and profit or loss may also be omitted if the undertaking in question does not publish its balance sheet.
6. The total amount of debts shown in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount of debt shown in the consolidated balance sheet and secured by collateral on assets granted by undertakings included in the scope of consolidation, with an indication of the nature and form of the collateral.
7. The total amount of any financial commitments that are not included in the consolidated balance sheet, insofar as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.
- 7bis. The nature and business purpose of any arrangements that are not included in the balance sheet, and the financial impact of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the

disclosure of such risks or benefits is necessary for assessing the financial position of the companies included in the scope of consolidation;

- 7ter.) transactions with related parties, including the amount of the transaction, the nature of the relationship with the related party and any other information about the transaction which may be needed to understand the financial position of the undertakings included in the scope of consolidation. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position of the undertakings included in the scope of consolidation.

By way of derogation from the foregoing, it is possible to include in the notes only those transactions with related parties which did not reflect normal market conditions.

The transactions between related parties included in the scope of consolidation which are cancelled upon consolidation are not mentioned.

The term "related party" shall have the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

8. The consolidated net turnover as defined in Article 48 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, broken down by categories of activity and into geographical markets insofar as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organised, these categories and markets differ substantially from one another.
9. a) The average number of staff employed during the financial year by undertakings included in the scope of consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit and loss account, the staff costs relating to the financial year.
- b) The average number of staff employed during the financial year by undertakings to which Article 335 has been applied shall be disclosed separately.
10. [...]
11. a) The difference between the tax charged to the consolidated profit and loss account for the financial year and to those for earlier financial years and the amount of tax already paid or payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;
- b) Where valuation at fair value has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the balance sheet shall show, as the case may be, deferred tax liabilities as a cumulative amount;
- c) Deferred tax balances at the end of the financial year, and changes to those balances during the year.
12. The amount of the fees granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent company by reason of their responsibilities in the parent company and its subsidiary undertakings, and the amount of any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies. This information must be given as a total for each category.

13. The amount of advances and loans granted to the members of the administrative, managerial and supervisory bodies of the parent company by the parent company or by its subsidiary undertakings, with indications of the interest rates, main conditions and amounts repaid, if any, as well as commitments entered into on their behalf by way of guarantee of any kind. This information must be given as a total for each category.
14. separately, the total fees for the financial year received by the licensed independent auditor, the approved audit firm or the audit firm for the statutory audit of the consolidated accounts, the total fees received for other insurance services, the total fees received for tax advisory services and the total fees received for other non-audit services.
15. Where valuation at fair value of financial instruments has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings:
  - a) the significant assumptions underlying the valuation models and techniques used where fair values have been determined in accordance with Article 64ter, paragraph (1), item b) of that law;
  - b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as, in accordance with Article 64quater of that law, changes included in the fair value reserve;
  - c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
  - d) a table showing movements in the fair value reserve during the financial year.
16. Where valuation at fair value of financial instruments has not been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings:
  - a) for each class of derivative instruments;
    - (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 64ter, paragraph (1), of that law;
    - (ii) information about the extent and the nature of the instruments; and
  - b) for financial fixed assets covered by Article 64bis of that law, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 55, paragraph (1), item c) aa) of that law;
    - (i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
    - (ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.
17. Where valuation at fair value of certain categories of assets other than financial instruments has been applied in accordance with Section 7bis of Chapter II of Title II of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings:
  - a) the main assumptions underlying the valuation models and techniques used, where fair value has not been determined by reference to a market value;
  - b) for each class of assets other than financial instruments, the fair value as at the date of the end of the financial year and the changes in value during the financial

year;

c) for each class of assets other than financial instruments, information on the significant terms and conditions that may affect the amount and certainty of future cash flows;

18. The nature and financial impact of material events after the consolidated balance sheet date that are not included in the consolidated profit and loss account or the consolidated balance sheet.

**Art. 338.**

*(Law of 18 December 2015; Law of 27 May 2016)*

The disclosures prescribed in Article 337, items 2, 3, 4 and 5 may:

a) take the form of a statement filed in accordance with Article 11bis; this must be disclosed in the notes to the accounts;

b) be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. Any such omission must be disclosed in the notes to the accounts.

**Sub-section 3. - The consolidated management report**

**Art. 339.**

*(Law of 10 December 2010)*

- (1) The consolidated management report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the scope of consolidation, together with a description of the principal risks and uncertainties that they face. The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the scope of consolidation, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated management report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

- (2) In respect of those undertakings, the report shall also give an indication of:

*(Law of 18 December 2015)*

a) (...);

b) the likely future development of those undertakings taken as a whole;

c) the activities of those undertakings taken as a whole in the field of research and development;

d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent company's shares or corporate units held by that company itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. These particulars may be disclosed in the notes to the accounts.

*(Law of 30 July 2013)*

e) in relation to the use by such undertakings of financial instruments and, where material for the assessment of their assets, liabilities, financial position and profit or loss:

- the financial risk management objectives and policies of such undertakings, including their policy for hedging each major type of forecasted transaction for which hedge accounting is used; and
- the exposure of such undertakings to price risk, credit risk, liquidity risk and cash flow risk.

*(Law of 10 December 2010)*

f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where a company has its securities admitted to trading on a regulated market within the meaning of Article 4, paragraph (1), item 14), of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In the event that the consolidated management report and the management report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 68bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings.

If the information required by Article 68bis of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings is set out in a separate report published together with the management report in the manner prescribed by Article 68 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, the information referred to in this sub-paragraph shall also form part of that separate report.

- (3) Where a consolidated management report is required in addition to a management report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the scope of consolidation.

### **Sub-section 3bis – The consolidated non-financial statement**

Art. 339bis.

(1) This article applies to parent companies in the sense of Article 309, paragraph (2) that meet the following conditions:

- a. They are a public interest entity in the sense of Article 2(1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings; and
- b. as at the date on which their balance sheet is prepared, they, collectively with their subsidiaries in the sense of Article 309(2), exceed the quantitative limits for at least two of the three criteria stipulated in Article 313, on a consolidated basis and for two consecutive years; and
- c. as at the date on which their balance sheet is prepared, they, collectively with their subsidiaries in the sense of Article 309(2), exceed the criteria of an average workforce of 500 employees over the financial year, on a consolidated basis.

For the purposes of the non-financial statement, all companies included in the scope of consolidation as per Article 319 are referred to collectively as a group.

(2) The parent companies referred to in paragraph (1) shall include in their consolidated management report a consolidated non-financial statement that contains information, to the extent that it is needed to understand the progression of the business, the group's



performance, situation and the impact of its activities, relating at least to environmental issues, social affairs, human resources, human rights and anti-corruption, including:

- a. a brief description of the group's commercial model;
- b. a description of the policies applied by the group in relation to these matters, including any reasonable due diligence procedures that have been undertaken;
- c. the results of these policies;
- d. the main risks represented by these matters as regards the activities of the group, including, if relevant and proportionate, the group's business relationships, products and services, which are likely to have a negative influence in these areas, and the way in which the group manages these risks;

### **Sub-section 3ter.1 – Duty and liability for drawing up and publishing the consolidated accounts and the consolidated management report**

#### **Art. 339ter.**

*(Law of 23 July 2016)*

The members of the administrative, management and supervisory bodies of the company, acting within their statutory powers, have collectively the duty to ensure that the consolidated accounts, the consolidated management report and, when published separately, the corporate governance statement, as well as the report to be provided pursuant to Article 339bis, paragraph (5), are drawn up and published in accordance with the requirements of this Law and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No. 1606/2002.

### **Sub-section 4. - The auditing of consolidated accounts**

#### **Art. 340.**

*(Law of 18 December 2009)*

- (1) An undertaking which draws up consolidated accounts must have them audited by one or more licensed independent auditors.

*(Law of 10 December 2010; Law of 18 December 2015)*

- (2) The licensed independent auditor or auditors:
  - a) issue a report stating:
    - i) whether the consolidated management report is consistent with the consolidated accounts for the same financial year, and
    - ii) whether the consolidated report complies with applicable legal requirements;
  - b) determine, based on the knowledge and understanding of the undertaking and its environment obtained during the audit, whether there are any material inaccuracies in the consolidated management report and, if so, provide information about the nature of those inaccuracies.
- c) Paragraph (2) of this article will not apply to the non-financial statement described in Article 339bis, paragraph (2), nor to the separate report described in Article 339bis, paragraph (5).
- (3) ...
- (4) ...
- (5) ...

**Art. 340bis.**

*(Law of 18 December 2015)*

- (1) The licensed independent auditors or approved audit firms present the results of their statutory scrutinisation of the accounts in the form of an audit report. This report is produced in line with international audit standards as adopted for Luxembourg by the Commission de Surveillance du Secteur Financier.
- (2) The audit report is produced in writing and:
  - a) shall name the entity whose consolidated accounts are being audited; identify the consolidated accounts in question, the end date and the period covered; and state which financial reporting framework was chosen;
  - b) contains a description of the scope of the statutory audit of the accounts which shall as a minimum identify the auditing standards by which the statutory audit was conducted;
  - c) contains an opinion, which may either be unqualified, qualified or adverse, and clearly state the conclusions of the licensed independent auditor(s) or the approved audit firm(s):
    - i) as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework; and
    - ii) where appropriate, whether the consolidated accounts comply with statutory requirements.

If the licensed independent auditors or approved audit firms are unable to deliver an opinion, the report shall contain a statement to this effect;

  - d) indicates any matters to which the licensed independent auditor(s) or approved audit firms wish to draw attention by way of emphasis without qualifying their opinion;
  - e) contains the opinion and a statement, both based on the work conducted during the audit, required by Article 340, paragraph (2) of this section;
  - f) contains a declaration as to any material uncertainties concerning events or circumstances that could cast significant doubt over the entity's ability to continue operating;
  - g) states the place in which the licensed independent auditors or approved audit firms are established.
- (3) Where the statutory audit of the accounts has been performed by several licensed independent auditors or approved audit firms, they must together agree on the outcome of the statutory audit of the accounts and present a joint report and opinion. In case of disagreement, each licensed independent auditor or approved audit firm shall present its opinion in a separate paragraph of the audit report and state the reasons for their disagreement.
- (4) The audit report shall be signed and dated by the licensed independent auditor. Where an approved audit firm performs the statutory audit of the accounts, the audit report shall bear at least the signature of the licensed independent auditor or auditors who perform the statutory audit of the accounts for that firm. Where several licensed independent auditors or approved audit firms have worked at the same time, the audit report is signed by all licensed independent auditors or at least by the licensed independent auditors who perform the statutory audit of the accounts for each approved audit firm.
- (5) The report from the licensed independent auditor or the approved audit firm on the consolidated accounts must meet the requirements of paragraphs (1) to (4). When producing a report on the consistency between the consolidated management report and the consolidated accounts, as required by paragraph (2), point (e), the licensed independent auditor or the approved audit firm shall examine the consolidated

accounts and the consolidated management report. If the annual accounts of the parent company are attached to the consolidated accounts, the reports from the licensed independent auditors or the approved audit firms required by this Article may be combined.

(Law of 18 December 2015)

#### **Sub-section 4bis. - Consolidated report on payments to governments**

**Art. 340ter.** (Law of 18 December 2015)

For the purposes of this sub-section, the following definitions shall apply:

- 1) "undertaking active in the extractive industries" means an undertaking with any activity involving the exploration, discovery, development and extraction of minerals, oil, natural gas and other materials, classified under the economic activities listed in Section B, Divisions 05 to 08 of Annex I of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2;
- 2) "undertaking active in the logging of primary forests" means an undertaking with the activities in primary forests listed under Section A, Division 02, group 02.2 of Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council;
- 3) "government" means any national, regional or local authority of a Member State or of a third country. It includes a department, agency or undertaking controlled by that authority as laid down in Articles 309 to 311 of this law;
- 4) "project" means a specific operational activity governed by a single contract, license, lease, concession or similar legal arrangement and constituting the basis for the payment obligation towards a government. However, if several such arrangements are connected by virtue of their substance, they are considered a single project;
- 5) "payment" means an amount paid, in cash or in kind, for the activities described at points (1) and (2), and classed as one of the following types:
  - a) production entitlements;
  - b) taxes and duties on company income, production or profits, excluding consumer taxes and duties such as value added tax, tax on personal income and sales tax;
  - c) royalties;
  - d) dividends;
  - e) signature, discovery and production bonuses;
  - f) licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and
  - g) payments for improvements to infrastructure;
- 6) "large undertaking" means an undertaking organised as a *société anonyme*, *société européenne*, *société en commandite par actions*, *société à responsabilité limitée* or one of the forms listed in Article 77, subparagraph 2, points 2 and 3 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and which, on its balance sheet date, exceeds the limits of at least two of the three criteria listed in Article 47 of that same amended law of 19 December 2002;
- 7) "public interest entity" is defined using the definition provided in Article 2(1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;
- 8) "subsidiary undertaking" means an undertaking as defined in Article 309, paragraph

(2) of this law;

- 9) "parent undertaking" means an undertaking as defined in Article 309, paragraph (2) of this law;
- 10) "group" means all undertakings included within the scope of consolidation as per Article 319 of this law;
- 11) "affiliated undertakings" means any two or more undertakings connected to one another as per Article 344, paragraph (1) of this law.

**Art. 340quater.** (Law of 18 December 2015)

- (1) Any large undertaking or any public interest entity active in the extractive industry or the logging of primary forests shall draw up a consolidated report on payments to governments in accordance with Article 340quinques if that parent undertaking is under the obligation to prepare consolidated financial statements.

A parent undertaking is considered active in the extractive industry or the logging of primary forests if one of its subsidiary undertakings is active in the extractive industry or the logging of primary forests.

The consolidated report shall only include payments arising from activities in the extractive industry or the logging of primary forests.

- (2) The obligation to draw up the consolidated report referred to in paragraph 1 shall not apply to:

- a) a parent undertaking of a group which, on the balance sheet date, does not exceed the limits of at least two of the criteria listed in Article 313, except where one of the affiliated undertakings is a public interest entity;

- b) a parent undertaking governed by the laws of a Member State which is also an affiliated undertaking, if its own parent undertaking is governed by the laws of a Member State.

- (3) An undertaking, including a public interest entity, must not be included in a consolidated report on payments to governments when at least one of the following conditions is met:

- a) severe long-term restrictions substantially hinder the parent undertaking in the exercise of its rights over the assets or management of that undertaking;

- b) in extremely rare circumstances, the information necessary for the preparation of the consolidated report on payments to governments in accordance with this subsection cannot be obtained without disproportionate expense or undue delay;

- c) the shares or corporate units of that undertaking are held exclusively with a view to their subsequent resale.

These exceptions only apply if they are also applied for the purposes of the consolidated accounts.

**Art. 340quinques.** (Law of 18 December 2015)

- (1) A payment, whether an individual payment or a series of related payments, must not be declared in the report if its value is less than €100,000 over a financial year.

- (2) For the activities described in Article 340ter, points (1) and (2), and for the financial year in question, the report shall contain the following information:

- a) the total amount of payments made to each government;

- b) the total amount of payments made to each government, per type of payment listed in Article 340ter, point (5), items (a) to (g);

- c) where payments have been allocated to a specific project, the total amount for each project, and the total amount for each project per type of payment listed in Article 340ter, point (5), items (a) to (g).

Payments made by undertakings for obligations at entity level may be declared at entity level rather than at project level.

- (3) Where payments in kind are made to a government, they shall be reported in value and, if applicable, in volume. Supporting notes shall be provided to explain how their value has been determined.
- (4) The declaration of the payments referred to in this Article shall reflect the substance of the payment or activity concerned rather than the form. Payments may not be artificially split or grouped to avoid application of this sub-section.

**Art. 340sexies.** (Law of 18 December 2015)

The consolidated report on payments to governments, as described in this sub-section, shall be published in the Recueil Électronique des Sociétés et Associations. This publication shall take the form of a mention that the report was filed with the register of commerce and companies, made within twelve months from the end of the financial year to which the report refers.

**Art. 340septies.** (Law of 18 December 2015)

Members of an undertaking's governing bodies, acting within the scope of their statutory powers, are responsible for ensuring that, to the best of their knowledge and ability, the consolidated report on payments to governments is produced and published in the manner required by this sub-section.

**Art. 340octies.** (Law of 18 December 2015)

The companies listed in Article 340quater who prepare and make public a consolidated report complying with third-country requirements assessed, under Article 47 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as equivalent to the requirements of this sub-section, are exempt from the requirements of this sub-section except for the obligation to publish this report as laid down by Article 340sexies.

### **Sub-section 5. - The publication of consolidated accounts**

**Art. 341.**

*(Law of 18 December 2009; Law of 27 May 2016)*

- (1) Consolidated accounts, duly approved, and the consolidated management report, together with the opinion submitted by (Law of 10 December 2010) the licensed independent auditor(s) entrusted with the auditing of the consolidated accounts, shall be published for the company which drew up the consolidated accounts as laid down by Article 11bis.

*(Law of 30 July 2013)*

- (1bis) The consolidated accounts and the consolidated management report are drawn up in only one language. For this purpose, the parent company is free to use the German or the English language instead of the French language.

*(Law of 10 December 2010)*

- (2) Article 79, paragraph (1), sub-paragraphs 2 and 3 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings shall apply with respect to the consolidated management report.

*(Law of 10 December 2010)*

- (3) Articles "80 and 81 of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings"

shall apply”.

- (4) Paragraph (2) shall not apply to companies whose securities are admitted to trading on a regulated market of a Member State of the European Union within the meaning of Article 4, paragraph (1), item 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

*(Law of 10 December 2010)*

**Sub-section 6. - Consolidated accounts prepared in accordance with international accounting standards**

**Art. 341bis.**

*(Law of 10 December 2010)* A company whose securities are not admitted to trading on a regulated market in a Member State of the European Union within the meaning of Article 4, paragraph (1), item 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, have the option to derogate from the provisions of Section XVI of this Law and to establish their consolidated accounts in accordance with international accounting standards adopted in accordance with Article 6, paragraph 2 of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

However, in that case, the relevant companies remain subject to the provisions of Articles 309 to 316, 337 items 2. to 5., 9., 12. to 14., 338 paragraph (1), 339, 339bis, 340 and 341-1.

*(Law of 29 July 1993)*

**Art. 341-1**

Consolidated accounts may, in addition to the publication in the currency or unit of account in which they are drawn up, be published in Euros at the rate of exchange prevailing on the consolidated balance sheet date. That rate shall be published in the notes to the accounts.

*(Law of 11 July 1988)*

**Sub-section (Law of 10 December 2010) 7. - Miscellaneous provisions**

**Art. 342.**

- (1) When, for the first time, consolidated accounts are drawn up in accordance with this section for a body of undertakings which was already connected as described in Article 309, paragraph (1), before 1 January 1988, account may be taken, for the purposes of Article 322, paragraph (1), of the book value of the shares or corporate units and the proportion of the equity and reserves which they represent as at a date before or the same as that of the first consolidation.
- (2) Paragraph (1) shall apply mutatis mutandis to the valuation, for the purposes of Article 336, paragraph (2), of the shares or corporate units or of the proportion of equity and reserves which they represent, in the capital of an undertaking associated with an undertaking included in the scope of consolidation, and to the proportional consolidation referred to in Article 335.
- (3) *(Law of 18 December 2015) (...)*

**Art. 343.** *(Law of 10 December 2010) (...)*

*(Law of 11 July 1988)*

**Art. 344.**

*(Law of 30 July 2013)*

- (1) Undertakings which are connected as described in Article 309, paragraph (1), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of Title II of the amended Law of 19 December 2002 on the register of commerce and

companies and the accounting and annual accounts of undertakings and for the purposes of this section.

*(Law of 10 December 2010)*

1bis) The term "related party" shall have the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

(2) Article 310 and Article 311, paragraph (2), shall apply.

*(Law of 30 July 2013)*

(3) Parent companies which do not have the legal form of a *société anonyme*, a *société européenne* (SE), a *société en commandite par actions*, a *société à responsabilité limitée* or a company referred to in Article 77, paragraph 2, items 2° and 3° of the amended Law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings and which are therefore not required to draw up consolidated accounts and a consolidated management report shall be excluded from the application of paragraph (1).

**Art. 344-1**

*(Law of 10 December 2010)*

(...)



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