

# **LAW ON BUSINESS COMPANIES**

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## **LAW ON BUSINESS COMPANIES**

**(Official Gazette, Republic of Serbia, No. 125/2004)**

## **PART ONE**

### **GENERAL PROVISIONS**

#### **Chapter 1**

##### **Basic Principles**

###### **Article 1**

###### **Scope of This Law**

This Law shall regulate the founding of business companies and entrepreneurs, the managing of business companies, the rights and obligations of founders, partners, members and shareholders of business companies, the linking and reorganization (status changes and changes of legal form, reorganization) of business companies, the cessation of business of entrepreneurs, and the liquidation of business companies.

###### **Article 2**

###### **Definition and Legal Forms of Business Companies**

- (1) A business company is a legal entity which is founded by legal entities and/or natural persons by Articles of Association for the purpose of conducting activities with the aim of gaining profit.
- (2) The legal forms of business companies under this Law are general partnership, limited partnership, limited liability company and joint stock company (open and closed).
- (3) In addition to the legal forms of business companies stated in paragraph (2) of this Article, specific other laws may prescribe other forms of companies or enterprises.

###### **Article 3**

###### **Branches of a Company**

- (1) A business company, domestic or foreign, may establish one or more branch. A branch is an organizational part of a company which does not have the capacity of a legal entity. A branch has a business location and authorized representatives, and conducts business with third parties in the name of and on behalf of the company.
- (2) A branch of a company must be registered as required by the law which regulates registration of business entities.

###### **Article 4**

###### **Duration of a Business Company**

A business company is founded for an unlimited duration, unless the Articles of Association states that the company will exist for a limited period of time or until the

occurrence of a particular event or accomplishment of a particular purpose.

## **Article 5**

### **Activities of a Company**

- (1) A business company may engage in any lawful activity.
- (2) In cases where a law prescribes that specific activities may be carried out only with approval, permit or other document issued by a state body, such activities may be conducted upon obtaining such approval, permit or other document.
- (3) In cases where a law prescribes that specific activities may be carried out only by a particular form of business company, such activities may not be conducted in another form of company.

## **Article 6**

### **Requirements for Performing Business Activities**

- (1) A business company may perform business activities in premises which meet requirements for technical equipment, work safety and environmental protection and improvement, as well as other prescribed requirements.
- (2) Fulfillment of the requirements referred to in paragraph (1) of this Article will be verified by the body which regularly inspects the premises.
- (3) A business company may start performance of business activities consisting of production, trade, distribution, preparation or warehousing material which is hazardous or harmful to persons or the environment, if the appropriate state body certifies that the requirements referred to in paragraph (1) are met.

## **Chapter 2**

### **Founding of a Company**

## **Article 7**

### **Articles of Association and Other Documents**

- (1) A business company is founded by its Articles of Association which is a contract among the founders or a decision of a sole founder (when there is only one founder).
- (2) The persons who are responsible for founding a business company are herein called the company's "founders." All of the founders of a company must sign its initial Articles of Association.
- (3) The signatures of the founders on the Articles of Association must be certified.
- (4) A company's Articles of Association must include the contents which are required by

this Law for the form of that company.

(5) In addition to the Articles of Association, a general partnership or limited partnership may have a partnership agreement among the partners, a limited liability company may have a company agreement among the members, and a joint stock company may have by-laws.

(6) Founders and other persons who under this Law join a general partnership upon its founding are called “partners”; such persons in a limited partnership are called “general partners” or “limited partners”; such persons in a limited liability company are called “members”; and such persons in a joint stock company are called “shareholders.”

### **Chapter 3**

#### **Registration and Publication**

##### **Article 8**

#### **Beginning of Existence as a Legal Entity**

A business company begins its existence as a legal entity upon its registration in the registry (hereinafter called the “Registry”) as prescribed in the law which regulates registration of business entities.

##### **Article 9**

#### **Registration and Publication**

Registration of information regarding companies and publication of registration shall be carried out in accordance with the law which regulates registration of business entities.

##### **Article 10**

#### **Effects of Registration and Publication Against Third Parties**

(1) Third parties shall be deemed to have knowledge of registered documents and information regarding the company after such documents or information has been published either in full or partial text or by means of a reference to the registered document.

(2) Third parties shall also be deemed to have such knowledge whenever they have actual knowledge thereof or whenever under the circumstances they should have knowledge thereof, and shall be deemed to have such knowledge before publication thereof if the company proves that they have knowledge.

(3) If information published by a company is inconsistent with information filed by the company in the Registry, the latter shall govern in relations with a third party so that a company cannot use published information, if the third party relied on information from the Registry.

##### **Article 11**

## **Action for Nullity of Founding**

- (1) The registration of founding of a business may be nullified in cases prescribed by this Law and the law which regulates registration of business entities.
- (2) Registration of founding and registration of other information regarding a business company will be nullified if:
  - 1) the Articles of Association are not in prescribed form;
  - 2) the registered scope of activities of the company is illegal or contrary to public order;
  - 3) the Articles of Association do not state the registered name of the company, the amount and type of the share of each founder or the amount the of the company's basic capital that is required by this Law or the business purpose of the company;
  - 4) the minimum capital contribution was not made in accordance with this Law;
  - 5) all of the founders were without legal and business capacity;
  - 6) the number of the founders is less than is prescribed by this Law.
- (3) If the basis for requesting nullity can be remedied, the competent court may set a deadline for such remedying which shall be not later than 90 days after the complaint is filed and suspend the procedure during that period.
- (4) Nullity of a company's registration shall have no adverse effect on transactions of the company concluded with conscientious third parties.
- (5) In case of nullity of a company's registration, members and shareholders shall be jointly liable for payment of company creditors' claims.

## **Chapter 4**

### **Liability of Founders and Other Persons**

#### **Article 12**

##### **Liability for Obligations Incurred Before Registration**

- (1) If action is taken by founders or other persons before a company's legal existence has begun, the persons who acted shall be liable jointly therefor with all of their assets unless otherwise agreed with third parties who have a claim for such obligations.
- (2) A company shall be jointly and severally liable with such persons for such obligations if it assumes them after registration in accordance with this Law.

#### **Article 13**

##### **Contributions, Capital, Basic Capital and Liability for Contributions**

- (1) A partner, member or shareholder of a company is obligated to the company to pay in full all agreed contributions to capital as required by this Law, the company's Articles of Association or any other agreement of that person.
- (2) For the contributions referred in paragraph (1) of this Article, a partner, member or shareholder shall receive a partnership interest or share in the company.
- (3) A person referred to in paragraph (1) of this Article who fails to comply with his obligations to a company with respect to the company's founding or submits false information on contributions to capital shall be liable to the company for any damages resulting from such failure.
- (4) Failure to comply with obligations to make a contribution to the company shall be subject to the Law on Obligations as well as this Law.
- (5) If a person referred to in paragraph (1) of this Article does not make a contribution that is to be made in kind, he is obligated at the company's option to contribute cash equal to the value of the contribution in kind that has not been made.
- (6) All contributions which have been made to a company are the property of the company and may not be used by partners, members or shareholders as their personal property.
- (7) A company may not release or reduce the obligations under this Article of persons referred to in paragraph (1) of this Article.
- (8) A person referred to in paragraph (1) of this Article shall not be entitled to refund or payment of interest on a contribution that has been made. A company's payment based on withdrawal or cancellation of shares or acquisition of its own shares, as well as other payments in accordance with this Law shall not be considered a refund or a payment of interest for this purpose.
- (9) In case of a transfer of interest in a company to another person, the transferor and the transferee shall be jointly and severally liable for the transferor's obligations prior to the time of transfer to make contributions, unless provided otherwise in this Law.
- (10) A claim by or on behalf of a company under paragraphs (1) through (9) of this Article may be brought by a company or partners i.e. members or shareholders who represent 5% or more of the company's capital.
- (11) A company's assets under this Law consist of the total value of real and other property and rights that the company has acquired through contributions and activities.
- (12) The basic capital of a company is the difference between the total value of its assets minus its liabilities, i.e., the total value of the contributions to the company and of the shares of the company.

#### **Article 14**

##### **Valuation of Contributions in Kind**

(1) As used in this Law, “contributions in kind” means non-monetary contributions to a company’s capital, including contributions which consist of property, rights, work or services and shares of another company.

(2) The value of contributions in kind to a general partnership, a limited partnership, a limited liability company or a closed joint stock company shall be determined by

agreement of the partners, members or shareholders in accordance with any applicable provisions of the Articles of Association.

(3) If partners, members or shareholders referred to in paragraph (2) of this Article do not agree on the value of a contribution in kind they may appoint an authorized appraiser for that purpose or may request the court to appoint an appraiser in non-contentious proceeding.

(4) The value of contributions in kind to an open joint stock company shall be determined by an authorized appraiser appointed by the founders i.e. board of directors from the list of authorized appraisers. Founders or board of directors may request a court to appoint the appraiser in a non-contentious proceeding.

(5) Valuation of contributions in kind shall be determined in accordance with any applicable provisions of the law which regulates accounting and audit.

## **Article 15**

### **Wrongful Abuse of Legal Form**

(1) A limited partner of a limited partnership, a member of a limited liability company, and a shareholder of a joint stock company may be held personally liable for obligations of the company if he wrongfully abuses the company form for illegal or fraudulent purposes or treats the assets of the company as though they were his personal assets and as though the company did not exist.

(2) In cases referred to in paragraph (1) of this Article, such person shall be jointly and severally liable with the company.

(3) Liability referred to in paragraphs (1) and (2) of this Article shall be determined by a competent court taking into consideration of all the circumstances related to the wrongful abuse and particularly considering that the general principle of limited liability shall not apply in cases referred to in paragraph (1) of this Article.

## **Chapter 5**

### **Registered Office and Name**

#### **Article 16**

##### **Registered Office**

(1) The “registered office” of a company is the principal location from which the company’s business is conducted.

(2) The registered office of a company shall be stated in the company’s Articles of Association and registered in accordance with the law which regulates registration of business entities.

## **Article 17**

### **Registered Name**

(1) The registered name of a company is the name under which the company conducts its business.

(2) A company’s registered name must be clearly distinguishable from the name of any other company and may not contain any information capable of misleading the public with respect to the business of the company.

## **Article 18**

### **Required Contents of Name**

(1) The registered name of a general partnership must include the word “partnership” or the abbreviations “o.d.” or “od”.

(2) The registered name of a limited partnership must include the words “limited partnership” or the abbreviations “k.d.” or “kd”.

(3) The registered name of a limited liability company must include the words “limited liability company” or the abbreviations “d.o.o.” or “doo”.

(4) The registered name of a joint stock company must include the words “limited liability company” or the abbreviations “a.d.” or “ad”.

(5) The registered name of a company in liquidation must include the words “in liquidation”.

## **Article 19**

### **Abbreviated or Modified Name**

As company may do business using one or more abbreviated or modified versions of its name only if such abbreviated or modified name is stated in its Articles of Association and also complies with the requirements of this Law that apply to the registered names.

## **Article 20**

### **Restrictions on Use of National and Official Names and Symbols**



- (1) The registered name of a company may include a name of a home country or territorial unit or its coat of arms, flag or other state logo or mark, but only with any required consent of the competent governmental authority of that country or territorial unit.
- (2) The registered name of a company may include the name or symbols of a foreign state or an international organisation only if permitted under the laws or regulations of that foreign state or organisation.
- (3) The registered name of a company may not include or imitate official marks used for quality control or product warranty.

## **Article 21**

### **Restrictions on Use of Personal Names**

- (1) The registered name of a company may include the name of a natural person only with his consent or, in the case of a deceased person, only with the consent of all heirs in the first degree of such person.
- (2) If a persons name is used in violation of respect and honor of that person, that persons name shall be deleted from the companys name in the Registry upon the request of that person or, if applicable, his heirs.

## **Article 22**

### **Use of Registered Name and Other Details in Documents**

- (1) Letters and forms addressed to third parties by a company, including those in electronic form, shall provide the following information: registered name of the company, legal form of the company, registered office of the company, Registry where the company is registered and number of the companys registration, registered name and registered office of an institution where the company has its principal bank account, and bank account number and tax identification number.
- (2) Such letters and forms of a limited liability company and of a closed or open joint stock company shall also state the amount of subscribed and paid-in capital of the company.
- (3) Such letters and forms of a single-member limited liability company and joint stock company shall also state the fact that it is a single-member company.

## **Article 23**

### **Language and Alphabet of a Registered Name**

- (1) The registered name of a company shall be in the Serbian language and in the alphabet officially used.
- (2) Notwithstanding the foregoing, the registered name of a company may include foreign words if they are in the company's trade or service mark registered in Serbia, or if it is a

name commonly used in the Serbian language, if there is no adequate word for it in Serbian language, or in the case of a word from a dead language.

## **Article 24**

### **Restriction on Transfer of Registered Name**

- (1) The registered name of a company may be transferred to another person only if that person is also a legal successor to its business.
- (2) If a member of a company whose name is used in the company's registered name ceases to be a member, the company may continue to use his name only with his consent.
- (3) If a company's business is transferred to another party, that other party may continue to use a previously-used name of a person in the company's registered name only with the consent of that person or, if he is deceased, the consent of his heirs to the third degree in a vertical line.
- (4) A decision to change a company's registered name shall be made consistently with the company's Articles of Association.

## **Chapter 6**

### **Representatives and Representation**

#### **Article 25**

##### **Representatives and Their Authority**

- (1) A representative of a company has a duty to the company to observe and act in compliance with any limitations on his authority which are stated in the company's Articles of Association, company agreement, by-laws or any decision of the company.
- (2) A representative of a company who exceeds such limitations shall be personally liable for damages caused thereby to the company and to any third party with whom he has dealt.
- (3) A limitation of authority referred to in paragraph (1) of this Article, published or not published, may not be relied on by a company against a third party. A limitation of authority of two or more representatives may be relied on by a company in accordance with Article 10 of this Law.
- (4) An act of a representative of a company shall be binding on the company even if the act is outside the business purpose of the company stated in its Articles of Association, unless the company proves that the third party claimant knew, or under the circumstances should have known, that the act was outside the business purpose of the company. Publishing of the business purpose of a company shall not in itself constitute sufficient proof for such purpose.
- (5) Publication by a company that a person has authority to represent the company shall constitute a bar to any irregularity in their appointment being relied on by the company as against third parties, unless the company proves that the third parties knew or should have

known of the irregularity.

## **Article 26**

### **General Provisions Concerning Procura**

- (1) Procura is a legal form of power of attorney in which a company authorizes one or more named persons to conduct legal transactions on behalf of the company.
- (2) If the procura does not state explicitly that it is issued for a particular branch of a company, it shall be deemed issued for the entire company.
- (3) A procura shall not authorize the entering into of contracts for the transfer or charging of immovables. The grant of authority in a procura may not be limited in scope, or to a particular period of time, or to particular types of transactions.
- (4) Limitation of a procura has no legal effect as against third parties.

## **Article 27**

### **Issuance and Types of Procura**

- (1) A procura may be issued by a company, to one person, to two or more persons separately, or to two or more persons jointly.
- (2) If a procura is issued to two or more persons separately, each procurator shall have all authority of the procura in accordance with this Law.
- (3) If a procura is issued to two or more persons jointly, the transactions pursuant to the procura shall be valid only if agreed by all procurators. Declarations of third parties made to one of the procurators shall be deemed made to all procurators.
- (4) A procura must be in written form.
- (5) A procura may be granted only to natural persons.
- (6) A procura is not transferable.

## **Article 28**

### **Procurator's Signature**

A procurator shall sign for the company under his name and surname, with an indication which clearly states his positions as a procura or by the mark "p.p."

## **Article 29**

### **Termination of Procura**

- (1) A procura may be revoked by a company at any time.
- (2) A company cannot waive its right to revoke a procura and cannot limit that right by imposing conditions or terms on its exercise.
- (3) If a procura is revoked, the procurator may exercise towards the company those rights which stem from the legal relationship on the basis of which procura was issued.
- (4) A procura shall not be terminated by death or loss of capacity to act of a member or shareholder who issued the procura.

### **Article 30**

#### **Registration of Procura**

- (1) An authorized representative of a company must report issuance or revocation of procura in the Register.
- (2) When applying for registration, a procurator shall deposit with the Registry his signature and his position with the company.

### **Chapter 7**

#### **Persons Owing Duties to a Company**

### **Article 31**

#### **Basic Principles**

- (1) Duties to a company under this Law are owed by:
  - 1) general partners and limited partners in a general or limited partnership;
  - 2) persons who under this Law are controlling members of a limited liability company or controlling shareholders of a joint stock company;
  - 3) authorized representatives of a company;
  - 4) members of a board of directors, members of an management body, members of a supervisory board, members of an audit committee, and internal auditors of a limited liability company or a joint stock company;
  - 5) persons who are authorized by contract to exercise management authority in a company; and
  - 6) liquidators of a company.
- (2) Persons named in paragraph (1) of this Article are obligated to act in the interest of the company.

## **Article 32**

### **Duty of Care and Business Judgment Rule**

- (1) Persons named in paragraph (1) of Article 31 have a duty to perform their functions in the named capacity good faith, with the care of a good businessman, and in the reasonable belief that they are acting in the company's best interests.
- (2) Persons referred to in paragraph (1) of this Article may in performing their duties rely on information or opinions of persons in particular areas who the persons referred to in paragraph (1) believe are reliable and competent.
- (3) A person who has acted in accordance with paragraphs (1) and (2) of this Article in making a business judgment will not be liable for damages to the company which may arise from such judgment.

## **Article 33**

### **Duty of Loyalty**

- (1) Persons referred to in paragraph (1) of Article 31 of this Law have a duty to act fairly and loyally to the company.
- (2) Persons referred to in paragraph (1) of this Article who have a personal interest in a matter have a duty particularly not to use property of the company for their own needs, not to use confidential information of the company for the purpose of gaining personal profit, not to abuse their position in the company for the purpose of personal enrichment to the damage of the company, and not to take business opportunities of the company for personal purposes (hereinafter called the "duty of loyalty").

## **Article 34**

### **Personal Interest and Related Persons**

- (1) A personal interest for purposes of Article 33 of this Law exists if a person referred to in paragraph (1) of Article 31 of this Law or a family member of such person:
  - 1) is a party to a transaction with the company;
  - 2) has a financial relationship with a party to a transaction with the company, a personal interest in activities which lead to concluding a transaction with the company, a financial interest in a transaction with the company, or engages in activities that could reasonably be expected to affect his judgment contrary to the interests of the company; or
  - 3) is under the controlling influence of a party to the transaction, or of a person who has a financial interest in the transaction that could reasonably be expected to affect his judgment adversely to the company.
- (2) A "family member" of a person referred to in paragraph (1) of this Article includes:

- 1) the person's spouse, or/and parents, brother or sister of the person's spouse;
  - 2) the persons child, parent, brother, sister, grandchild or a spouse of any of the foregoing;
  - 3) a relative of direct vertical lineage and horizontal lineage to the second level of kinship, adopter and adoptee, a spouses relative to the first level of kinship; and
  - 4) an individual having the same home as the person.
- (3) Persons referred to in paragraph (1) 2) and 3) and paragraph (2) of this Article shall be considered to be related persons under this Law (hereinafter called "related persons").

## **Article 35**

### **Authorization of Transactions Involving Conflict of Interest**

(1) A person who enters into a transaction with the company shall not be deemed to have violated the principles relating to conflict of interest in stated Article 34 of this Law, and shall not be liable for damages arising from his conflict of interest, if the transaction is authorized in good faith by either:

1) all partners who do not have a personal interest (in the case of a general partnership) or all limited partners who do not have a personal interest (in the case of a limited partnership), except that the authorization may be given by a majority of such partners if the Articles of Association provides for such authorization to be given by a majority of such partners;

2) a majority vote of the members who do not have a personal interest, given at a membersmeeting (in the case of a limited liability company); or

3) a majority vote of the members of the board of directors who do not have a personal interest (or, if such a majority does not exist, a majority vote of shareholders who do not have a personal interest) (in the case of a joint stock company).

(2) The authorization of a transaction referred to in paragraph (1) of this Article will be effective if all material facts regarding the personal interest are known or have been disclosed to the partners, members of the company, members of the board of directors or shareholders who grant the authorization.

(3) In the case of any such authorization of a transaction with a joint stock company by the board of directors, the matter shall be reported to the first shareholdersassembly next following.

(4) A person who enters into a contract or transaction with the company shall not be deemed to have violated Article 34 of this Law, and will not be liable for damages arising from his conflict of interest, if he proves that the transaction was in the interest of the company at the time it was entered into.

(5) A transaction which under Article 34 of this Law involves a conflict of interest, and

which is not authorized in accordance with paragraphs (1) and (2) of this Article or for which proof is not made in accordance with paragraph (4) of this Article, shall be null and void.

(6) If a company does not authorize a transaction which involves a conflict of interest, persons referred to in paragraph (10) of Article 13 of this Law may exercise the rights referred to therein.

## **Article 36**

### **Competition Prohibited**

(1) Persons referred to in paragraph (1) of Article 31 of this Law may not directly or indirectly engage in competition with the company unless the competition is authorized in accordance with Article 35 of this Law.

(2) Such prohibited competition shall be deemed to include but not be limited to acting in the following capacities for a competing business:

- 1) employee;
- 2) entrepreneur;
- 3) general partner or limited partner;
- 4) controlling member or shareholder;
- 5) member of a company body referred to in paragraph (1) 4) of Article 31 of this Law;
- 6) representative of a company;
- 7) liquidator of a company; and
- 8) person authorized by contract to manage a company.

(3) A company's Articles of Association may provide that the prohibition referred to in paragraphs (1) and (2) of this Article shall remain in force after the loss of the status referred to in those paragraphs, but for no longer than two years.

## **Article 37**

### **Legal Effects of Violation of Conflict of Interest Principles and Competition Prohibition**

(1) Violation of conflict of interest and competition prohibition provisions of this Law shall entitle a company to recover damages and the right to:

- 1) accept the transaction in question as being transactions made on account of the company;
- 2) transfer to the company any benefits resulting from the transactions in question; or

3) transfer to the company any claims stemming from the transactions in question.

(2) Claims to enforce the rights of a company for violation of conflict of interest or competition prohibition provisions of this Law may be brought by the company, a general partner, a member, or shareholders who have or represent at least 5% of the basic capital of the company, and must be brought within 60 days after discovery of the violation or three years after the date of the violation.

## **Article 38**

### **Duty to Keep Business Secrets**

(1) Information on operations of a company determined by company's Articles of Association, company agreement or by-laws, which would obviously result in significant damage to a company if known by a third party are considered to be business secrets.

(2) Information which is required to be disclosed by law or relates to violation of laws, good business practices and principles of business ethics, including information which is grounds for suspicion of corruption, will not be regarded as business secrets. Disclosure of such information is legal if its purpose is to protect the public interests.

(3) Persons referred to in Article 31 of this Law shall be liable for damages caused to the company by unlawful disclosure of business secrets.

(4) A company has a duty to provide full protection of a person who acts in good faith to bring the existence of corruption to the attention of a public body.

## **Article 39**

### **Changes in Duties Owed to a Company**

(1) A general partnership, limited partnership, limited liability company or closed joint stock company may establish duties to the company in addition to those stated in Articles 32, 34, 36 and 38 of this Law.

(2) A company referred to in paragraph (1) of this Article may, in its Articles of Association, partnership agreement, company agreement or by-laws (as the case may be), identify specific activities, types and manner of conducting activities which shall not violate the duty not to compete with the company.

## **Chapter 8**

### **Individual and Derivative Court Action**

#### **Individual Court Action by a Partner, Member or Shareholder**

## **Article 40**



(1) A partner, member or shareholder of a company has the right to file a lawsuit in court in his own name against any person referred to in paragraph (1) of Article 31 of this Law to recover damages caused by violation of duties by that person under this Law.

(2) In the case of a general partnership, duties which are owed to the company shall be considered as duties owed to the partners directly, unless the Articles of Association or partnership agreement provides otherwise.

(3) A lawsuit under paragraph (1) of this Article may be brought by one person in his own name or by more persons in their names acting together.

## **Article 41**

### **Derivative Court Action by a Limited Partner, Member or Shareholder**

(1) A limited partner in a limited partnership, member in a limited liability company, or shareholder in a joint stock company has the right to file a lawsuit in court in his name and on the company's behalf against any person referred to in paragraph (1) of Article 31, to enforce or to recover damages to the company caused by violation of duties owed to the company under this Law (hereinafter called a "derivative court action").

(2) A derivative court action may be brought by a limited partner, member or shareholder only if the following conditions are met:

1) the limited partner, member or shareholder had that status at the time of filing the lawsuit, or acquired that status as a result of transfer from a person who had that status at the time of filing of the lawsuit.

2) the limited partner, member or shareholder holds such interests or shares in the company representing at least 5% of the basic capital of the company. If two or more persons bring the action together the holdings of all of them shall be counted together for this purpose; and

3) the limited partner, member or shareholder, before filing the lawsuit, had requested the company in writing to bring the lawsuit and that request was refused or not responded to by the company within 30 days of the date of its submission.

(3) The request referred to in subparagraph 3) paragraph (2) of this Article shall be made to all general partners in the case of a limited partnership, to all directors or other persons who have authority to bring the complaint in the case of a limited liability company, and to the board of directors in the case of a joint stock company.

(4) A complaint under this Article must include evidence that the actions referred to in paragraph (2) subparagraph 3) of this Article were taken.

(5) A derivative case may not be settled out of court.

(6) All damages received in a derivative case shall be the property of the company, except that the plaintiffs who filed the complaint shall be entitled to recover their expenses.

(7) The provisions this Article shall not be applicable to a general partnership unless its Articles of Association or partnership agreement so provides.

## **Article 42**

### **Simultaneous Individual and Derivative Actions**

In case of simultaneous individual and derivative lawsuits, the person complaining may maintain both court cases simultaneously, in which case the special restrictions referred to in Article 41 hereof shall not apply to the individual case.

## **Title 9**

### **Information, Publication and Time Limitation**

## **Article 43**

### **Right to Information and Access**

(1) Every company shall keep its general partners, members or shareholders informed regarding the company's performance and financial condition and it shall make available information and documents required to be made available in this Law, the Articles of Association or by-laws.

(2) If a competent body or authorized person of the company fails to act as required under paragraph (1) of this Article, they shall be held liable for damages to partners, members or shareholders.

(3) If the competent body fails to carry out the duties referred to in paragraph (1) of this Article, the partners, members and shareholders may request the competent court in a non-contentious proceeding to issue an order to act as required in paragraph (1) of this Article.

## **Article 44**

### **Submission of Information to Registry and Publication**

(1) A company which offers securities by public offering shall submit to the Registry, for publishing, all information contained in the offering documents that is required by the law which regulates securities markets.

(2) Such a company shall also publish the information referred to in paragraph (1) of this Article in the mass media in accordance with the law which regulates securities markets and regulations of the Securities Commission.

## **Article 45**

### **Disqualifications from Election**

(1) A person who has been convicted of criminal offenses related to performance of his

duties under a special law relating to the economy or business, as well as a person who violates provisions of this Law on restrictions of distributions, may not be an authorized representative, member of the board of directors, procurator or liquidator of a company until the legal consequences thereof have lapsed under the law.

(2) A member of a supervisory board of a company, and a related person to such person as described in this Law, may not be a person with authority to represent or conduct management of the company.

## **Article 46**

### **Settlement of Disputes**

(1) The commercial court in the territory where a company's registered office is located is competent to decide all disputes arising under this Law, unless this Law provides otherwise.

(2) The court shall decide in non-contentious proceedings in cases specified in this Law or in matters arising under this Law.

(3) In matters referred to in provision in paragraph (2) of this Article, an emergency procedure must be available and a court of first instance is obligated to decide within 60 days from the date of receiving the request unless provided otherwise in this Law. An appeal may be submitted within eight days. A court of second instance is obligated to make a decision in respect of the appeal within thirty days from the date of receipt of the request.

(4) An appeal of a court decision in respect of matters arising under paragraph (2) of this Article shall not stay execution of the decision.

## **Article 47**

### **Statute of Limitations**

(1) General partners, members and shareholders of a company must bring a claim against the company based on that status not later than 180 days after the date of becoming aware of the basis for the claim but not in any event later than three years from the date of the maturity of the claim, unless provided otherwise by law for particular claims.

(2) Claims of a company's creditors as against general partners, members and shareholders must be brought not later than 180 days after the date of becoming aware of the basis for the claim but not in any event later than three years from the date of dissolution of the company or from the date of termination of their status as partners, members or shareholders, unless provided otherwise by law for particular claims.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to a company's claims against partners, members, shareholders, members of company bodies representatives and liquidators in such capacity.

## **PART TWO**

## **ENTREPRENEUR**

### **Article 48**

#### **Definition and Registration**

- (1) An entrepreneur in this Law is a natural person who is registered and who conducts lawful activities for profit as his profession, including art, old trades and domestic work.
- (2) Art, old trades and domestic work particularly include filigree, shoemaking, pottery and production of crafts with national symbols.
- (3) The Minister who deals with matters of economy shall define the scope of work, which in this Law shall be considered to include art, old trades and domestic work.
- (4) An entrepreneur shall be registered in accordance with the law which regulates registration of business entities.
- (5) A natural person who is registered and conducts activity of a free profession which is regulated under special regulations shall be considered an entrepreneur under this Law, if it is so provided by the special regulation.
- (6) An individual farmer is not an entrepreneur under this Law unless provided otherwise in a special law.

### **Article 49**

#### **Liability of Entrepreneur**

An entrepreneur is liable with all of his assets for all of his obligations that result from his undertaking business.

### **Article 50**

#### **Characteristics**

- (1) An entrepreneur may conduct business under his own name, the name of another person or a separate business name in accordance with this Law.
- (2) The name referred to in paragraph (1) of this Article shall be registered with the word "entrepreneur" (preduzetnik) or the abbreviation "pr."

### **Article 51**

#### **Applicability of Other Articles**

Provisions of this Law relating to business name, registered office, business activity, representation, liquidation and time limitations in connection with a company, shall also apply to an entrepreneur unless provided otherwise in a special law.

## **Article 52**

### **Termination**

An entrepreneur shall terminate conducting business in case of:

- 1) his own decision;
- 2) death or loss of capacity to conduct business;
- 3) not conducting business for a continuous period of one year;
- 4) the duration of the business has expired if the business was registered with a stated duration;
- 5) conducting the business when it has been temporarily interrupted by decision of an authorized body;
- 6) when penalized more than three times for conducting business activity that does not fulfil prescribed conditions;
- 7) an order is issued forbidding the person from conducting the business because necessary conditions are not met for conducting the business and the person fails to fulfil such conditions within the period stated in the order or does not change the business activity; or
- 8) change in legal form in accordance with this Law;
- 9) bankruptcy and liquidation.

## **PART THREE**

### **LEGAL FORMS OF BUSINESS COMPANIES**

#### **Title I**

#### **GENERAL PARTNERSHIP**

##### **Chapter 1**

##### **Form and Founding**

##### **Article 53**

##### **Definition and Liability**

(1) A general partnership is a company organized by two or more legal entities and/or natural persons, as general partners of the company, who undertake to conduct business under a common registered name.

- (2) A general partnership is liable for all of its obligations with all of its assets.
- (3) All partners of a general partnership are jointly and severally liable for all obligations of the partnership with all of their assets, unless otherwise agreed with the creditor.
- (4) Agreements among partners contrary to paragraph (3) of this Article are ineffective as against third parties.

#### **Article 54**

##### **Freedom to Contract Principle**

The partners of a general partnership may regulate freely their relations among themselves and with the partnership except as provided otherwise by this Law and other laws.

#### **Article 55**

##### **Articles of Association**

- (1) The Articles of Association of a general partnership must contain:
  - 1) the full name and place of residence of all natural-person partners and the registered name and registered office of all legal entity partners;
  - 2) the registered name and registered office of the partnership;
  - 3) the business purpose of the partnership; and
  - 4) a statement of the kind and value of the contribution of each partner.
- (2) The Articles of Association may contain other matters relating to the partnership and the partners.
- (3) The Articles of Association may be amended only with the agreement of all partners, unless provided otherwise by the Articles of Association.

#### **Article 56**

##### **Partnership Agreement**

- (1) Apart from the Articles of Association a partnership may have a partnership agreement regulating the partnership's business and governance.
- (2) A partnership agreement is not required to be submitted to the Registry.
- (3) A partnership agreement must be in writing and must be signed by every partner.
- (4) A partnership agreement and any amendments thereto shall have legal effect among partners as of the moment of signing of the agreement by all partners unless provided otherwise in the partnership agreement.

## **Article 57**

### **Relationship of Articles of Association and Partnership Agreement**

In the event of any inconsistency between a partnership's Articles of Association and partnership agreement, the Articles of Association shall control.

## **Chapter 2**

### **Legal Relations Among the Partners and the Partnership**

## **Article 58**

### **Articles of Association and Partnership Agreement May Govern**

Legal relations of partners among themselves and with the partnership shall be governed by the partnership's Articles of Association and partnership agreement if it has a partnership agreement.

## **Article 59**

### **Contributions**

- (1) The contribution of a partner to a general partnership may be in money or in kind, including past or future work or services.
- (2) All partners' contributions shall be equal in value.

## **Article 60**

### **Delay in Payment of Contribution**

- (1) A partner who fails to pay his contribution when due in cash or in kind as required by the Articles of Association, or fails to timely transfer to the partnership any amount of cash or other property he has received at any time on behalf of the partnership, or takes for himself cash or other property from the partnership without authorization, shall pay interest on the amount from the day on which his contribution or the transfer were due or from the day on which he took the cash or other property.
- (2) The provisions of paragraph (1) of this Article shall not exclude any other compensation or damages available to a partnership.

## **Article 61**

### **Increase or Reduction of Contribution**

- (1) No partner is obligated to increase his contribution above the amount agreed in the Articles of Association, even for covering losses of the partnership.
- (2) No partner may reduce his contribution without the approval of all the other partners.

## **Article 62 Transfer of Interests Among Partners**

Transfer of interests among partners shall be unrestricted.

## **Article 63**

### **Decision Making by Partners**

(1) A decision in the ordinary course of a partnership's business shall be made by a majority of the total number of partners. The consent of all partners shall be required for a decision on a matter outside the ordinary course of the partnership's business and for admission of a new partner.

(2) In the case of decisions involving a conflict of interest as referred to in Articles 34 and 35 of this Law, partners who have the conflict shall not participate in the decision.

(3) Partners shall make decisions for the partnership during a meeting of partners. The same applies as to partners engaged in management.

## **Article 64**

### **Management of a Partnership**

(1) Each partner shall have the right to manage the business of the partnership (herein called "management").

(2) If the Articles of Association or partnership agreement of a partnership has assigned management authority to one or more particular partners, the other partners shall be excluded from management.

## **Article 65**

### **Management by More than One Partner**

(1) If two or more partners are vested with management authority, each of them shall have the right to act independently, unless one of them contests such right.

(2) If the Articles of Association or partnership agreement provides that managing partners may act only jointly, the approval of all managing partners shall be required for each act or transaction, except when this would require deferment of a decision and the deferment would harm the partnership's interests.

(3) If the Articles of Association or partnership agreement provides that the management shall be by more than one partner, every managing partner shall follow advice given by the other managing partners, and every managing partner shall keep the other managing partners informed for the purpose of making joint decisions.

(4) If a managing partner is bound to follow instructions of another managing partner and the first managing director considers instructions given to be inappropriate under the circumstances, he shall notify the other managing partners for the purpose of deciding



jointly, unless this would require deferment of a decision and the deferment would harm the partnership's interests.

## **Article 66**

### **Scope of Management Authority**

- (1) Management authority shall apply to all matters in the ordinary course of the partnership's business.
- (2) Management authority as to matters which are outside the ordinary course of the partnership's business as referred to in paragraph (1) of this Article shall require consent of all partners.

## **Article 67**

### **Transfer of Management Authority**

- (1) No partner may transfer his management authority to a third party unless all other partners approve.
- (2) A partner who transfers his management authority to a person who is not a partner is liable for the choice of that person and for the acts of that person in exercising those management rights.

## **Article 68**

### **Resignation of Management Authority**

- (1) A managing partner may resign from management responsibilities within a time frame stated in the Articles of Association or partnership agreement (if any), and on grounds which are reasonable in the judgment of the other partners.
- (2) Any provisions in the Articles of Association or partnership agreement which would allow a managing partner to surrender such right to resign, shall be null and void.
- (3) If there are reasonable grounds for a managing partner to resign sooner than the time frame referred to in paragraph (1) of this Article, he may do so.
- (4) A managing partner must give notice of resignation in writing to all the partners and the partnership in time to allow for continuation of pending transactions by other managing partners, unless there are reasonable grounds for shorter notice.
- (5) If a managing partner resigns contrary to paragraphs (1) and (3) of this Article, he is obligated to compensate any damage to the partnership caused thereby.

## **Article 69**

### **Revocation of Management Authority**

The management authority of a partner may be revoked by decision of a competent court upon request of the other partners made on reasonable grounds which may include incapacity to perform managerial duties regularly or gross violation of duties.

#### **Article 70**

##### **Right to Reimbursement of Expenses**

- (1) A partner shall be entitled to reimbursement of expenses which he has incurred in conducting the partnership's business and which were necessary in view of the circumstances.
- (2) Expenses referred to in paragraph (1) of this Article shall be paid by the partnership.

#### **Article 71**

##### **Profit and Loss**

- (1) At the end of each business year an annual statement of account for the partnership shall be prepared stating profits or losses of the partnership and each partner's share thereof.
- (2) Each partner shall be entitled to an equal share of any profits of the partnership.
- (3) Each partner shall bear equally any losses of the partnership.
- (4) The interest of each partner in the profit of the partnership shall be paid to him not later than three months from the date of the adoption of the financial statement.
- (5) If the Articles of Association contains a provision which differs from the provisions of paragraphs (2) and (3) of this Article such provision shall be considered to relate both to profits and losses.

#### **Article 72**

##### **Applicability of Articles 59-71**

The provisions of Articles 59-71 of this Law shall apply to a partnership unless the partnership's Articles of Association or partnership agreement provides otherwise.

#### **Chapter 3**

##### **Relationship of a Partnership and Partners to Third Parties**

#### **Article 73**

##### **Representation of a Partnership**

- (1) Each partner shall have authority to represent the partnership, unless the Articles of Association provides otherwise.

(2) If two or more partners have authority to represent a partnership, they may do so independently unless the Articles of Association provides otherwise.

(3) The Articles of Association may determine that all or some of the partners may represent the company only jointly.

(4) Partners who are entitled to represent the company jointly may authorize one or more of them to carry out specific transactions or specific kinds of transactions. A communication from a third party may be delivered to any one of the partners entitled to participate in the representation of the partnership, and such delivery will constitute delivery to the partnership.

(5) The Articles of Association may determine that the partners may represent the partnership only jointly with a procurator. In this case, paragraph (4) of this Article shall apply accordingly.

(6) The exclusion of a partner from authority to represent the partnership, a decision on joint representation, a decision of the kind described in paragraph (3) of this Article, and as any change in a partner's authority to represent the partnership shall be registered in accordance with the law which regulates registration of business entities.

#### **Article 74**

##### **Resignation of Representation Authority**

(1) A partner authorized to represent a partnership may resign within a time frame stated in the Articles of Association or partnership agreement (if any), and on grounds which are reasonable in the judgment of the other partners.

(2) Any provisions in the Articles of Association or partnership agreement which would allow a partner to surrender such right to resign, shall be null and void.

(3) If there are reasonable grounds for a partner to resign representation authority sooner than the time frame referred to in paragraph (1) of this Article, he may do so.

(4) A partner must give notice of resignation of representation authority in writing to all the partners and the partnership in time to allow for continuation of pending transactions by other partners.

(5) If a partner resigns contrary to paragraphs (1) and (3) of this Article, he is obligated to compensate any damage to the partnership caused thereby.

#### **Article 75**

##### **Revocation of Representation Authority**

Authority to represent a partnership may be revoked by decision of a competent court unless provided otherwise in the Articles of Association, or revoked based on a lawsuit filed by the partnership or upon request made by the other partners if it is determined that the partner is incapable of representing the partnership or is in gross violation of his duties

to represent the partnership.

## **Article 76**

### **Complaint and Compensation**

- (1) A partner may file a personal complaint, as well as a complaint on behalf of the partnership, against a third party.
- (2) A claim of a third party against a partner may be compensated from claims of the partner against the partnership.

## **Article 77**

### **Liability of a New Partner**

- (1) A person who becomes a partner in an existing general partnership assumes the liabilities of the partnership, including pre-existing liabilities, equally with all existing partners.
- (2) Agreements contrary to paragraph (1) of this Article are ineffective as against third parties unless the third parties agree.

## **Chapter 4**

### **Partnership Interests**

## **Article 78**

### **Transfer of Partnership Interests to Third Parties**

- (1) A partner may transfer his interest in a partnership to a third party only with the consent of all the other partners.
- (2) In case of a proposed transfer of interest to a third party, the other partners shall have a preemptive right to purchase that interest.
- (3) If the other partners do not give such consent and do not exercise such preemptive right, the partner who wishes to transfer his interest may do so freely to any third party.
- (4) A pledge of an interest shall be considered a transfer of the interest for the purposes of paragraphs (1), (2) and (3) of this Article.
- (5) Transfer of an interest at death to heirs and legal successors shall not be a transfer of interest to a third party for purposes of paragraphs (1), (2) and (3) of this Article.
- (6) The Articles of Association or partnership agreement may contain provisions regarding transfer which are different from those in paragraphs (1)-(4) of this Article.

## **Article 79**

## **Liability Relating to Transfer of Interest**

(1) In case of any transfer of interest, the transferor and the transferee shall be jointly and severally liable to the partnership for all of the transferor's obligations to the partnership at the moment of the transfer, unless all of the partners agree otherwise.

(2) A claim by or on behalf of a partnership with respect to paragraph (1) of this Article must be brought within three years after from the registration of the transfer of interest.

(3) Paragraph (2) of this Article shall also apply accordingly to all other claims by or on behalf of a partnership against a person who has ceased to be a partner.

## **Chapter 5**

### **Dissolution of a General Partnership and Exit of Partners**

#### **Article 80**

##### **Events Causing Dissolution of a Partnership**

(1) A general partnership shall dissolve upon occurrence of any of the following events:

- 1) expiration of the term or completion of the task for which the partnership was established;
- 2) a decision of the partners to dissolve;
- 3) opening of a bankruptcy procedure against the partnership;
- 4) the date as of which the partnership has not carried out any business activities for two years in continuous succession;
- 5) a court decision that the partnership is dissolved;
- 6) any event agreed to in the Articles of Association or partnership agreement that results in dissolution.

(2) A partner shall cease to be a partner upon the occurrence of any of the following events unless the Articles of Association or partnership agreement provides otherwise:

- 1) death of the partner;
- 2) opening of a bankruptcy proceeding against the partner;
- 3) notice of withdrawal as a partner given by the partner;
- 4) a decision of the partners made in accordance with the Articles of Association or the partnership agreement and this Law;
- 5) Any other cases stated in the Articles of Association or partnership agreement as

causing the partner to cease to be a partner.

## **Article 81**

### **Tacit Extension of Duration**

If a partnership has been established for a definite term or for the fulfillment of a specific purpose and continues operating after the expiration of that term or the achievement of that purpose, the partnership shall be considered to have received the tacit consent of all partners to exist for an indefinite period of time.

## **Article 82**

### **Resignation and Withdrawal of a Partner by Giving Notice**

- (1) A partner may withdraw voluntarily from a partnership by giving notice of his withdrawal to the partnership.
- (2) A partner may withdraw as provided in paragraph (1) of this Article only by giving written notice of withdrawal to the other partners not less than six months before the end of the partnership's business year, unless the Articles of Association provides otherwise.
- (3) A partner's right referred to in paragraph (1) of this Article may not be reduced or eliminated.

## **Article 83**

### **Dissolution of a Partnership by Court Decision**

- (1) Pursuant to a lawsuit filed by a partner, a partnership may be dissolved by court decision for justifiable reasons.
- (2) A justifiable important reason under paragraph (1) of this Article shall exist if the court finds that another partner has deliberately or by gross negligence his duties under this Law, the Articles of Association or the partnership agreement, or if the performance of such duties has become impossible, or that it is not otherwise possible to continue the partnership's business in conformity with this Law, the Articles of Association or the partnership agreement.
- (3) Any reduction or elimination a partner's right to file a lawsuit referred to in paragraph (1) of this Article shall be null and void.
- (4) A claim under this Article shall be brought against the partnership and all other partners in the competent court.
- (5) In a case referred to in this Article the court may, instead of ordering dissolution of the partnership, reverse the claim and order the expulsion of a partner under Article 84 of this Law.

## **Article 84**

### **Expulsion of a Partner**

- (1) The provisions of this Law relating to expulsion of a member of a limited liability company shall apply mutatis mutandis with respect to expulsion of a partner of a partnership.
- (2) A decision to expel a partner shall be made by the remaining partners in accordance with Article 63 of this Law.

## **Article 85**

### **Consequences of Exit of a Partner**

- (1) The interest of a partner who exits the partnership shall be distributed among the remaining partners equally.
- (2) The remaining partners shall be obligated to pay the departing partner the amount he would have received if the partnership had been dissolved at the time of his exit without taking account of then-outstanding transactions.
- (3) If the value of the assets of the partnership is not sufficient to cover the partnerships commitments, the exiting partner shall pay a part of the missing amount proportionate to his share in bearing losses of the partnership.
- (4) Paragraphs (1)-(3) of this Article shall apply unless provided otherwise by the Articles of Association or partnership agreement.

## **Article 86**

### **Treatment of Outstanding Transactions on Exit of a Partner**

The share of a partner leaving a partnership in profits and losses of pending transactions shall be valued as of the date of his exit, unless the Articles of Association or partnership agreement provides otherwise.

## **Article 87**

### **Procedure in Case of One Remaining Partner**

- (1) If for any reason only one partner remains, he is obligated to take all necessary measures to adapt the company under this Law within three months after the date that he became the only partner, or continue the business as an entrepreneur.
- (2) If within the time limit referred to in paragraph (1) of this Article the sole partner fails to conform the status with the requirements of this Law, the partnership shall be liquidated.

## **Article 88**

## **Continuation of Partnership with Heirs**

- (1) A general partnership shall continue with the heirs to a deceased partner, if that is in accordance with the Articles of Association and consented to by the heirs.
- (2) The heirs may exercise the right referred to in paragraph (1) of this Article from the date they knew of the succession or the date of the appointment of the representative of an heir who has no legal capacity, as the case may be.

### **Article 89**

#### **Registration of Dissolution**

- (1) The partners with authority to represent a partnership shall report a dissolution of the partnership and the exit of any partner from the partnership to the Registry for registration and publication.
- (2) In case of dissolution by court decision, the court shall report the dissolution to the Registry ex officio.

### **Title II**

## **LIMITED PARTNERSHIP**

### **Chapter 1**

#### **Definition and Founding**

### **Article 90**

#### **Definition and Liability**

- (1) A limited partnership is a partnership organized by two or more legal entities and/or natural persons who undertake to conduct business under a common registered name, and in which at least one partner's liability is unlimited (a "general partner") and at least one partner's liability is limited to the loss of his agreed contribution (a "limited partner").
- (2) A limited partnership is liable for all of its obligations with all of its assets.
- (3) The liability of a limited partner and a general partner for the obligations of the partnership shall be as stated in paragraph (1) of this Article.

### **Article 91**

#### **Application of General Partnership Provisions to Limited Partnerships**

- (1) Unless this Law provides otherwise, the provisions of this Law on general partnerships shall also apply, mutatis mutandis, to limited partnerships.
- (2) A general partner in a limited partnership has the same status as a partner in a general



partnership unless provided otherwise by this Law.

## **Article 92**

### **Articles of Association**

(1) The Articles of Association of a limited partnership must contain:

- 1) the full name and place of residence of each natural-person partner and the registered name and registered office of each legal-entity partner and a statement of which type of partner each is;
- 2) the registered name and registered office of the partnership;
- 3) the registration of the type and value of each founder's contribution;
- 4) the business purpose of the partnership.

(2) The Articles of Association may contain other matters as considered relevant by the limited partnership and the partners.

## **Article 93**

### **Amendment of Articles of Association**

(1) The Articles of Association of a limited partnership may be amended only with the agreement of all general and limited partners, unless the Articles of Association provide otherwise.

(2) An amendment of the Articles of Association of a limited partnership which increases the obligations of a particular partner or imposes new liabilities on a particular partner shall require the consent of that partner.

## **Article 94**

### **Limited Partnership Agreement**

(1) Apart from the Articles of Association a limited partnership may have a limited partnership agreement regulating the partnership's business and governance.

(2) A limited partnership agreement is not required to be submitted to the Registry.

(3) A limited partnership agreement must be in writing and must be signed by every partner.

(4) A limited partnership agreement and any amendments thereto shall have legal effect among partners as of the moment of signing of the agreement by all partners unless provided otherwise in the partnership agreement.

## **Article 95**

## **Relationship of Articles of Association and Partnership Agreement**

In the event of any inconsistency between a limited partnership's Articles of Association and limited partnership agreement, the Articles of Association shall control.

### **Chapter 2**

#### **Relationships Among Partners and the Partnership**

##### **Article 96**

###### **Contributions**

- (1) The contribution of a limited partner to a limited partnership may be in money or in kind including work that is done and services to the company.
- (2) A limited partner must pay in all of his contributions to the limited partnership prior to his becoming a limited partner.

##### **Article 97**

###### **Transfer of Interests**

- (1) A general partner of a limited partnership may not transfer all or any part of his partnership interest without the consent of all limited and general partners.
- (2) A limited partner of a limited partnership may transfer all or any part of his partnership interest by sale, gift, pledge, inheritance or otherwise.

##### **Article 98**

###### **Profit and Loss**

Each general and limited partner shall be entitled to distributions of profit and shall be liable for losses from the partnership in proportion to his percentage share of the contributions of all partners actually paid in.

##### **Article 99**

###### **Applicability of Other Articles**

The provisions of Articles 96-98 of this Law shall apply to a limited partnership unless the Articles of Association or partnership agreement provides otherwise.

##### **Article 100**

###### **Management of a Limited Partnership**

- (1) One or more general partners shall manage the business of a limited partnership (hereinafter called "management").

- (2) A limited partner may not participate in management of a limited partnership.

**Chapter 3 Relationships of Partnership and Partners With  
Third Parties**

**Article 101**

**Representation**

A limited partner may not represent a limited partnership in dealings with third parties.

**Article 102**

**Liability of a Limited Partner as a General Partner in Certain Cases**

- (1) A limited partner shall be liable as a general partner if his name is included in the registered name of the limited partnership with his consent.
- (2) A limited partner shall be liable as a general partner if he acts contrary to paragraph (2) of Article 100 of this Law.

**Chapter 4**

**Changes in Membership and Status of a Company**

**Article 103**

**Termination of Partner Status and Changes of Legal Form**

- (1) A limited partnership shall not dissolve upon the death of a limited partner who is a natural person or upon dissolution of a limited partner which is a legal entity.
- (2) If a limited partnership has no general partners and new general partners are not admitted within three months after the date on which such event occurs, the limited partners may unanimously decide within such three months change the legal form to a limited liability company or joint-stock company in accordance with this Law.
- (3) If the limited partners do not comply with the action and time frame stated in paragraph (2) of this Article, the limited partnership shall be terminated by liquidation in accordance with this Law.
- (4) If all limited partners withdraw from a limited partnership, the company may continue as a general partnership or as the business of an entrepreneur.
- (5) Any events referred to in paragraphs (1)-(4) of this Article must be reported to the Registry and published in accordance with the law which regulates registration of business entities.

**Title III**

# **LIMITED LIABILITY COMPANY**

## **Chapter 1 Basic Principles**

### **Article 104**

#### **Definition and Liability**

- (1) A limited liability company is a company organized by one or more legal entities and/or natural persons, as members of the company, to conduct business under a common registered name.
- (2) A limited liability company is liable for all of its obligations with all of its assets.
- (3) A member of a limited liability company is not liable for obligations of the company solely by reason of being a member, except that a member shall be liable up to the amount of any agreed but unpaid contribution of the member to the company.
- (4) A limited liability company may have a maximum 50 members.
- (5) If the number of members of a limited liability company exceeds the number stated in paragraph (4) of this Article but is not more than 100, and if such situation continues for more than one year, the company shall change its form to a closed joint stock company.

### **Article 105**

#### **Freedom to Contract Principle**

The members of a limited liability company may regulate freely their relations among themselves and with the company except as provided otherwise in this Law.

## **Chapter 2**

### **Articles of Association and Company Agreement**

#### **Article 106**

##### **Articles of Association**

- (1) The Articles of Association of a limited liability company must contain:
  - 1) the full name and place of residence of each natural person member and the registered name and registered office of each legal entity member;
  - 2) the registered name and registered office of the company;
  - 3) the business purpose of the company;
  - 4) the amount of the company's basic capital, the amount of each initial member's

contribution, and a description of the nature and valuation of any such contributions which are in kind;

5) the manner and time of making contributions in cash and kind;

6) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorized to commence business; and

7) any special advantage granted, at the time the company is founded or up to the time it receives authorization to commence business, to anyone who has taken part in the founding of the company or in transactions leading to the grant of such authorization.

(2) The Articles of Association of a limited liability company may also contain other provisions including provisions that may be contained in a company agreement.

## **Article 107**

### **Company Agreement**

(1) Apart from the Articles of Association a limited liability company may have a company agreement regulating the company's business and governance. A company agreement shall be in writing and particularly may contain provisions which:

1) impose obligations on members to make contributions to the company in addition to their initial contributions, and prescribe specific payments and other consequences for their failure to meet such obligations;

2) state conditions for and the manner of transfer of shares by members in ways different from those stated in this Law;

3) state that members' votes or entitlement to dividends will be equal or will be according to capital contributions, or will be according to some other method; or

4) prescribe detailed procedures for decision-making including a method for settling disputes in case of deadlock among members.

(2) A company agreement is not required to be submitted to the Registry.

(3) A company agreement and any amendments thereto shall have legal effect among members as of the moment of the signing of the agreement by all members, unless provided otherwise in the company agreement.

## **Article 108**

### **Relationship of Articles of Association and Company Agreement**

In the event of any inconsistency between a company's Articles of Association and company agreement, the Articles of Association shall control.

## **Chapter 3**

### **Costs**

#### **Article 109**

##### **Founding Costs**

- (1) The Articles of Association of a limited liability company may provide that the cost of founding a company shall be borne by the company or by its founders.
- (2) If not provided otherwise in the Articles of Association, the founders shall bear the cost of founding the company.
- (3) If the Articles of Association provides that the cost of founding shall be borne by the company, the cost shall be reimbursed by the company to the founders up to the amount stated in the Articles of Association.

## **Chapter 4**

### **Members' Basic Obligations**

#### **Section 1**

##### **Obligation Concerning Contributions**

#### **Article 110**

##### **Form of Contributions**

- (1) A member's contribution to a limited liability company may be monetary or nonmonetary including performed work or services.
- (2) Contributions of members to a limited liability company need not be equal in value.
- (3) Contributions to a limited liability company, in money or in kind, shall be paid in to the company as provided in the company's Articles of Association.

#### **Section 2**

##### **Additional Contributions**

#### **Article 111**

##### **Calls for Additional Contributions**

- (1) Members of a limited liability company may call for additional contributions if so provided by the company's Articles of Association or company agreement.
- (2) Unless provided otherwise in the Articles or Association or company agreement, such

additional contributions shall be made by the members in proportion to their respective percentage shares.

(3) If a member of a limited liability company does not pay the additional contribution referred to above in this Article, the remaining members shall be obligated to pay such uncollected amount in proportion to their shares unless provided otherwise in the Articles of Association or company agreement.

(4) A company's Articles of Association may provide that a member who does not meet his obligations referred to in paragraphs (1) and (2) of this Article shall be liable to other members and the company for the damage caused.

## **Chapter 5**

### **Basic Capital**

#### **Article 112**

##### **Minimum Basic Capital**

(1) The monetary value of the basic capital of a limited liability company may not be less than 500 Euros in the dinar countervalue calculated per mean exchange rate at the time of being paid in, of which sum at least one half shall be deposited in an interim account until the registration of the company, while the remainder shall be transferred to the company's account within two years from the date of registration.

(2) A higher amount of minimum basic capital may be required by a separate law for the founding of financial and insurance companies, as well as other companies that conduct certain business as limited liability companies.

#### **Article 113**

##### **Increase and Decrease of Capital**

(1) A company's basic capital may be increased by decision of its members, and an increase may be by additional contributions by members or by conversion of any reserves available for that purpose.

(2) A company's basic capital may be decreased on one basis by a decision of its members, but not below the amount required by this Law.

(3) A decrease of a company's basic capital on one basis can be conducted simultaneously with an increase of its basic capital on another basis, in accordance with this Law.

(4) Registration of an increase or decrease of a company's basic capital is done, as a rule, once a year within thirty days from the day of the members' annual assembly.

#### **Article 114**

##### **Applicability of Other Articles**

Provisions of this Law that regulate the maintenance, increase and decrease of basic capital and convening of shareholder meetings of an open joint stock company in that connection, shall apply to the maintenance, increase and decrease of basic capital and convening of member meetings of a limited liability company when the company's losses exceed 50% of the company's basic capital.

## **Chapter 6**

### **Shares**

#### **Article 115**

##### **One Share Per Member**

- (1) A member of a limited liability company shall acquire a share in the initial capital of the company in proportion to the percentage of his contribution.
- (2) A member of a limited liability company shall have one single share in the company.
- (3) If a member acquires one or more additional shares, they will be combined with his existing share and all will constitute a single share.

#### **Article 116**

##### **Voting and Distribution Rights of Shares**

Unless provided otherwise in a company's Articles of Association, the members' voting power in decisions of the company and the members' rights to dividends and distributions on liquidation of the company shall be in proportion to their then-current percentages of the total contributions of all members paid in.

#### **Article 117**

##### **Legal Nature of Shares**

- (1) Shares in a limited liability company are not securities.
- (2) Shares in a limited liability company may not be acquired or offered through public invitation.
- (3) Unless provided otherwise in a company's Articles of Association or company agreement, a limited liability company shall issue a certificate to each member identifying his membership and evidencing his share.

#### **Article 118**

##### **Co-Ownership of a Share**

- (1) A share may have more than one owner (hereinafter called co-owners of the share). Co-owners of a share shall be considered to be one single member of the company and each co-



owners full name and address shall be kept in the company's book of shares.

(2) Unless provided otherwise in a company's Articles of Association or company agreement, co-owners of a share shall exercise their voting and other rights in the company only through a single joint representative. In every such case the co-owners must identify that representative to the company to be kept in the company's book of shares.

(3) Any notice given by the company to such a designated representative shall be deemed given to all of the co-owners. If the co-owners of a share fail to appoint and identify to the company such a representative, a notice given by the company to any co-owner shall be deemed given to all co-owners.

(4) Co-owners of a share shall be jointly and severally liable to the company for all obligations to the company respecting the share.

(5) Legal action by a company against one co-owner for such obligations shall have binding effect against all co-owners.

## **Article 119**

### **Book of Shares**

(1) A limited liability company must keep a book of shares at its registered office.

(2) The book of shares must contain: the personal name or registered name, the place of residence or registered office and the tax reference number of every company member, every co-owner of a share, and every representative of co-owners of a share; the amount of all contracted and paid-in contributions of each member; any secondary obligations and additional contributions beyond the initial contributions; all pledges of shares; the number of votes or the percentage voting power of each share; all transfers of shares including the date and the name of the transferor and the transferee; and all changes in any of the foregoing.

(3) A limited liability company shall submit application and documents for changes in data entered into the book of shares to the Registry for registration and publication in accordance with the law which regulates registration of business entities.

(4) A member of the company shall have the right to examine and make a copy of the book of shares.

(5) The directors of a company shall be responsible for the correctness of data in the book of shares in compliance with this Law.

## **Article 120**

### **Registration of Shares**

(1) In relation to a limited liability company, a company member is a person who is registered as such in the company's book of shares, whereas in relation to third parties a company member is a person registered as such in the Registry.

(2) The date on which a company has received an application for registration shall be considered to be the date of a member's registration in the book of shares if all the information required for such registration has been provided, regardless of actual time of registration.

## **Article 121**

### **Acquisition of Own Shares**

(1) As used in this Law, "own shares" of a limited liability company means shares acquired by the company from members.

(2) A limited liability company may not subscribe to its own shares directly or indirectly through third parties who would acquire them on its behalf.

(3) A limited liability company may acquire its own shares from members, including shares that are partly paid.

(4) Shares referred to in paragraph (3) of this Article may be acquired by purchase from a member, by reason of involuntary termination of a member's membership, or otherwise.

(5) A limited liability company may not acquire its own shares in violation of the provisions of this Law restricting distributions to shareholders.

(6) A limited liability company may not vote its own shares, such shares shall not be counted in calculating a quorum for voting, and such shares shall not carry the right to receive distributions.

(7) Shares of a company which have been owned by a limited liability company for a year from the date of their acquisition shall be cancelled by the company.

## **Article 122**

### **Pledge of Shares**

(1) A limited liability company may pledge shares in the company only if the amounts of debt claims secured by the pledge are less than the value of the shares, i.e. the paid value of the shares.

(2) A pledge by a member of his share to the company or to a person who acts in the name and on behalf of the company shall be subject to the provisions of this Law relating to acquisition of own shares.

## **Article 123**

### **Loans by a Company to Acquire its Shares**

(1) A limited liability company may not directly or indirectly provide any financial support for acquisition of its shares.

(2) Paragraph (1) of this Article shall not apply to transactions by financial institutions in the normal course of business or to transactions for acquisition of shares by employees or the company or a related company.

(3) Dispositions referred to in paragraph (2) of this Article shall be carried out only in accordance with provisions of this Law restricting distributions.

## **Article 124**

### **Withdrawal and Cancellation of Shares**

(1) A limited liability company may withdraw and cancel its own shares in cases foreseen by the Articles of Association or company agreement.

(2) A withdrawal or cancellation of shares may be effected only by decision of the company's members, unless provided otherwise in the company's Articles of Association or company agreement.

(3) A decision of members to withdraw and cancel shares shall state the grounds for cancellation, the amount paid to the member-owner of the shares in question, and the effect on the company's capital of the cancellation.

(4) A decision referred to in paragraph (4) of this Article shall be entered into the company's book of decisions.

(5) All rights and obligations arising from a share shall terminate upon cancellation of that share.

## **Chapter 7**

### **Basic Rights of Company Members**

#### **Section 1**

#### **Transfer of Shares**

### **Article 125**

#### **Free Transfer in Certain Cases**

Unless provided otherwise in this Law or the Articles of Association or company agreement, a share may be freely transferred:

- 1) to another member of the company or to the company;
- 2) to the transferring member's spouse, brother, sister, lineal ancestor, lineal descendant, or spouse of a lineal descendant;
- 3) to a member's legal representative or heir upon his death; or

4) by a status change of the company under this Law.

## **Article 126**

### **Right of First Refusal on Transfer to Third Parties**

(1) Before offering to transfer his share or a part thereof to a person who is not then a member and is not a person referred to in Article 125, a transferring member must first offer it to the company.

(2) If the company does not accept such offer within the period stated therefor in the company's Articles of Association or company agreement, the decision on which is to be made by the members meeting, the offer shall be sent to the other members of the company, in accordance with the Articles of Association or company agreement.

(3) If the other members do not advise the transferring member on a decision within the period stated in the Articles of Association or company agreement, the offer shall be deemed refused.

(4) The company or the other members may make a counteroffer to the transferring member, in which case the transferring member shall give a response in writing within 10 days of receipt of the counteroffer. If the transferring member does not do so within such period the counteroffer shall be deemed refused.

(5) A company accepting an offer may allocate some or all of the purchased share or part thereof to one or more of its members if all the members who voted in favor of the purchase approve the allocation. If the company is unable to buy the share because of the restrictions on distributions in this Law, the members who voted for the purchase shall be obligated to do so in proportion to their contributions to the company.

(6) If the offering member's offer is rejected, the offering member may, during a period of 60 days after the rejection, transfer his share to a third party at the price and on other terms offered to the company or a higher price.

## **Article 127**

### **Transfer in Court Enforcement Proceedings**

A company and its members shall have the rights stated in in Article 126 in the case of a transfer of a share in enforcement court proceedings against a member. Any such proceedings shall also be subject to laws regulating enforcement proceedings.

## **Article 128**

### **Requirements and Consequences of Transfer**

(1) A share may be transferred voluntarily only by written contract with duly certified signatures of the transferor and the transferee. A company's Articles of Association need

not be amended to reflect a transfer, unless the company's Articles of Association provides otherwise.

(2) A transferor and a transferee of a share shall be obligated to notify the company immediately of the transfer, change of membership and the time of the transfer, for entry into the company's book of shares. A company shall give effect to a transfer when it has received notice of the transfer.

(3) A transferee of a share will become a member of the company only when he has agreed in writing to be a party to and bound by the company's Articles of Association and company agreement by signing it and he is registered in the company's book of shares.

(4) A share transfer to heirs shall become effective as of the date the decision on succession becomes valid.

## **Article 129**

### **Division and Transfer in Part of a Share**

(1) A share may be divided in case of inheritance, legal succession, and transfer to two or more persons.

(2) A company's Articles of Association or company agreement may prohibit division of a share or may permit it only in certain cases such as the case of a transfer by a member to two or more other members.

(3) The provisions of this Law on share transfer shall apply to transfers of shares in whole or in part.

## **Article 130**

### **Pledge of a Share by a Member**

(1) A member of a limited liability company may pledge his share as security for a loan or other obligation of the member, unless the company's Articles of Association or company agreement provides otherwise.

(2) Any pledge shall be entered into the company's book of shares and the Registry.

(3) Unless the company's Articles of Association or company agreement provides otherwise, a pledgee shall not have any voting or management rights in the company until and unless he has become a member of the company.

(4) An approval of a pledge shall not imply approval for transfer of ownership or membership to the pledgee or any other third party unless the approval so states and the approval is not contrary to the company's Article of Association or company agreement.

## **Section 2**

### **Distributions to Members**

## **Article 131**

### **Financial Reports**

- (1) A company's directors shall submit annual financial reports and business reports, together with any related auditor's report, to an annual meeting of members to be adopted by them.
- (2) Any approval by the members meeting of a company's annual or other financial statements shall not affect any right available to the members if such statements are later found to be incorrect or misleading.

## **Article 132**

### **General Provisions Regarding Distributions**

- (1) A limited liability company may make distributions to its members at any time, unless provided otherwise in the company's Articles of Association or company agreement and except as provided in the provisions of this Law restricting distributions.
- (2) Unless provided otherwise in a company's Articles of Association or company agreement, any distributions to members shall be made to them in proportion to their then-current percentages of the initial capital of all members actually paid in to the company at the point in time when the company's decision to make the distribution is made.
- (3) A company agreement may contain other provisions regarding distributions, including but not limited to provisions specifying times and amounts for distributions, delegating authority to declare and pay distributions to a specified majority of members or to directors, providing for a record date to determine the identity of members who are entitled to a distribution, or imposing limitations on distributions in addition to those in the provisions of this Law restricting distributions.
- (4) When a member becomes entitled to receive a distribution, he becomes a creditor of the company with respect to the distribution.

## **Article 133**

### **Restrictions on Distributions**

- (1) A limited liability company may not make a distribution to its members if, after payment of the distribution, either:
  - 1) the company's net assets would be less than its initial capital, increased by the amount of any reserves that may be used for distributions to members in compliance with this Law and the law which regulates accounting and audit, and decreased by any amount that the company is required to enter into reserves for the year of distributions; or
  - 2) the company would be incapable of paying its debts as they become due in the ordinary course of the company's business.

(2) As an exception to paragraph (1) of this Article, a company may make a distribution to its members if its financial statements prepared in accordance with the law which regulates accounting and auditing show that the distribution is reasonable in the circumstances. A company's Articles of Association or company agreement may require that certain specified financial statements, accounting practices or valuation methods be used for such a determination.

#### **Article 134**

##### **Personal Liability for Prohibited Distributions**

(1) A member who receives a distribution prohibited by Article 133 of this Law, and who knew, or who under the circumstances must have known, at the time that the distribution was thus prohibited, shall be personally liable to the company for the return of the amount of the distribution.

(2) A member, director or other person who causes such a prohibited distribution to be made, and who knew at the time that the distribution was thus prohibited, shall be personally liable to the company for the return of the amount of the distribution.

(3) If more than one person has liability under paragraphs (1) and (2) of this Article with respect to a particular prohibited distribution, their liability shall be joint and several.

(4) A company's Articles of Association or company agreement may provide that members must replenish the company's basic capital if the persons referred to in paragraph (2) of this Article do not reimburse the company for such prohibited distributions.

#### **Article 135**

##### **Loans for Capital to be Subordinated**

(1) If a member of a limited liability company has granted the company a loan at a time when the members acting as orderly merchants would instead have made capital contributions (such as at a time of financial crisis), the member shall be a subordinated creditor under the Law on Bankruptcy for repayment of the loan in a bankruptcy proceeding against the company.

(2) If a third party has granted the company a loan described in paragraph (1) of this Article and a company member has provided the third party with collateral or guarantees for repayment of the loan, then in a bankruptcy proceeding against the company the third party may assert a claim for repayment only of amounts that remain unpaid.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply mutatis mutandis to other actions of a company member or a third party that are commercially equivalent to the granting of loans as described in paragraphs (1) and (2) of this Article.

(4) The foregoing rules shall not apply with respect to a member or director of the company who holds shares representing less than 10% of the company's capital.

(5) If the company has repaid a loan or other amounts referred to in paragraphs (1) - (3) of

this Article within a year preceding the commencing of bankruptcy proceedings against the company, then the member who gave the security shall reimburse the company the amount that was repaid.

(6) The obligation referred to in paragraph (5) of this Article shall, however, exist only up to the amount of the value of the security given by him at the time of the repayment of the loan.

(7) A member shall be discharged from the liability referred to in paragraph (5) hereof if he makes available to the company, for satisfaction of the obligation, the assets which were granted as security.

(8) Paragraphs (1)–(7) of this Article shall apply mutatis mutandis to other legal transactions which are the commercial equivalent of a loan.

## **Chapter 8**

### **Assembly**

#### **Section 1**

#### **Definition and Competence**

##### **Article 136**

##### **General Provisions**

(1) The members of a limited liability company shall act through members' meetings.

(2) In a single-member limited liability company the decisions of the members' meeting shall be made by the single member or another person authorized by the member.

(3) Immediately after the adoption of a decision of a single-member company, the member shall record and sign the minutes and enter the decision in writing in the company's book of decisions.

(4) Decisions in a single-member company referred to in paragraphs (2) and (3) of this Article need not be in writing or entered in the company's book of decisions if they concern current operations in the normal course of the company's business.

##### **Article 137**

##### **Competence of the Members' Meeting**

Unless provided otherwise in this Law or in a company's Articles of Association or company agreement, the members' meeting shall make decisions on:

1) approving business operations concluded relating to founding of the company prior to registration of the company in the Registry;



- 2) appointment and removal of directors and fixing their remuneration;
- 3) adopting financial reports and deciding the time and amount of distributions to members;
- 4) appointing internal auditors or independent auditors, approval of their findings and opinions, and determining their remuneration and other conditions of their engagement;
- 5) appointing liquidators and confirming of the liquidation balance sheet;
  
- 6) increasing or decreasing the basic capital of the company, acquiring, withdrawing or canceling own shares, and issuing any securities;
- 7) granting procuration and other business powers-of-attorney for the company and any company branches;
- 8) deciding on any additional capital contributions to be required from members;
- 9) expulsion of members, admission of new members, and approval of transfer of shares to third parties when company approval is required;
- 10) changes in status, changes in legal form and termination of existence of the company;
- 11) approving transactions of the company with directors and other persons contemplated by Article 35 of this Law;
- 12) acquisition, sale, lease, pledge, and other dispositions of major assets as provided in this Law;
- 13) amending the company's Articles of Association or company agreement;
- 14) establishing branches;
- 15) adopting a book of rules for members' meetings; and
- 16) any other matters which the Articles of Association of company agreement states shall be within the exclusive competence of the members' meeting.

## **Section 2**

### **Convening a Meeting and Agenda**

#### **Article 138**

##### **Convening a Meeting**

- (1) A members' meeting shall be convened when necessary but always in cases prescribed by this Law or the company's Articles of Association or company agreement.
- (2) A members' meeting shall be convened by the company's single director or board of

directors unless the company's Articles of Association or company agreement provides otherwise. The place of each meeting shall be the company's registered office, unless the Articles of Association or company agreement prescribes differently or the members decide differently.

## **Article 139**

### **Regular and Extraordinary Meetings**

(1) A regular annual meeting shall be held no later than six months after the end of the company's business year with an aim of adopting the financial reports and making decisions on distributions.

(2) Members' meetings held between the annual meetings shall be known as extraordinary meetings.

(3) A request to convene a meeting may be submitted to the directors by any member or director at any time.

(4) An extraordinary meeting shall be convened if requested in writing by members with at least 10% of the voting power of all members, unless the Articles of Association or company agreement prescribes that this right belongs to members who represent a smaller percentage of the voting power.

(5) A request referred to in paragraph (4) of this Article shall be made to the directors of the company.

(6) If the directors do not, within 15 days after receiving the request, grant the request and convene an extraordinary meeting, the request submitters may convene the meeting themselves, stating the agenda. In this case the meeting shall determine the person to bear the costs of the thus convened session.

(7) If an extraordinary meeting convened by minority members is not held or lacks a quorum, the minority members may convene an additional meeting not less than seven days later, and if the thus convened meeting is not held or lacks a quorum they shall have the right to ask the court, in noncontentious proceedings, to appoint a person who shall convene the meeting and state the agenda in the capacity of interim legal representative.

(8) The court shall be obligated to decide on a minority members' request referred to in paragraph (7) of this Article within 48 hours after receiving it.

## **Article 140**

### **Notice and Agenda**

(1) A members' meeting shall be convened by sending an invitations in writing to each member at the addresses stated in the company's book of shares. An invitation may be sent to a member by email if the member has consented thereto in writing.

(2) The invitations shall be thus delivered to each member not later than seven nor more

than 15 days prior to the meeting.

(3) The invitation shall contain the registered name and registered office of the company, the time and place of the meeting, the proposed agenda, and any other matters required in the company's Articles of Association or company agreement. If a decision on amending the Articles of Association or company agreement is proposed the full proposed amendment must be enclosed. The invitation must also include drafts of proposed decisions relating to the agenda, drafts or descriptions of contracts the meeting is to approve, and, when appropriate, financial reports, managing board reports, supervisory board reports and auditors' reports.

(4) The meeting shall make decisions on the issues stated in the agenda and also on issues proposed by any member who has informed the other members of his proposal not later than three days prior to the meeting. Matters that are not listed in the invitation or of which members have not been informed can be added to the agenda only if all members are present and do not object to discussing and voting on them. Decisions on such added issues are effective if no absent member expresses disagreement therewith, in accordance with the Articles of Association or company agreement.

#### **Article 141**

##### **Waiver of Objection to Procedure**

A member who attends a members' meeting, in person or through an authorized representative, may not object to the procedure for convening or conducting the meeting unless he does so at the meeting or in writing within three days following the meeting.

#### **Article 142**

##### **Action Without a Formally-Convened Meeting**

Unless provided otherwise in a company's Articles of Association or company agreement, a members' meeting may also be held without complying with the procedures prescribed in Article 140 if all the attending members agree to this and if all the non-attending members waive any objection in writing.

#### **Section 3**

##### **Procedure for Decision Making**

#### **Article 143**

##### **Voting by Proxy**

(1) Unless provided otherwise in a company's Articles of Association or company agreement, a member may appoint any other person (a proxy) to vote for him by signing a written power of attorney to that effect.

(2) A member of a company may not be represented at a meeting under circumstances where the representative has only part of the voting power of the member's share, and may not grant a proxy to more than one person.

(3) A properly appointed legal representative of an entity shall represent and vote for that entity and shall not be considered a proxy subject to paragraph (1) of this Article.

(4) A proxy agreement may be valid for only one members' meeting including any reconvening of that meeting.

(5) A director of a company may not vote or act as a voting representative of an employee of the company or a related person to an employee.

#### **Article 144 Quorum**

(1) At a members' meeting a simple majority of the voting power on a matter shall constitute a quorum for action of the members on that matter, unless the Articles of Association or company agreement requires a larger majority.

(2) If a meeting is not held due to lack of the quorum prescribed in paragraph (1) of this Article, it may be reconvened with the same proposed agenda at a date not less than 10 nor more than 30 days from the date of the first meeting in the manner prescribed in Article 140.

(3) At the reconvened meeting one-third of the voting power on a matter shall constitute a quorum for action on that matter, unless the Articles of Association or company agreement requires a larger quorum.

#### **Article 145**

##### **Conduct of a Members' Meeting**

(1) A members' meeting may adopt detailed procedural rules for the conduct of a meeting which are consistent with this Law, the Articles of Association and company agreement.

(2) A members' meeting shall be presided over by a chairman who shall be elected at the beginning of the meeting, unless the Articles of Association, company agreement or rules adopted by the meeting provide otherwise.

(3) The authority, obligations and liabilities of the chairman of a meeting may be specified in a company's Articles of Association, company agreement or rules adopted by a meeting.

(4) The chairman at a meeting shall appoint a person to keep minutes of the meeting, two persons to certify the minutes as being accurate, and a person to count votes, unless the Articles of Association, company agreement or rules adopted at a meeting provide otherwise.

(5) All directors of a company shall attend each members' meeting if possible.

## **Article 146**

### **Decision Making**

- (1) The decision of a simple majority of the voting power of a quorum prescribed in paragraphs (1) and (2) of Article 144 shall control on all matters unless a company's Articles of Association or company agreement requires a higher vote, and except as provided in paragraph (2) of this Article.
- (2) Unanimous agreement of all members shall be required for the following matters, unless the Articles of Association or company agreement provides for a lower vote (but not less than a simple majority of the voting power of all members): amendment of the company's Articles of Association or company agreement, increasing or decreasing the company's basic capital except by additional contributions of members required in the company's Articles of Association or company agreement; legal status changes of the company by merger, division, change of legal form, termination or liquidation of the company; making of distributions to members; acquisition by the company of its own shares; or the disposition of major assets as provided in this Law.
- (3) A decision that reduces or eliminates the rights as a member of one or more members in relation to the rights as a member of any other member shall require the agreement of the affected member or members, unless otherwise provided in this Law.

## **Article 147**

### **Meetings, Meetings by Telephone, Voting by Mail, and Actions Without a Meeting**

- (1) A members' meeting of a company with not more than 10 members may be held through conference telephone or other audio or visual communication equipment if all of the participants can listen and talk to each other. The persons participating in such a meeting shall be considered to be personally present at the meeting.
- (2) A member may vote at a meeting by mail or other means of document delivery, unless the Articles of Association or company agreement provides otherwise. The Articles of Association or company agreement may contain detailed rules for such voting, including rules specifying the issues which may be thus voted on.
- (3) If a company's Articles of Association or company agreement requires that action of the members must be taken at a meeting, any action which may be taken at a meeting may be taken without a meeting if consent in writing, stating the action so taken, is signed by all of the members entitled to vote on such matter.

## **Article 148**

### **Open and Secret Ballot**

- (1) Voting at a members' meeting shall be open -- by show of hands.
- (2) Voting on any matter shall be by secret ballot if requested by members who are present and have or represent at least 10% of the voting power on the matter in question.

## **Article 149**

### **Disqualification to Vote**

- (1) A member may not vote at a meeting on decisions that would:
  - 1) eliminate or reduce his obligations to the company;
  - 2) initiate or terminate a lawsuit against him; or
  - 3) approve transactions between him and the company referred to in Article 35 of this Law.
- (2) References in paragraph (1) of this Article to a member include related persons as defined in this Law.
- (3) A member shall not be disqualified from voting on decisions to appoint or remove him as director or liquidator of the company or to appoint or remove another person related to him.
- (4) The voting power of a member whose vote is disqualified shall not be taken into consideration in establishing the quorum or the number of votes necessary for making a decision.

## **Article 150**

### **Minutes**

- (1) Decisions at a members' meeting shall be recorded in minutes.
- (2) The minutes shall include particularly the name of the person presiding and any persons appointed to certify the minutes or count votes, the issues that were subject to voting, the results of voting for and against and abstained, any objections of members against the holding of the meeting, any dissenting opinions of members, and any objections by directors to decisions made.
- (3) The list of members present and the documents relating to convening the meeting session shall be filed in the company's records with the minutes.
- (4) The minutes shall be signed by the meeting's chairman and the recording clerk.
- (5) Failure to comply with this Article shall not in itself affect otherwise valid company action, if there is other evidence of its validity.

## **Article 151**

### **Book of Decisions**

- (1) Decisions adopted at a members' meeting shall be entered into a book of decisions

without delay.

(2) The decisions shall be valid from the moment of adoption, unless provided otherwise in the Articles of Association or company agreement.

## **Section 4**

### **Declaration of Nullity of a Meeting Decision**

#### **Article 152**

##### **Applicability of Similar Articles**

Provisions of this Law relating to general and special bases for declaration of nullity of a decision of a shareholders meeting, exceptions from a declaration of nullity and procedure of nullity referring to a joint stock company shall apply mutatis mutandis to a limited liability company.

## **Chapter 9**

### **Director or Board of Directors**

#### **Section 1**

##### **Status and Method of Work**

#### **Article 153**

##### **General Provisions Concerning Directors**

- (1) A limited liability company may have a single director or a board of directors.
- (2) A company's Articles of Association shall state whether the company shall have a single director or a board of directors.
- (3) A single director or member of a board of directors of a limited liability company may be a member of the company or may be a person who is not a member.
- (4) If a company has a board of directors, the board may consist of all members of the company or it may consist of other persons.

#### **Article 154**

##### **Election of Directors**

- (1) All directors of a company shall be elected by the members of the company at a members' meeting, except that the initial directors may be appointed in the Articles of Association.
- (2) A company's Articles of Association or company agreement may provide for election

of directors by cumulative voting as described in this Law.

## **Article 155**

### **Number of Directors and Vacancies**

- (1) A company's Articles of Association or company agreement shall state the number of directors on the company's board of directors.
- (2) In such case, if the number of directors falls below that number the remaining directors may fill the vacancy.
- (3) In such a case, the remaining directors shall convene a members' meeting without delay to fill the vacancy, and the remaining members shall perform only urgent tasks

before the vacancy is filled, unless the company's Articles of Association or company agreement provides otherwise.

## **Article 156**

### **Chairman of the Board**

- (1) Unless a company's Articles of Association or company agreement provides otherwise, the company's board of directors shall have a chairman who shall be elected by the majority of members.
- (2) A chairman shall have authority to represent the company.
- (3) The chairman shall convene and preside at meetings of the board and shall be responsible for the taking of minutes of meetings of the board.
- (4) The Articles of Association or company agreement may provide that the chairman shall preside at members' meetings and shall be responsible for the taking of minutes of members' meetings.

## **Section 2**

### **Activities of the Single Director or Board of Directors**

## **Article 157**

### **Competence**

- (1) Unless provided otherwise in a company's Articles of Association, a single director or board of directors shall have the following competence:
  - 1) representation of the company and managing operations of the company in accordance with this Law, the Article of Association and the company agreement;
  - 2) establishing a business plan;



- 3) convening members' meetings and establishing the proposed agenda for those meetings;
  - 4) implementing decisions of the members' meetings;
  - 5) establishing record dates and payment dates as of which the company determines the identity of its members for entitlement to dividends, voting and other purposes;
  - 6) concluding loan agreements;
  - 7) establishing the date as of which members acquire the right to participate in profit and the date of payment of participation in profit, as well as the date of acquiring the right to vote of other members of the company;
  - 8) granting or revoking procura; and
  - 9) any other matters provided for in the Articles of Association or company agreement.
- (2) If so stated in the Articles of Association or company agreement, a single director or board of directors shall have the following responsibilities:
- 1) implementing the acquisition, withdrawal and cancellation of company shares when authorized;
  - 2) determining the amount of dividends;
  - 3) issuing bonds and other securities.
- (3) A director or board of directors may transfer activities relating to matters referred to in paragraphs (1) and (2) of this Article unless the company's Articles of Association provides otherwise.

## **Article 158**

### **Liability for Business Books**

A single director or board of directors of a company shall be responsible for appropriate business book keeping and internal surveillance of the business in compliance with this Law.

## **Section 3**

### **Method of Work of the Board of Directors**

## **Article 159**

### **Individual or Joint Action by Directors**

(1) If a company has two or more directors, each of them shall have the right to act and bind the company independently, unless the company's Articles of Association provides

otherwise.

(2) If the Articles of Association or company agreement provides that directors may act only jointly, the approval of all directors shall be required for each act or transaction, except when this would require deferment of a decision and the deferment would harm the company's interests.

(3) If the Articles of Association or company agreement provides that a director is bound to follow instructions of another director and the first director considers instructions given to be inappropriate, he shall notify the other directors for the purpose of deciding jointly on the transaction, unless this would require deferment of a decision and the deferment would harm the company's interests.

(4) In the case of dispute between directors referred to in paragraph (3) of this Article, an extraordinary members' meeting shall be convened in accordance with this Law.

#### **Article 160**

##### **Meetings of the Board**

(1) The board of directors of a limited liability company shall hold at least four regular meetings each year, one of which shall be held immediately prior to the annual members' meeting.

(2) Apart from the meetings referred to in paragraph (1) of this Article, the board may hold extraordinary sessions which may be convened by the chairman at his own initiative or at the request of any member of the board. If the president fails to convene a meeting at the written request of one of the members, the meeting may be convened by the member himself.

(3) The convening of extraordinary sessions of the board shall be done in writing, stating the reasons, the time and the place of the meeting, which shall be given to all the members of the board.

(4) A meeting of the board may be held through conference telephone or other audio or visual communication equipment if all of the participants can listen and talk to each other. The persons attending a meeting in this way shall be considered to be personally present at the meeting.

(5) A meeting of the board may be held without the procedures prescribed in paragraphs (2)-(4) of this Article if it is attended by all of the directors and none of them objects to this or, if it is not attended by all of the directors, the non-attending directors waive any objection in writing in accordance with the Articles of Association and company agreement.

(6) The board may adopt procedural rules which further govern their procedures so long as those rules are not inconsistent with the company's Articles of Association or company agreement.

(7) Paragraphs (1)-(6) of this Article shall apply to a company unless the company's Articles of Association or company agreement provides otherwise.

## **Article 161**

### **Action Without a Meeting**

Unless provided otherwise in a company's Articles of Association or company agreement, any decision which may be taken by the board at a meeting, may be taken by the board without a meeting if a consent in writing is signed by all of the members of the board entitled to vote on that matter.

## **Article 162**

### **Quorum and Majority**

(1) The quorum for decision making by the board shall be a majority of the total number of members of the board.

(2) The decision of a majority of all of the directors shall be the decision of the board.

(3) Decisions of the board shall become effective at the moment of their adoption. Decisions of the board shall be entered in the company's book of decisions.

(4) If the votes of the directors result in a draw, the deciding vote shall be that of the chairman, who shall vote last.

(5) Paragraphs (1)-(4) of this Article shall apply to a company unless the company's Articles of Association or company agreement provides otherwise.

## **Article 163**

### **Disqualification to Vote**

The provisions of this Law relating to disqualification to vote shall be applied mutatis mutandis with respect to voting by directors or members of a limited liability company.

## **Article 164 Committees**

(1) The board of a company may form one or more committees comprised of members of the board or other persons.

(2) The conditions and the manner of work for such committees may be defined by the board in a manner consistent with the company's Articles of Association or company agreement.

(3) Unless provided otherwise in the company's Articles of Association or company agreement, all actions and decisions of a committee shall be subject to the board's approval.

## **Article 165 Minutes**

- (1) Minutes shall be kept of each meeting of a company's board or committee of a board and shall be presented for approval at the next-following meeting of the board or committee. The minutes shall be signed by the person presiding at the meeting and the person who took the minutes.
- (2) The minutes of a meeting shall be written within 10 days after the meeting.
- (3) The minutes shall state the time and place of the meeting, the directors present, the agenda of the meeting, a summary of the discussions, the issues subject to voting, and the results of voting including identification of those who voted in favor, against or abstained.
- (4) A failure to comply with paragraphs (1)-(3) of this Article shall not affect otherwise valid action by the board or committee.

## **Section 4**

### **Status Liability**

#### **Article 166**

### **Resignation of a Director**

The provisions of this Law relating to resignation of a director of a joint stock company shall apply mutatis mutandis with respect to resignation of a director of a limited liability company.

#### **Article 167**

### **Removal of a Director**

- (1) The members of a company at a members' meeting may remove one or more directors of the company with or without stated cause.
- (2) Any such removal shall be without prejudice to a director's rights to compensation under any separate contract with the company but such a contract may not eliminate the company's right stated in paragraph (1) of this Article.

## **Chapter 10**

### **Supervision**

#### **Article 168**

### **Internal Auditor or Audit Committee**

- (1) The Articles of Association or company agreement of a limited liability company may provide that the company shall have an internal auditor or an audit committee.

(2) An audit committee shall have at least three members and its total number of members shall be odd. An internal auditor shall be a natural person.

## **Article 169**

### **Election and Removal**

(1) An internal auditor or member of an audit committee shall be elected by the members' meeting from among independent directors if the company has independent directors, and from among other independent persons, except that the initial internal auditor or members may be appointed in the initial Articles of Association or by decision of the founders of the company.

(2) An internal auditor or member of an audit committee may be removed by decision of a members' meeting with or without a stated reason for removal.

(3) Any such removal shall not in itself prejudice any right to compensation which the person may have under a contract with the company. Such a contract may not eliminate the company's rights under paragraph (2) of this Article.

## **Article 170**

### **Competence and Method of Work**

(1) An internal auditor and members of an audit committee of a limited liability company shall report to the members' meeting on the following:

- 1) the accounting, reporting and financial operations of the company and any related companies;
- 2) the company's compliance with legal and regulatory requirements; and
- 3) the qualifications, independence and performance of the company's outside auditor, if there is one.

(2) In performing its functions the internal auditor or audit committee shall control y the following:

- 1) the selection and compensation of the outside auditor;
- 2) the adequacy and completeness of the annual and other financial statements of the company and the basis for proposals for distribution of profit and other distributions to members;
- 3) the adequacy and completeness of the company's disclosure of financial and other information to the members;
- 4) compliance of the company's business and transactions with the provisions of this law relating to financial matters and conflict of interest transactions; and

5) procedures for handling any complaints from members, or other persons relating to matters referred to in subparagraphs 1)-4) above.

(3) The internal auditor or audit committee shall present a report to the members on the foregoing at each annual members' meeting and at any extraordinary members' meeting when it considers a report to be appropriate or necessary and when so requested by the company's board of directors.

(4) In carrying out their duties the internal auditor or audit committee may inspect all documents of the company, request statements and explanations of members of the board of directors or employees and inspect the state of the company's assets.

(5) The internal auditor and the audit committee shall submit a separate report to the members' meeting on contracts between the company and a director or related persons as defined in this Law.

(6) In performing their duties the internal auditor or audit committee may engage other persons competent in their fields and pay reasonable remuneration to them.

(7) The internal auditor or audit committee shall perform its activities including those referred to in paragraphs (1)-(6) of this Article in compliance with the law which regulates accounting and audit and the company's Articles of Association and company agreement.

#### **Article 171**

##### **Auditor**

(1) A limited liability company may have an auditor with supervisory authority in accordance with the law which regulates accounting and audit.

(2) A company's auditor shall be notified of the holding of members' meetings simultaneously with the members, so that he can participate in the meeting in accordance with the law.

#### **Article 172**

##### **Fiduciary Agent-Expert**

The provisions of this Law relating to the appointment of a fiduciary agent-expert and his competences and reports in a joint stock company shall apply mutatis mutandis to a limited liability company, unless provided otherwise in the Articles of Association or company agreement.

#### **Chapter 11**

##### **Amendment of Articles of Association and Company Agreement**

#### **Article 173**

##### **Method of Amendment**

- (1) A company's Articles of Association may be amended only by unanimous agreement of all members of the company, unless provided otherwise in the Articles of Association.
- (2) The Articles of Association may permit amendment of the Articles of Association by fewer members than all, but not by less than a simple majority of the company's voting power.
- (3) A company's company agreement may be amended only by unanimous agreement of all members of the company, unless provided otherwise in the company agreement.
- (4) The company agreement may permit amendment of the company agreement by fewer members than all, but not by less than a simple majority of the company's voting power.
- (5) Notwithstanding paragraphs (1)-(4) of this Article, any amendment of a company's Articles of Association or company agreement which changes a member's rights shall require that member's consent.
- (6) The signatures of company members on amendments to the company's Articles of Association or company agreement shall be certified in accordance with law.

## **Chapter 12**

### **Company Documents and Information**

#### **Article 174**

##### **Retention of Company Documents and Information**

- (1) Every company must at all times keep and maintain the following:
  - 1) its Articles of Association including all amendments thereto;
  - 2) its company agreement and all amendments thereto;
  - 3) the decision on registration;
  - 4) internal documents approved by its membersmeeting and board of directors;
  - 5) its book of decisions
  - 6) foundation documents of every branch and representative office of the company;
  - 7) documents proving the ownership and other rights of the company over its assets;
  - 8) minutes and decisions of all membersmeetings and board of directorsmeetings;
  - 9) minutes of any audit committee meeting and their decisions;
  - 10) financial reports, reports on business operations and auditorsreports;

11) accounting files and documents;

12) documents on financial and operations reports submitted to authorized bodies;

13) a list of all related companies with information showing the share or other rights in those companies;

14) the book of shares;

15) a list of full names and addresses of all members of the board of directors and all persons authorized to represent the company, as well as information whether the latter represent the company collectively or individually;

16) the full name and address of the internal auditor and members of the audit committee;

17) a list of all transfers of shares including pledges or any other transfer to a person who does not thus become a member of the company; and

18) a list of contracts between the company and directors or related persons.

(2) A limited liability company shall keep the documents and information referred to in paragraph (1) of this Article foregoing at its registered office or another place known to and accessible to all of the company's members.

(3) A limited liability company shall keep its Articles of Association and company agreement permanently. It shall keep the other documents above for at least five years, and shall then deliver them to the archives in accordance with applicable laws and regulations.

## **Article 175**

### **Access to Records and Information**

The provisions of this Law relating to access to company records and information of a joint stock company and access thereto by court order shall apply mutatis mutandis to access to company records and information on a limited liability company and access thereto by court order.

## **Chapter 13**

### **Rights Based on Termination of a Member's Membership in a Company and Termination of Company**

#### **Section 1**

#### **Termination of a Member's Membership in a Company**

## **Article 176**

### **Events Causing Termination of Membership**



A member of a company shall cease to be a member upon the occurrence of any of the following events:

- 1) his death in the case of a natural person;
- 2) termination of existence as a legal entity in the case of a legal entity;
- 3) withdrawal of the member in accordance with the company's Articles of Association or company agreement;
- 4) withdrawal of a member in violation of the company's Articles of Association or company agreement;
- 5) withdrawal of the member in compliance with a court decision;
- 6) expulsion of the member in compliance with a court decision;
- 7) expulsion of a member in compliance with the company's Articles of Association or company agreement;
- 8) transfer of all of the member's share; or
- 9) an event agreed to in the Articles of Association or company agreement as causing the member to cease to be a member.

## **Section 2**

### **Withdrawal or Expulsion of a Member**

#### **Article 177**

##### **Basic Principles**

- (1) A limited liability company's Articles of Association or company agreement may state grounds, procedures and consequences of termination of membership of a member of the company, including contractual penalties or a requirement for damage compensation upon expulsion or wrongful withdrawal.
- (2) The Articles of Association or company agreement of a limited liability company may not deny in advance the right to withdraw from the company and a member may not renounce that right in advance. The same applies with respect to a member's right to make claims against the company for wrongful expulsion and the company's right to make claims against the member for wrongful withdrawal.

#### **Article 178**

##### **Withdrawal of a Member for Justified Reasons**

- (1) A member of a limited liability company may withdraw from the company if other company members or the company have caused damage to the member by their actions,

that the member has been prevented from exercising his rights in the company, or that the company or company members have imposed unreasonable obligations on him, or for other justified reasons.

(2) In a case referred to in paragraph (1) of this Article, the member is entitled to bring proceedings before the competent court aimed at establishing justified reasons for withdrawal, if his reasons for withdrawal are challenged.

(3) A member withdrawing from the company for justified reasons shall have the right to compensation based on the market value of his share, to be paid within any time period stated in the Articles of Association or company agreement, as well as the right to compensation for any damage caused to him.

(4) A member withdrawing from the company without justified reasons shall be obligated to compensate for any damage caused to the company.

#### **Article 179**

##### **Expulsion of a Member**

(1) A limited liability company's members' meeting may initiate an expulsion procedure against a individual member before the competent court if the member fails to make a contribution as required by the company's Articles of Association or company agreement or if other justified reasons exist.

(2) Other justified reasons referred to in paragraph (1) of this Article particularly exist if the member:

- 1) deliberately or with gross negligence inflicts damage to the company or members of the company;
- 2) deliberately or with gross negligence violates the Articles of Association or company agreement or obligations prescribed by law;
- 3) is involved in an undertaking which makes impossible the execution of business operations between the company and the member; or
- 4) by his actions obstructs or significantly hinders the company's business.

(3) A claim for a member's expulsion may be submitted by the company and any company member. Upon initiation of a procedure for expulsion of the member, the court may suspend his right to vote on any matter and other rights, if it finds that necessary and justified.

(4) A limited liability company is entitled to compensation for damage inflicted on it by the member who is expelled due to justified reasons.

#### **Article 180**

##### **Consequences of Termination of Membership**

- (1) Upon withdrawal or expulsion of a member of a limited liability company, the capacity of member and all rights deriving thereof shall cease to exist.
- (2) Paragraph (1) of this Article also applies with respect to termination of member capacity on other grounds.
- (3) Such a person whose membership ceases to exist is entitled to the market value compensation of his share at the time of membership termination.
- (4) Paragraph (3) of this Article shall not apply to a member whose membership was terminated by his death when and his heirs are entitled to take over his share and become the company members.
- (5) Paragraph (3) also shall not apply to a member who sold his share to another person who is entitled to take over his share and become a member.
- (6) Claims of a limited liability company for damages in the case of expulsion of a member for justified reasons or a case of wrongful withdrawal, or other misconduct of the member, shall be offset against the claim of the share value of the member in question.
- (7) Compensation for share value may not be paid if it would violate the restrictions in this Law on payment of distributions to members of the company.
- (8) In order to secure the payment of claims on the basis of a withdrawal or expulsion of a member of a limited liability company, the court may suspend the member from exercising his membership rights in the company. The court may also order other interim measures.

### **Section 3**

#### **Dissolution of a Company**

#### **Article 181**

#### **Events Causing Dissolution**

A limited liability company shall dissolve upon the occurrence of any of the following events:

- 1) expiration of the company's term stated in the Articles of Association;
- 2) decision of its members;
- 3) status change leading to termination of the company;
- 4) bankruptcy;
- 5) a final decision of the competent court that the company's registration was null and void and ordering deletion of the company from the Registry; and
- 6) an event specified in the Articles of Association or company agreement.

## **Article 182**

### **Single-Member Company**

A single-member limited liability company shall cease to exist upon opening of bankruptcy proceedings or liquidation against its only member or by the death of the member having no legal heirs to his/her stakes.

## **Article 183**

### **Dissolution by a Court on Motion of Minority Members**

Provisions of this Law relating to dissolution and other remedies at the request of minority shareholders of a joint stock company shall apply mutatis mutandis to a limited liability company.

## **Part IV**

### **JOINT STOCK COMPANY**

#### **Chapter 1**

#### **Definition**

#### **Article 184**

#### **Definition and Liability**

- (1) A joint stock company is a company organized by one or more legal entities and /or natural persons, as shareholders of the company, to conduct business under a common registered name, and whose basic capital is defined and divided into shares.
- (2) A joint stock company is liable for all of its obligations with all of its assets.
- (3) A shareholder of a joint stock company is not liable for obligations of the company solely by reason of being shareholder, except that a shareholder shall be liable up to the amount of any agreed but unpaid contribution to the company in accordance with this Law.

#### **Chapter 2**

#### **Articles of Associations and By-Laws**

#### **Article 185**

#### **Articles of Association**

- (1) The Articles of Association of a joint stock company must contain:
  - 1) the full name and residence address of each natural person founder and the registered name and registered office of each legal entity founder;

- 2) the registered name and registered office of the company;
- 3) the business purpose of the company;
- 4) a statement of whether the company is a closed or an open company;
- 5) the amount of the company's subscribed and paid-in basic capital and the method of payment of that capital into the company in exchange for shares;
- 6) the number and the nominal value (or in the case of shares without nominal value accounting value) of shares of each type and class that the company is authorized to issue. and the rights of each class of shares.
- 7) the number of shares of each type and class which have been subscribed and which have been issued;
- 8) the names of any initial shareholders whose initial contribution is in kind, a description of that investment, and a statement of the number and types of shares to be issued therefor;
- 9) the duration of the company unless it is perpetual;
- 10) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorized to commence business; and
- 11) any special advantage granted, at the time the company is founded or up to the time it receives authorization to commence business, to anyone who has taken part in the foundation of the company or in transactions leading to the grant of such authorization.

(2) The Articles of Association of a joint stock company may also contain:

- 1) the names and addresses of the company's initial directors;
- 2) any authorization given to the board of directors to issue authorized (but unissued) shares in accordance with this Law and the company's by-laws;
- 3) restrictions on transfer of the company's shares, if any, in the case of a closed joint stock company; and
- 4) any other matter that under this Law may be set forth in the Articles of Association or by-laws.

#### **Article 186 By-Laws**

- (1) Apart from the Articles of Association a company may have by-laws regulating in more detail the company's business and governance.
- (2) The by-laws of a company are not required to be submitted to the Registry.

- (3) The by-laws must be in writing.
- (4) The by-laws and any amendments thereto shall have legal effect as of the moment of their adoption unless provided otherwise in the by-laws themselves.
- (5) If the power to make or amend the by-laws is not explicitly given to the shareholders in the Articles of Association, the by-laws may be made or amended by the the board of directors.

#### **Article 187**

#### **Relationship of Articles of Association and By-Laws**

In the event of any inconsistency between a company's Articles of Association and by-laws, the Articles of Association shall control.

### **Chapter 3**

#### **Special Benefits and Costs**

#### **Article 188**

#### **Special Benefits**

- (1) Any special benefits for shareholders or third parties shall be stated in the Articles of Association, which shall also state the persons to whom they are given and the period of time for which they are given if limited.
- (2) Special benefits shall expire with expiration of the term for which they are awarded, subject to any amendment of the Articles of Association which provides otherwise.
- (3) If special benefits for shareholders or third parties are not stated in the Articles of Association, any contracts respecting them shall be null and void. An amendment to the Articles of Association made after a company has been registered may not provide for such contracts.

#### **Article 189**

#### **Founding Costs**

- (1) A company's Articles of Association may provide that the cost of founding the company shall be borne by the company or by its founders.
- (2) The founders shall bear the cost of founding the company if not provided otherwise in the Articles of Association.
- (3) Such costs may be reimbursed by the company to founders only up to an amount stated in the Articles of Association for that purpose.

(4) If the Articles of Association state that the company shall bear such costs, the costs may be paid from the company's basic capital or may be paid into the company as a contribution.

## **Chapter 4**

### **Contributions**

#### **Article 190**

##### **Loans to Acquire Shares**

(1) A company may not make loans, extend credit or provide other financial support or security for the acquisition of its shares.

(2) The provisions of paragraph (1) of this Article shall not apply to transactions in the normal course of business of a financial organization, or giving deposits, credit or security for acquisition of shares by employees or the company or of a linked company as defined in this Law.

(3) Any transaction referred to in paragraph (2) of this Article shall be subject to restrictions on distributions stated in this Law.

#### **Article 191**

##### **Valuation of Contributions in Kind**

(1) If there are contributions in kind, one or more independent authorized appraisers shall prepare a report stating the value of such contributions before the company's initial registration.

(2) An appraiser referred to in paragraph (1) of this Law may be a natural person or a company authorized to audit in accordance with the law which regulates accounting and audit.

(3) The report shall describe the contributions in kind, shall state the methods used in determining their value, and shall state whether that value represents at least the number and nominal value of the shares (or the accounting value in the case of shares without nominal value) for which the contributions in kind are to be issued and, where appropriate, the premium over nominal value for which the shares are to be issued.

(4) If a contribution includes or consists of a company, its balance sheets for the two preceding business years shall be included in the appraisers' report.

(5) The appraisers' report shall be submitted to the Registry and published in accordance with the law which regulates registration of business entities.

(6) As an exception to paragraphs (1) and (2) of this Article, the valuation of contributions in kind to a closed company shall be determined as provided in Article 14 of this Law.

## **Article 192**

### **Form of Contributions and Payment into the Company**

- (1) A shareholder's contribution for the issuance of shares may be made in money or in kind but not in work or services, whether performed or future.
- (2) As an exception to paragraph (1) of this Article, an in kind contribution for shares of a closed company may be made in labor or services performed for the company, if the company's Articles of Association so provide.
- (3) Contributions in cash must be paid up at the time of a company's registration at not less than 50% of their nominal value or, in the case of shares without nominal value, their accounting value. The remainder must be paid up in full within two years after the company's registration.
- (4) All agreed contributions in kind must be paid into a company in full within two years after the company's registration.

## **Chapter 5**

### **Closed and Open Companies**

#### **Article 193**

##### **Forms**

- (1) A joint stock company may be closed or open.
- (2) A joint stock company shall be an open company if its Articles of Association do not state that it is a closed company.

#### **Article 194**

##### **Closed Company**

- (1) A closed company is a company whose shares are and may be issued only to its founders or to another limited group of persons in accordance with law.
- (2) A closed company may have a maximum of 100 shareholders.
- (3) If the number of shareholders of a closed company exceeds such limit for more than one year, the company, if it remains a joint stock company, shall be an open company.
- (4) A closed company may not conduct an open subscription for shares or otherwise offer its shares to the general public.
- (5) A closed company may become an open company, and an open company may become a closed company, in accordance with this Law and the law which regulates securities markets.



(6) A change from a closed company to an open company, and a change from an open company to a closed company, shall require amendment of the company's Articles of Association to state the change in status, but shall not be a change of legal form of the company within the meaning of this Law.

## **Article 195**

### **Transfer of Shares of a Closed Company**

(1) The Articles of Association or by-laws of a closed company may impose restrictions on transfer of the company's shares including restrictions of the kinds referred to in Article 126 of this Law relating to limited liability companies.

(2) If the Articles of Association or by-laws of a closed company do not impose a restriction on transfer of shares, the shares shall be freely transferable.

## **Article 196**

### **Open Company**

(1) A company shall be deemed founded openly if the founders invite the public to subscribe and buy shares at the time of the company's initial registration.

(2) A public offering of shares referred to in paragraph (1) of this Article shall be made through a public offering and prospectus in accordance with this Law and the law which regulates securities markets.

(3) An open joint stock company may be listed or unlisted within the meaning of the law which regulates securities markets.

(4) An open joint stock company may not restrict the transfer of its shares to third parties.

## **Article 197**

### **Subscription and Payment for Shares in the Founding Offering of an Open Company**

(1) A founding (first) offering of shares of an open company shall be deemed successful if the offered shares are subscribed in a number which is defined through the public offer and the published prospectus and if the subscribed shares are paid in the amount specified in paragraph (3) of Article 192 of this Law.

(2) If the shares in a public offering and prospectus are not subscribed and paid in accordance with paragraph (1) of this Article, the offering shall be considered unsuccessful and the founders shall be jointly obligated to refund without delay any amounts paid by subscribers.

## **Chapter 6**

## **Founding Assembly of an Open Company Article 198**

### **Convening the Assembly**

- (1) The founders of an open joint stock company shall, in the case of a successful offering, convene a founding assembly not later than 60 days after the expiration of the term for subscription of shares in the the public offer or the prospectus.
- (2) The founding assembly shall be convened by written notice to each subscriber given in accordance with provisions of this Law relating to convening of a shareholder assembly.
- (3) The written notice for the founding assembly shall include copies of the company's Articles of Association, reports of the founders and appraisers including a report on costs of founding, a list of the distribution of shares made by the public offering and list of persons to receive the shares without subscription based on public call specifying the number and type of shares received in this manner.
- (4) A court in a non-contentious proceeding on request of founders who own at least 10% of the subscribed shares may extend the term for the founding assembly by up to 30 days.

## **Article 199**

### **Procedures at the Founding Assembly**

- (1) All subscribers to fully-paid shares shall have the right to participate in the founding assembly with the right to vote.
- (2) A simple majority of the subscribed and fully-paid shares entitled to vote on a matter shall constitute a quorum for decision of the founding assembly on that matter.
- (3) The founding assembly shall be opened by the founder in possession of the highest number of fully-paid shares, and if there is more than one such person the person who paid earliest shall open the assembly.
- (4) The person referred to in paragraph (3) of this Article shall compile the list of shareholders present or their legal representatives and shall decide whether all the terms referred to in paragraphs (1) and (2) of this Law have been met for the founding assembly to proceed.
- (5) Should the founding assembly not have the quorum referred to in paragraph (2) of this Article, the founders may re-convene the assembly in the same manner, and not less than eight and not more than 15 days shall pass between the first and second assemblies.

## **Article 200**

### **Consequences of Failing to Hold the Founding Assembly**

- (1) If the founders of an open joint stock company do not convene the founding assembly within the period required by Article 198 of this Law, or if the founding assembly is not

held pursuant to this Law or does not adopt the decisions required by this Law, the founding of the company shall be considered unsuccessful and the founders shall be jointly obligated to refund any amounts paid by subscribers.

(2) Not later than 15 days after expiration of the term for the founding assembly in accordance with Article 198 of this Law, the founders shall call all subscribers to make their required payments. The call shall be announced in the same manner as the public offering.

(3) Should the founders fail to act pursuant to paragraph (2) of this Article, the competent court may do so in a non-contentious proceeding upon the request of any subscriber.

## **Article 201**

### **Presiding and Minutes at the Founding Assembly**

(1) The founding assembly shall elect the chairman, the keeper of the minutes (recording secretary) and two counters of votes, after which reports on founding and assessment (audit) shall be read.

(2) Appendices to the reports referred to in paragraph (1) of this Article shall be read only if subscribers with no less than 10% of the votes present at the meeting so require.

(3) The minutes of the founding assembly shall be kept by a keeper of the minutes and signed by the assembly chairman, the keeper of the minutes, the persons appointed to count the votes, and the founders of the company.

## **Article 202**

### **Competence of the Founding Assembly**

(1) The founding assembly of an open company shall:

1) determine whether the offered shares have been subscribed and paid and whether all required contributions in kind have been made, in accordance with this Law and the Articles of Association;

2) elect the initial directors of the company unless the Articles of Association has already appointed them;

3) decide on approval of any special rights of the founders and approval of special benefits of founders or other persons;

4) decide on approval of any valuation of investments in kind (including stocks and rights);

5) decide on approval of contracts made before registration of the company, and which are related to the procedure of founding; and

6) determine the costs of founding of the company.

(2) If more shares than offered by the public invitation have been subscribed, the founding assembly may decide to accept all or part of the subscribed surplus in which case the subscribers who subscribed to shares first shall a priority right and, if more than one person subscribed the shares at the same time, the surplus shares shall be accepted in proportion to the shares subscribed by those subscribers which are not surplus.

(3) If the founding assembly decides to accept a surplus of subscribed shares, the subscribers to such shares shall have voting rights at the founding assembly from the time of the decision to accept them, if the shares were subscribed in accordance with this Law.

### **Article 203**

#### **Voting at the Founding Assembly**

(1) At the founding assembly each fully paid subscribed ordinary share shall be entitled to one vote.

(2) The affirmative votes of a simple majority of the ordinary shares present and entitled to vote on a matter shall be the decision of the founding assembly on that matter, unless a larger majority is required in this Law, the Articles of Association and the prospectus.

(3) At the founding assembly decisions shall be made separately and with separate voting for each contribution in kind and each contract or transaction. A person who has made a contribution in kind shall be disqualified from voting with respect thereto and his votes shall not be counted for purposes of determining the quorum for voting or the majority required for decision.

(4) Unless provided otherwise in the Articles of Association and the prospectus, at the founding assembly the unanimous agreement of all subscribers shall be required for changes in the provisions of the Articles of Association on the amount of initial capital (possible acceptance of surplus shares).

(5) At the founding assembly founders shall not have the right to vote on approving founding costs of the company, and persons who have contracts with the company which are to be approved shall not have the right to vote on such approval.

### **Chapter 7**

#### **Shares and Other Securities of a Company**

### **Article 204**

#### **Ordinary and Preferred Shares**

(1) A joint stock company may issue ordinary (or common) shares and preferred (or preference) shares.

(2) A company must have at least one ordinary share.

- (3) A company's ordinary stock shall always be a single class.
- (4) A company's preferred stock may be divided into two or more classes with different rights (such as different dividend rates, different participating or cumulative rights to dividends, or different rights to distribution of the company's assets on liquidation of the company).
- (5) All ordinary shares shall have the same nominal value or shall have no nominal value.
- (6) All preferred shares of a single class shall have the same nominal value.
- (7) A company may not issue bearer shares.

## **Article 205**

### **Authorized (But Not Issued) and Issued Shares**

- (1) Besides issued shares, a joint stock company may have approved and authorized (but not issued) shares.
- (2) The number of authorized ordinary shares and the number of authorized preferred shares of each class shall be stated in a company's Articles of Association. The number of authorized but unissued shares may not be greater than 50% of the number of issued ordinary shares at the time that number was fixed in the Articles of Association.
- (3) A company may issue all or only part of its authorized ordinary shares. A company may issue none, part or all of its authorized preferred shares of any class.
- (4) The decision to issue shares permitted in the Articles of Association, and the decision on the number, time and other terms of any such issuance, may only be made by the company's shareholders' assembly unless the Articles of Association confers such authority on the company's board of directors, in which case the board may make such decisions in accordance with the Articles of Association.
- (5) An authorization referred to in paragraph (4) of this Article shall include issuance of shares to increase basic capital for new contributions in cash or in kind in accordance with provisions of this Law relating to increasing basic capital with new contributions, but shall not include issuance of shares in an increase of capital from the company's assets in accordance with this Law.
- (6) The board of directors may be authorized to issue any type or class of authorized shares but may not be thus authorized for a period longer than five years from the time the number of authorized shares was established in the Articles of Association. The five-year period may be renewed one or more times by the shareholders' assembly, each time for a period not exceeding five years.
- (7) Shares of a company shall be issued in accordance with applicable provisions of the law which regulates securities markets.

## **Article 206**

### **Registration of Issuance and Access**

- (1) The founders of an open joint stock company, and when appropriate the company, shall register the issuance of shares or other securities in a public offering with the Securities Commission in accordance with the law which regulates securities markets and applicable regulations of the Securities Commission.
- (2) A joint stock company shall register its shares and other securities, and the identity of the owners thereof, in the Central Registry of Securities in accordance with the law which regulates securities markets and any applicable regulation of the Securities Commission.
- (3) A joint stock company may keep a book of shares and other securities.
- (4) The book of shares referred to in paragraph (3) of this Article may contain: the personal name or registered name, the place of residence or registered office and the tax reference number of every owner, co-owner and co-owners' representative of its shares or other securities; the amount of all contracted and paid-in contributions of each shareholder; any secondary obligations and additional contributions beyond the initial contributions; all pledges of shares; all transfers of shares including the date and the name of the transferor and the transferee; and all changes in any of the foregoing.
- (5) A book of shares referred to in paragraph (3) of this Article may be kept in electronic form.
- (6) A book of shares referred to in paragraph (3) of this Article may, upon approval of the company, be maintained by a financial or other institution.
- (7) Each company shall inform the Central Registry of Securities of the information referred to in paragraphs (3) and (4) of this Article, including changes thereto in accordance with the law which regulates securities markets.
- (8) Any shareholder of the company shall have the right to examine and make a copy of the book of shares.
- (9) The board of directors of a joint stock company shall be responsible for registering the company's shares promptly and correctly and for maintaining the book of shares correctly, and all of the directors shall be personally liable for any damage caused to a shareholder or third party by the company's failure to do so.

## **Article 207**

### **Registration of Shares**

- (1) A shareholder, in relation to a company and third parties, shall be a person who is registered as such in the Central Registry of Securities in accordance with the law which regulates securities markets.

(2) The date on which a company has received an application for registration shall be considered to be the date of a shareholder's registration in the book of shares if all the information required for such registration has been provided, regardless of actual time of registration.

(3) In case of a discrepancy between the Central Registry of Securities and the book of shares, the Registry shall control.

(4) A subscription for shares and the name of the shareholder shall be recorded in non-material form in the Central Registry of Securities as provided in the law which regulates securities markets.

## **Article 208**

### **Rights of Holders of Ordinary Shares**

(1) Each ordinary share gives to its holder the same rights as are held by each other holder under this Law, the Articles of Association and by-laws of the company and which rights particularly include:

- 1) the right to access to legal and other documents and information pertaining to and in possession of the company;
- 2) the right to participate in the shareholders' assembly;
- 3) the right to vote at the shareholders' assembly based on the principle that one share gives the right to one vote;
- 4) the right to receive dividends after any dividends payable pursuant to preferential rights of preferred shares have been paid in full;
- 5) the right to receive a distribution on liquidation of the company after the claims of creditors and holders of any preferred shares have been satisfied; and
- 6) preemptive rights to acquire newly-issued shares and other securities of the company; and
- 7) the right to receive distributions on shares in accordance with law.

(2) Ordinary shares of a company may not be converted into preferred shares or other securities of the company.

(3) The rights referred to in subparagraphs 4) and 5) of paragraph (1) of this Article may be contractually transferred by a shareholder to a third party.

## **Article 209**

### **Rights of Holders of Preferred Shares**

- (1) Each share of each class of a joint stock company's preferred stock gives to its holder the same rights as are held by each other holder.
- (2) Those rights shall be as stated in the Articles of Association.
- (3) Those rights shall in all cases include priority over ordinary shares with respect to payment of dividends (which in case of preferred shares may be participative or cumulative as provided in the law which regulates securities markets) and to distribution on liquidation of the company.
- (4) Those rights may also include the right to convert the preferred shares into ordinary shares or into shares of another class of preferred stock under terms and in cases stated in the Articles of Association, and the right of the company to redeem the preferred shares at a price and on other terms stated in the Articles of Association.
- (5) Holders of preferred shares also have the right to one vote per share at any shareholders' assembly on any issue requiring group voting of holders of such class of preferred shares in accordance with this Law.
- (6) A company's Articles of Association may also provide that holders of preferred shares shall have the right to vote with ordinary shareholders on any or all other matters at the shareholders' assembly if but only if:
  - 1) such preferred shares are convertible into ordinary shares (in which case they may have the number of votes of the ordinary shares they may be converted into); and
  - 2) dividends on such preferred shares which have accrued and are required to be paid have not been paid and remain unpaid.
- (7) Except in cases stated in paragraph (6) of this Article, holders of preferred shares shall have no right to vote with ordinary shareholders at the shareholders' assembly.
- (8) The total number of votes of holders of preferred shares may not at any time be the same as or higher than the total number of votes of holders of ordinary shares.
- (9) Holders of preferred shares shall have the right to be present and participate in discussions at a shareholder assembly.
- (10) Holders of preferred shares shall have the same rights as holders of ordinary shares to access to documents and other information in possession of the company.

## **Article 210**

### **Securities Other Than Shares; Convertible Securities, Options and Bonds**

- (1) Unless provided otherwise in a company's Articles of Association, the company may issue securities other than shares including bonds, convertible bonds and options or warrants.
- (2) For purposes of this Law, an option or warrant is deemed to be a security which gives



to its owner the right to acquire a specified number of shares of a specified type and class at a stated price.

(3) The number of issued convertible securities and securities which give the right to acquire shares cannot be greater than the number of authorized (non-issued) shares.

(4) Concurrently with any issuance of securities convertible into shares or options to acquire shares, the company shall note in the Central Registry of Securities the number of authorized shares required to secure the rights of the holders of such securities.

(5) Until the expiration of the time period of effectiveness of those rights, the company shall maintain the number of authorized shares referred to in paragraph (4) of this Article of the types and classes in question which shall be sufficient to secure such rights.

(6) The decision to issue securities or options referred to in this Article, and the determination of the number, time, price and other terms of issuance shall be made by the shareholders' assembly, unless the Articles of Association or a decision of the shareholders' assembly in accordance with this Law authorizes the company's board of directors to make that decision.

(7) A company's decision to issue bonds, and the determination of the amount and other terms of any such issuance, shall be made by the shareholders' assembly unless the Articles of Association or a decision by the shareholders' assembly in accordance with this Law authorizes the board of directors to make that decision.

(8) Securities convertible into shares may not be issued at a price which is lower than the nominal value (or, in the case of shares without nominal value, the accounting value) of the shares into which they are convertible.

(9) A company's issuance of securities other than shares or options or bonds shall also be subject to applicable provisions of the law which regulates securities markets and any regulations of the Securities Commission.

(10) Holders of securities convertible into shares or options to acquire shares shall have the same right as shareholders to be informed and to inspect records and documents of the company, unless otherwise stated in the decision to issue such securities or options or otherwise agreed by such holders.

## **Article 211**

### **Dividends on Partly Paid Shares**

A dividend on partly paid shares shall be payable in proportion to the amount actually paid in for the shares, calculated as of the record date for the dividend.

## **Article 212**

### **Amount of Consideration for Shares and Other Securities**

- (1) Shares may not be issued for an amount lower than their nominal value or their accounting value, in the case of shares without nominal value.
- (2) Shares may be issued for an amount higher than their nominal or accounting value and the excess amount shall represent a share premium and shall be treated as provided in this Law and in accordance with the law which regulates accounting and audit.
- (3) A joint stock company may issue shares at a price which is below their market value determined by the board of directors in accordance with this Law for:
  - 1) issuance of shares at a price established by an option to acquire shares or by a security convertible to shares;
  - 2) issuance of ordinary shares following the procedure set forth in this Law for exercise of preemptive rights to acquire shares of existing shareholders at a price that may not be less than 90% of their market value;
  - 3) issuance of shares in a reorganization of the company; or
  - 4) issuance of shares to a broker or other intermediary for the purpose of resale at market value, at a price that may be less than the market value by no more than the amount of brokers' committee, set as a percentage of the issue price of the shares, which may not exceed 10% of the market value of the shares.
- (4) A company shall issue options to acquire shares or securities convertible into shares at a price not less than their market value, except for:
  - 1) issuance following the procedure set forth in this Law for exercise of preemptive rights to acquire such options or securities at a price that may not be less than 90% of their market value; and
  - 2) issuance to a broker or other intermediary for the purpose of resale at market at a price that may be less than the market value by no more than the amount of brokers' committee, set as a percentage of the issuance price, which may not exceed 10% of the full value of such options or other securities

## **Article 213**

### **Preemptive Rights to Acquire New Shares**

- (1) Shareholders of a company shall have a preemptive right to acquire newly issued shares of the company's stock, upon the issuance of such shares, in proportion to the nominal value (or, in the case of shares without nominal value, the accounting value) of already-held shares of such existing shareholders at the time of the new issuance.
- (2) Shareholders referred to in paragraph (1) of this Article shall exercise their preemptive rights in accordance with rules and procedures stated in the company's Articles of Association, by-laws, or a decision of the board of directors of the company.
- (3) For purposes of this Article, the term "newly-issued" includes shares which were

issued earlier and then reacquired and are being held by the company; and the term “shares” includes options to acquire shares and securities convertible into shares.

(4) For purposes of this Article, an issuance of shares shall include an issuance to banks, underwriters or other financial institutions for the purpose of resale in accordance with the law which regulates securities markets.

(5) The company shall give each such existing shareholder notice in writing in accordance with this Law of a proposed issuance referred to in paragraph (1) of this Article.

(6) The notice referred to in paragraph (5) of this Article shall particularly state the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the preemptive rights. The time period for exercise of the preemptive rights shall not be shorter than 30 days from the day the written notice is sent.

(7) Unless provided otherwise in the Articles of Association, all holders of ordinary shares, options to acquire ordinary shares and securities convertible into ordinary shares shall have preemptive rights.

(8) Persons referred to in paragraph (7) of this Article shall not have preemptive rights to acquire any of the following:

1) preferred shares, except for preferred shares which are convertible into ordinary shares or carry a right to subscribe for or acquire ordinary shares; or

2) shares authorized in the Articles of Association that are issued within six months after the date of the company's initial registration.

(9) Holders of preferred stock shall not have preemptive rights under this Article.

(10) Shares subject to preemptive rights that are not acquired by existing shareholders or others referred to in paragraph (7) of this Article pursuant to such rights may be issued to any person within the period of one year after the shares were offered to the existing shareholders or other persons referred to in paragraph (7) pursuant to provisions of this Article, at a price set by the board of directors but not lower than 90% of the price set for the exercise of preemptive rights.

(11) Any offer made after expiration of the above time period of one year shall be subject to the preemptive rights of existing shareholders and other persons under this Article.

(12) The preemptive rights provided for in this Article may be reduced or eliminated in a company's Articles of Association, by-laws or decision of a shareholders' assembly made upon recommendation of the board of directors. The board of directors shall submit to the assembly a written report stating the reasons for the reduction or elimination and an explanation of the proposed issue price. The decision to reduce or eliminate the rights shall be registered and published in accordance with the law which regulates registration of business entities.

(13) The preemptive rights provided for in this Article may also be reduced or eliminated

by the board of directors for a share issuance as to which it has been granted authority to make decisions under paragraphs (4)-(6) of Article 205 of this Law.

#### **Article 214**

##### **Co-Ownership of a Share**

(1) A share may have more than one owner (hereinafter called “co-owners”). Co-owners of a share shall be considered to be one single shareholder.

(2) Unless provided otherwise in a company’s Articles of Association or by-laws, co-owners of a share shall exercise their voting and other rights in the company only through a single joint representative and shall identify that representative to the company in writing to be entered in the Registry and kept in the company’s book of shares.

(3) Any notice given by the company to such a designated representative shall be deemed given to all of the co-owners. If the co-owners of a share fail to appoint and identify to the company such a representative, a notice given by the company to any co-owner shall be deemed given to all of the co-owners.

(4) Co-owners of a share shall be jointly and severally liable to the company for all obligations to the company respecting the share.

(5) Legal action by a company against one co-owner for such obligations shall have binding effect against all co-owners.

### **Chapter 8**

#### **Dividends and Other Distributions to Shareholders**

##### **Section 1**

##### **Principles**

##### **Article 215**

##### **General Principles**

(1) A joint stock company may authorize and pay dividends on its shares annually in connection with its annual shareholders’ assembly, or at any other time between those assemblies, unless provided otherwise in the company’s Articles of Association.

(2) A company’s decision to authorize and pay dividends may be made only by its shareholders’ assembly, unless the power to make that decision has been given, in whole or in part, to the board of directors in the Articles of Association or by a decision of the shareholders’ assembly made in accordance with the Articles of Association.

(3) After adoption of the financial report for the previous year, profits from that year shall be distributed in the following order:

- 1) to cover losses brought forward from previous years;
  - 2) to fund legally prescribed reserves if such reserves are provided for in a specific law;
  - 3) for dividends in accordance with this Law;
  - 4) to fund statutory and other reserves if the company determines them in the Articles of Association;
- (4) After a decision to pay a dividend has been made, a shareholder to whom it is to be paid becomes a creditor of the company for the amount of the dividend.
- (5) A dividend referred to in subparagraph 3) of paragraph (3) of this Article on stock of any type or class shall be paid pro rata to all holders of that type or class of stock, in proportion to the nominal value (or accounting value in the case of shares with no nominal value), except as provided in Article 211 of this Law in the case of partly-paid stock.
- (6) Any agreement or arrangement by which a company gives some shareholders specific privileges with respect to dividends shall be null and void.

#### **Article 216**

##### **Dividends Payable in Money, Shares or Other Property**

- (1) Dividends may be paid in money and in shares or other securities of the company or other companies or other property, unless provided otherwise in the company's Articles of Association.
- (2) Dividends payable in shares of the company of any type or class shall be subject to the following provisions:
  - 1) the dividends shall be paid by issuance of such shares pro-rata;
  - 2) if shares of a certain type or class are to be issued as dividends on another type or class, and there are shares already outstanding of the type or class to be issued, the dividend may not be paid unless it has been approved by a majority of the votes of the shares of the type and class that is to be issued.
- (3) The amount of the dividend payable in shares shall be deemed to be equal to the amount of the nominal value of the shares to be issued.

#### **Article 217**

##### **Restriction on Payment of Interim Dividends by an Open Company**

The following conditions shall apply in the case of dividends paid by an open company during the company's financial year:

- 1) interim accounts shall be prepared showing that the funds available for distribution are

sufficient; and

2) the amount to be distributed may not exceed the total profits earned since the end of the last financial year for which annual accounts have been prepared, plus any profits brought forward and amounts drawn from reserves available for this purpose, less losses brought forward and amounts to be placed in reserves pursuant to a particular law or the company's Articles of Association or by-laws.

## **Article 218**

### **Record Date for Dividends and Other Distributions**

A company's Articles of Association may fix, or provide the method for fixing, the record date as of which the list of registered shareholders entitled to receive a dividend or other distribution, including a distribution on liquidation, shall be determined. If the Articles of Association does not fix or provide for fixing a record date, the board of directors shall fix that date. The dividend or other distribution shall be paid to persons who were registered shareholders of the company on the record date.

## **Article 219**

### **Procedures for Authorization and Payment of Dividends**

(1) Each decision to authorize a dividend shall include:

1) the amount of the dividend; and

2) the record date as of which the list of shareholders entitled to receive the dividend shall be determined.

(2) If after the record date but before the payment date, a shareholder transfers shares based on which he is entitled to receive the dividend, the right to receive the dividend shall remain with the transferor.

## **Section 2**

### **Acquisition of Own Shares**

## **Article 220**

### **Subscription to a Company's Own Shares or Parent's Shares Prohibited**

(1) A company may not subscribe to its own shares directly or indirectly through another person who would acquire them on its behalf.

(2) A dependent company may not subscribe to shares of its controlling company directly or indirectly through another person who would acquire them on its behalf.

(3) If another person has subscribed to or otherwise acquired shares in violation of paragraph (1) or paragraph (2) of this Article, it shall be deemed that such person has taken

them for his own account, and such person shall be personally liable to pay the market value for such shares regardless of any agreements with the company on whose behalf they were subscribed to or acquired.

- (4) Any agreement to reimburse or indemnify such person with respect thereto shall be null and void.

## **Article 221**

### **General Provisions for a Company's Acquisition of its Own Shares**

- (1) "Own shares" as used in this Law means shares of a company which the company has acquired from its shareholders.
- (2) A joint stock company may acquire shares or other securities issued by it at any time with the agreement of the holders of such securities either directly or indirectly through a person acting on the company's behalf, subject to any restriction in its Articles of Association and subject to the restrictions on distributions stated in this Law.
- (3) A company may acquire part or all of its preferred stock or other securities other than ordinary shares.
- (4) A company may acquire only a part of its ordinary stock.
- (5) An open company may not acquire shares issued by it if and to the extent that, at the time of the acquisition, the total nominal value or accounting value of the acquired shares exceeds 10% of the company's basic capital except:
  - 1) if the company has sufficient reserves which may be used for the acquisition under this Law, and it uses such reserves for the acquisition;
  - 2) in case of free of charge acquisition of shares that are fully paid;
  - 3) in case of acquisition in a (enforced) collection procedure against shareholders if there was no other way to collect; and
  - 4) in case of a status change.
- (6) An open company may not acquire its shares by agreement with a shareholder except through an offer to all holders pro rata in accordance with this Law.
- (7) A company may pay for acquisition of its own shares or other securities in money, shares in another company, or other securities or other property.
- (8) A company shall acquire its own shares or other securities at their value defined in accordance with this Law, unless provided otherwise in the company's Articles of Association or in a contract between the company and the holder of the securities at the time the securities were issued.

## **Article 222**

### **Procedures for Company's Acquisition of its Own Shares**

(1) A company's decision to acquire its own shares or other securities shall be made by the shareholders' assembly.

(2) The decision of the shareholders' assembly referred to in paragraph (1) of this Article shall specify: the maximum number of shares to be acquired, the time period for which the authorization is given, which shall not exceed 18 months, the purchase price (or the method of determination thereof), and the names of the shareholders whose shares are to be acquired except in the case of an acquisition of shares pro rata from all shareholders.

(3) The decision referred to in paragraph (1) of this Article may authorize the board of directors to set the time of acquisition, the number of shares to be acquired, the calculation of the purchase price, procedures to be followed in the acquisition and other issues, provided that such determinations by the board shall not be inconsistent with instructions included in the decision of the shareholders' assembly and the shareholders are informed of such determinations at the next shareholders' assembly.

(4) Notwithstanding the provisions of paragraph (1) of this Article, the board of directors, unless (and except to the extent that) the Articles of Association provides that this is within the exclusive competence of the shareholders' assembly, may make a decision to acquire:

1) options to acquire shares of the company, securities convertible into shares of the company, or other securities other than shares; or

2) up to 5% of any class of the company's shares for the sole purpose of distribution among employees of the company or linked (dependent) company in accordance with this law; and

3) shares or other securities if the acquisition is deemed necessary to prevent serious and immediate damage to the company.

(5) In any such case the board shall submit a report to the next-following shareholders' assembly stating the reasons for the acquisition, the number and nominal or accounting

value of the acquired shares, and the percentage of shares.**Article 223**

### **Procedures for Acquisition of Shares Pro Rata From all Shareholders**

(1) If a company offers to acquire shares of a particular type or class pro rata from all holders of such shares, the company shall send a written offer to all such holders in accordance with this Law.

(2) The offer referred to in paragraph (1) of this Article shall state the number of shares to be acquired, the purchase price (or the method of calculating the purchase price), the procedure for payment and date of payment, and the procedure and the deadline for all



shareholders to offer their shares for sale to the company. If the company has more than 500 shareholders that deadline must be at least 30 days after the date of submission of the company's offer.

(3) If the total number of shares offered for sale to the company exceeds the number of shares the company will acquire, the company shall acquire shares from each shareholder in proportion to the number of shares the shareholder has offered for sale, except where necessary to avoid acquisition of fractional shares.

(4) If the total number of shares offered for sale to the company exceeds the number of shares the company has offered to acquire the company may decide to acquire a higher number of shares up to the total number of the shares offered for sale by shareholders.

## **Article 224**

### **Status of Reacquired Shares**

(1) After a company has acquired its own shares, a company shall own such shares and may reissue them to other persons in accordance with this Law and the law which regulates securities markets.

(2) Such own shares must be disposed of within one year of the date of acquisition when they do not exceed 10% of the basic capital. In the cases in which the shares represent more than 10%, such shares must be disposed of within three years of the date of acquisition.

(3) If the shares are not disposed of as required by paragraph (2) of this Article, the board of directors shall be obligated to cancel them without decision thereon of the shareholders' assembly (and the number of authorized shares of such type and class shall be accordingly reduced) in accordance with the provisions of this Law relating to a decrease of basic capital in a regular procedure.

(4) In the case of cancellation of own shares the company's basic capital shall be decreased in accordance with paragraph (3) of this Article.

(5) During the time such shares are owned by the company:

1) the nominal or accounting value of such shares may be included in or excluded from the company's basic capital, but if it is excluded it shall constitute a reserve which may not be distributed to shareholders;

2) the shares will not be entitled to vote or to be counted toward a quorum at a shareholders' assembly; and

3) the shares will not be entitled to receive dividends or other distributions.

## **Article 225**

### **Pledge of Own Shares Restricted**

(1) A joint stock company may not directly or indirectly pledge its shares unless the

amount secured by the pledge is less than the amount paid for the pledged shares.

(2) The acceptance of a company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition by the company and shall be subject to the provisions of this Law relating thereto.

## **Article 226**

### **Entry in Central Registry and Book of Shares of Acquisition or Pledge of Own Shares**

A company shall register any acquisition or pledge of its shares in the Central Registry of Securities in accordance with the law which regulates securities markets and shall record it in its book of shares if it has a book of shares.

## **Section 3**

### **Redemption and Cancellation of Preferred Stock or Other Securities**

## **Article 227**

### **Grounds for Redemption and Cancellation**

(1) A joint stock company's Articles of Association may provide:

1) that the company shall have the obligation and/or the right, in the presence of sufficient funds, to redeem, during a specified period or in specified cases, in full or in part, its preferred shares of one or more classes; and

2) that the holders of such shares shall be obligated to sell them to the company under the terms and conditions referred to in subparagraph 1) of this paragraph.

(2) A joint stock company may issue options to acquire shares or securities other than shares under terms which provide that the company has the obligation and/or the right, in the presence of sufficient funds; to redeem such securities during a specified period or in specified cases, in full or in part.

(3) A joint stock company shall redeem and cancel preferred shares, options to acquire shares, and securities other than shares in proportion to the number of the securities in question belonging to each holder thereof, except when necessary to avoid redemption of fractional shares.

(4) If a company lacks sufficient funds to effect a required redemption, the redemption shall be effected at the first point in time when the company has such funds.

(5) A company's Articles of Association may establish a stated redemption price or a formula or model for calculating the redemption price.

(6) Options to acquire shares and securities other than shares shall be redeemed at the

price established in the conditions of issuance of the options or securities in question.

## **Article 228**

### **Price for Redemption**

Preferred shares shall be redeemed at their market price or, if there is none, at the value of the shares determined by the company's board of directors in accordance with this Law or by an independent appraiser who is chosen from a list kept by the competent court by either the shareholders' assembly, the board of directors or dissenting shareholders under this Law.

## **Article 229**

### **Entry in Central Registry and Book of Shares**

A company shall register any redemption of its shares or other securities in the Central Registry of Securities in accordance with the law which regulates securities markets and shall record it in its book of shares if it has a book of shares.

## **Section 4**

### **Restrictions on Distributions**

## **Article 230**

### **Restrictions on Payment of Dividends and Other Distributions**

(1) A closed joint stock company may not make a distribution to its shareholders if, after payment of the distribution, the company's net assets would be less than its basic capital, increased for reserves that may be used for distributions to shareholders in accordance with this Law or the law which regulates accounting and audit.

(2) An open joint stock company may not make a distribution to its shareholders in the case of a decrease of basic capital in a regular procedure in accordance with this Law, if:

1) after payment of the distribution the company's net assets would be less than its basic capital, increased for reserves that may be used for distributions to shareholders in accordance with this Law or the law which regulates accounting and audit; or

2) in the case of a dividend, the amount of the dividend exceeds the amount of the company's profit in the previous business year increased for undistributed profit and amounts drawn from reserves, increased by amounts required to be entered into the amount of reserves in the current year, in accordance with by-laws of the company, this Law or the law which regulates accounting and audit.

(3) In addition to the restrictions stated in paragraphs (1) and (2) of this Article, no open or closed joint stock company may make a distribution to its shareholders if:

1) after payment of the distribution the company would be incapable of paying its debts as

they become due in the ordinary course of the company's business; or

2) on the payment date any matured dividends on prior preferred shares are not paid in full.

(4) A company may make a distribution to its shareholders, if based on financial reports which are in accordance with law that regulates accounting and audit can be concluded that the distribution is reasonable under the circumstances. A company's Articles of Association or by-laws may require that certain specified financial statements, accounting practices or valuation methods be used for such a determination.

## **Article 231**

### **Personal Liability of Shareholders and Directors for Prohibited Distributions (1) A**

shareholder who receives a distribution prohibited by this Law and who knew (or

should have known under the circumstances) that it was prohibited, shall be personally liable to the company for return of the amount of the distribution.

(2) A director shall also be liable as provided in provisions of this Law relating to directors' liability.

## **Section 5**

### **Loans and Capital**

## **Article 232**

### **Certain Loans for Capital to be Subordinated**

(1) If a shareholder of a company has granted the company a loan at a time when the shareholders acting as orderly merchants would instead have made capital contributions (such as at a time of financial crisis), the shareholder shall be a subordinated creditor under the Law on Bankruptcy for repayment of the loan in a bankruptcy proceeding against the company.

(2) If a third party has granted the company a loan at a time referred to in paragraph (1) of this Article, and a company shareholder has provided the third party with collateral or guarantees for repayment of the loan, then in a bankruptcy proceeding against the company the third party may assert a claim for repayment only of amounts that remain unpaid after exhausting his claims and remedies with respect to the collateral and the guaranty.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply mutatis mutandis to other actions of a company shareholder or a third party that are commercially equivalent to the granting of loans as described in paragraphs (1) and (2).

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply with respect to a shareholder of the company who holds shares representing less than 10% of the

company's capital and who is not a director in the company.

(5) If the company has repaid a loan or other amounts referred to in paragraphs (1)-(3) of this Article within a year preceding the commencing of bankruptcy proceedings against the company, then the shareholder who gave the security or was liable as guarantor shall reimburse the company the amount that was repaid.

(6) This obligation shall, however, exist only up to the amount for which the shareholder was liable as guarantor or that is equivalent to the value of the security given by him at the time of the repayment of the loan.

(7) The shareholder shall be discharged from the obligation if he makes available to the company, for satisfaction of the obligation, the assets which were granted as security.

(8) The foregoing provisions shall apply mutatis mutandis to other legal transactions which are the commercial equivalent of a loan.

## **Title 9**

### **Basic Capital**

#### **Section 1**

#### **General Provisions**

#### **Article 233**

#### **Minimum Basic Capital**

(1) The monetary value of the basic capital of a closed joint stock company on the date of payment may not be less than 10,000 Euro in dinar countervalue calculated per mean exchange rate.

(2) The monetary value of the basic capital of an open joint stock company on the date of payment may not be less than 25,000 Euro in dinar countervalue calculated per mean exchange rate.

(3) Laws other than this Law may require higher initial capital for banks, insurance companies and companies engaging as joint stock companies in other activities.

(4) The registration of an increase or decrease of a closed joint stock company's basic capital shall be conducted once every year within 30 days from the date of the annual shareholders' assembly.

(5) Provisions of this Law which regulate the increase, decrease and maintaining of basic capital, and convening a shareholders' assembly when loss does not exceed 50% of the basic capital of a company shall apply to closed and open joint stock companies.

#### **Article 234**

### **Minimum Nominal Value of a Share**

- (1) A joint stock company may issue ordinary shares with nominal value or without nominal value, and may issue preferred shares with nominal value.
- (2) The nominal value of a share shall not be lower than 5 Euro in dinar countervalue calculated at mean exchange rate on the date of submitting the application for entry of founding of the company into the Registry or application for entry of change of the basic capital of the company into the Registry.
- (3) Shares shall not be issued in an amount lower than the lowest amount of the basic capital referred to in Article 233 of this Law. Such amount shall be the basis for the considered the nominal value of shares which have a nominal value, and shall be considered the accounting value of shares without nominal value.
- (4) Shares shall not be issued for an amount lower than their nominal value or accounting value, as the case may be.
- (5) Shares without nominal value shall participate equally in the basic capital of a company. The amount of basic capital covering one single share shall not be lower than the amount stated in paragraph (2) of this Article. Paragraph (4) of this Article shall apply accordingly to shares without nominal value.
- (6) Participation of shares in basic capital shall be determined by the ratio between the value of the shares and the total value of all paid shares.
- (7) The value of shares as referred to in paragraph (6) of this Article shall be equal to the sum of the nominal and accounting value of the shares.

### **Article 235**

#### **Splits and Mergers of Shares**

- (1) A joint stock company may split each share of any class into two or more shares, reducing at the same time the nominal value of shares of that class, without changing the basic capital.
- (2) A joint stock company may merge all shares of any class into a lower number of shares of that class, increasing at the same time the nominal value of shares of that class, without changing the basic capital.
- (3) A joint stock company may cancel shares it has acquired with reserves of the company, increasing at the same time the nominal value of other shares or reserves, without changing the basic capital of the company.
- (4) A joint stock company may perform the activities referred to in paragraphs (1)-(3) of this Article only if such activities do not dilute or otherwise adversely affect the rights of holders of options to acquire shares or securities convertible into shares that are to be merged or split.

(5) If a merger of shares results in there being fractional shares with nominal value less than the value referred to in paragraph (2) of Article 234 of this Law, the company shall buy them at the established market value or, if there is no established market value, at the price established by an independent appraiser in accordance with this law.

(6) The provisions of paragraphs (1)-(4) of this Article shall also apply to a company which has issued shares without nominal value.

(7) Merger and split of shares shall require amendment of the Articles of Association in accordance with this Law to state the resulting number and nominal value of the resulting shares.

## **Article 236**

### **Maintenance of Basic Capital**

(1) An joint stock company shall maintain its basic at a level equal to or greater than that required by Article 233 of this Law.

(2) Should the basic capital of the company be reduced for any reason below the amount stated in paragraph (1) of this Article, the company shall increase it to the required level within six months, unless during that time the company is changed into another form to which the requirement does not apply.

(3) If a company does not comply with paragraph (2) of this Article a liquidation proceeding may be opened.

## **Title 2**

### **Increase of Basic Capital**

#### **Sub-section 1**

#### **General Provisions**

### **Article 237**

#### **Decision Making**

(1) The basic capital of an open joint stock company shall be increased by decision of the shareholders' assembly, except in a case when such a decision may be made by the board of directors in accordance with paragraphs (4)-(6) of Article 205 of this Law.

(2) A decision on increase of basic capital of an open joint stock company shall be reflected in an amendment of the Articles of Association.

(3) A decision to increase basic capital of an open joint stock company shall state the amount of the increase, the method of increase, the method and time of distribution of profit among participants in the increase, the date of payment into the company, and other matters

in accordance with the law which regulates securities markets.

(4) A decision on a new issuance of shares on the basis of new contributions may be made only after full payment of subscribed shares from a previous issuance, unless the Articles of Association or the decision on issuance states that basic capital may be increased on the basis of 9/10 of subscribed shares.

(5) The provisions of paragraph (4) of this Article shall not apply to an increase of basic capital in a status change, an increase on the basis of contributions in kind, or an increase through issuance of shares to employees of the company or linked companies.

## **Article 238**

### **Method of Increase**

(1) The basic capital of an open joint stock company may be increased:

1) through new contributions;

2) by converting convertible securities into shares or issuing shares to holders of options to acquire the shares (conditional increase); or

3) from the company's assets.

(2) In an increase of basic capital of an open joint stock company, new shares shall be issued or the nominal value of existing shares shall be increased.

## **Article 239**

### **Types of Issuance**

(1) Shares of a joint stock company in an increase of basic capital shall be issued through a closed issuance or an open (public) issuance.

(2) For purposes of paragraph (1) of this Article an issuance is closed if the shares are issued to existing shareholders, to holders of convertible securities or other securities which carry the right to acquire such shares, and/or to a limited number of professional investors in accordance with this Law and the law which regulates securities markets.

(3) For purposes of paragraph (1) of this Article, an issuance is open if the shares are issued to persons without preemptive rights, in accordance with the law which regulates securities markets.

(4) A closed joint stock company may conduct only a closed issuance. An open joint stock company may conduct a closed or an open issuance.

## **Article 240**

### **Value of Shares in a New Issue**



Shares in a new issue shall be issued at market value as defined in this Law.

## **Subsection 2**

### **Increase of Basic Capital with New Contributions**

#### **Article 241**

##### **Increase of Basic Capital with Contributions in Money and in Kind**

- (1) The basic capital of an open joint stock company may be increased through new contributions which may be monetary or non-monetary (in kind), in accordance with the company's decision on the increase.
- (2) If contributions are made in kind, the decision on the increase shall state the property or rights which the company thereby acquires, the persons from whom it is acquired, and the number and nominal or accounting value of shares which are acquired by such contributions.
- (3) If the information referred to in paragraph (2) of this Article is not stated in the case of an open joint stock company, contracts for the contributions in kind and related legal activities shall be invalid. After registration of a withdrawal of basic capital, acting contrary to paragraph (2) of this Article shall not affect the validity of the withdrawal, and a shareholder whose contribution was not issued is obligated to pay in the nominal value of the share or the higher amount of the issuance, or the accounting value in the case of shares without nominal value.
- (4) Contributions in kind shall be valued by one or more independent appraisals in accordance with this Law.

#### **Article 242**

##### **Registration and Publication of the Decision**

- (1) A decision to increase basic capital of an open joint stock company with new contributions shall be registered and published in accordance with the law which regulates registration of business entities. Subscription of shares on the basis of such a decision may not begin prior to such registration and publication of the decision.
- (2) A decision to increase basic capital may not be submitted for registration after the expiration of six months from the date the decision was made.

#### **Article 243**

##### **Subscription of New Shares**

- (1) Shares issued in an increase of basic capital by an open joint stock company with new contributions, shall be subscribed and issued in accordance with this Law and the law which regulates securities markets.

(2) An issuance referred to in paragraph (1) of this Article in an increase of basic capital on the basis of new contributions, shall be deemed successful if the requirements stated in the decision on issuance and the published prospectus are met, in accordance with the law which regulates securities markets.

(3) Shares subscribed in an issuance referred to in paragraph (1) of this Article shall be paid in accordance with the decision on issuance and this Law.

(4) Shares of an open joint stock company issued on the basis of new contributions may be issued to persons taking over the issuance in accordance with the law which regulates securities markets.

(5) If new shares in an increase of basic capital of an open joint stock company are issued for a higher price than their nominal value, the surplus represents a share premium.

(6) Such surplus must prior to entry of the increase of basic capital in the Registry.

## **Article 244**

### **Reporting to the Securities Commission and Entry into the Central Registry**

(1) If an issuance of shares on the basis of new contributions is deemed successful in accordance with this Law, this shall be reported to the Securities Commission in accordance with the law which regulates securities markets.

(2) Upon receipt by the Securities Commission of such report on the successful issuance of shares on the basis of new contributions, the Central Registry of Securities shall be informed without delay for the purpose of recording the newly issued shares and their shareholders and for the purpose of recording the increase of nominal or accounting value of existing shares.

(3) If an open joint stock company has a book of shares, the changes referred to in paragraph (1) of this Article shall be recorded in the book of shares.

## **Article 245**

### **Acquisition of Shares and Issuance of Share Certificates**

(1) Shares or certificates for shares shall be issued to subscribers for shares in proportion to the paid in contributions or to the contributions transferred into the company assets in an increase of basic capital with such contributions.

(2) New shares or share certificates for shares may be issued after entry into the Central Registry of Securities. New shares or share certificates issued prior to such registration shall be null and void, and the board of directors and the issuer shall be jointly and severally liable to the shareholders for the damage caused by such issuance.

(3) Issuance of shares or share certificates as referred to in paragraph (1) of this Article shall be registered in the appropriate accounts of the shareholders in the Central Registry of

Securities.

## **Article 246**

### **Registration and Publication of Capital Increase**

- (1) An increase in basic capital of an open joint stock company through new contributions shall be registered and published in accordance with the law which regulates registration of business entities.
- (2) The basic capital of an open joint stock company shall be deemed increased as of the date of such registration and publication.

## **Subsection 3**

### **Conditional Increase of Basic Capital**

## **Article 247**

### **Requirements**

- (1) In adopting a decision on the issuance of convertible securities and securities with the right to acquire shares, a shareholders' assembly must at the same time adopt a decision on a conditional increase of basic capital in an amount with which would cover the rights of holders of the securities after conversion or exercise of the rights to acquire shares (conditional increase of capital).
- (2) The amount of basic capital referred to in paragraph (1) of this Article may not exceed one half of the basic capital of an open joint stock company which exists at the time of adoption of the decision.
- (3) A decision of a shareholders' assembly contrary to the decision on conditional increase of basic capital shall be null and void.

## **Article 248**

### **Content of the Decision**

A decision on conditional increase of capital of an open joint stock company shall state:

- 1) the purpose of the conditional increase;
  - 2) the persons who may exercise the right to receive the shares (such as holders of securities with the right to acquire shares or convertible bond holders);
  - 3) the time period and conditions for exercising the right;
  - 4) the price for which the shares are issued or a method by which it can be determined;
- and

5) the distribution of the rights referred to in subparagraph 2) of this Article, the time period within which the rights must be exercised, and the waiting period before the first exercise of such this right, which may not be less than two years after the date of adoption of the decision.

## **Article 249**

### **Registration and Publication of the Decision**

(1) A decision on a conditional increase of basic capital of an open joint stock company shall be registered and published in accordance with the law which regulates registration of business entities.

(2) The procedure for converting convertible securities into shares and the exercise of the rights to acquire shares may not begin prior to registration and publication pursuant to paragraph (1) of this Article.

## **Article 250**

### **Statement on Exercising the Right of Registration and Conversion**

(1) The right of holders of convertible securities to conversion into shares shall be exercised by completing a written statement that they have been converted into shares. Issuance of such statement constitutes subscription of shares and payment for shares.

(2) The right of holders of securities with the right to acquire shares shall be exercised by completing a written statement regarding the registration of shares through the first issuance for the purpose of increasing basic capital with new contributions in accordance with this Law.

(3) The statements referred to in paragraphs (1) and (2) of this Article shall state the number of shares and their nominal or accounting value, their number, and if shares of several classes are issued the specific classes, details referred to Article 191 of this Law in the case of contributions in kind, and the date when the decision on conditional increase of capital was made.

(4) Statements on registration of shares that do not contain the information required in paragraph (3) of this Article or which contain limitations on the liability of the person making the statement shall be null and void.

(5) Regardless of nullity of the statement, a person making the statement may not refer to the nullity of the statement if he had previously, on the basis of the statement, exercised rights as a shareholder and fulfilled the obligations of a shareholder.

(6) Limitations will not be effective if they are not contained in the statement.

## **Article 251**

### **Informing the Securities Commission and Entry into the Central Registry**

- (1) After completion of the procedure referred to in Article 250 of this Law, the Securities Commission shall be informed thereof in accordance with the law which regulates securities markets.
- (2) Upon the administrative decision of the Securities Commission, the Central Registry of Securities shall be informed without delay, for the purpose of entering the newly issued shares and the shareholders.
- (3) If the open joint stock company has a book of shares, the changes referred to in paragraph (1) of this Article shall be entered into the book of shares.

## **Article 252**

### **Acquisition and Confirmation of Shares**

- (1) New shares or certificates for shares may be issued after the registration referred to in Article 260 of this Law. New shares or confirmation on shares issued prior to such registration shall be null and void, and the issuer and board of directors shall be jointly and severally liable for damages of such issuance.
- (2) Issuance of shares and shares certificates as referred to in paragraph (1) of this Article shall be registered in the appropriate accounts in the Central Registry of Securities.
- (3) During a conditional increase of initial capital, the board of directors of a company shall issue shares or certificates for shares in accordance with paragraph (1) of this Article only for the purpose of fulfilling the adopted decision.
- (4) The board of directors shall issue shares in exchange for convertible securities only if the difference between the amount at which the bonds have been issued and the greater amount of initial capital relating to the shares issued for that purpose, is covered from other reserves which can be used for that purpose, or by additional payments by a person who is authorized to convert a bond for a share. This shall not apply if the total amount for which the bonds have been issued reaches the total amount of initial capital which is required for shares issued for them or if it exceeds that amount.

## **Article 253**

### **Registration and Publication of Capital Increase**

- (1) Within 30 days after the end of the business year of an open joint stock company, authorized representatives of a company shall submit an application to the Registry for registration of an increase of basic capital on the basis of the total number of shares issued during that year by conversion of convertible securities or exercise of options or other rights to acquire shares.
- (2) The application referred to in paragraph (1) of this Article shall be submitted together with other evidence and documents in accordance with the law which regulates registration of business entities.
- (3) The increase of initial capital of an open joint stock company by converting convertible securities into shares and by issuing shares to holders of securities with the right to acquire

shares shall be registered and published in accordance with the law which regulates registration of business entities. Upon such registration and publication, it shall be deemed that the basic capital of a joint stock company has been increased.

#### **Subsection 4**

#### **Article 254**

#### **Requirements**

(1) The shareholders' assembly of an open joint stock company may decide to increase the basic capital of a company by converting capital reserves and retained earnings into basic capital of the company.

(2) Such a decision shall state the amount of the increase, the amount of the reserves to be converted into basic capital, whether new shares are to be issued in such an amount or the nominal or accounting value of existing shares is to be increased, and the time limit for shareholders to exercise their rights.

(3) Reserves and retained earnings of a joint stock company may not be converted into basic capital if losses are reported in the profit and loss account representing the basis for such a decision. Reserves intended for a specific purpose may be converted into basic capital only if such conversion is consistent with the designated purpose.

(4) A decision to increase basic capital of a company from company assets shall be based on annual financial statements of the company for the preceding year, provided that they have been approved by auditors and duly adopted no more than eight months before submission of the application for entry of such decision into the Registry.

(5) If the shareholders' assembly fails to appoint special auditors for the financial statements referred to in paragraph (4) of this Article, the auditors which were appointed by the shareholders' assembly to audit the latest annual financial statements, or auditors appointed by a court in a non-contentious proceeding taking into account the circumstances, shall be deemed so appointed in accordance with the law which regulates accounting and audit.

#### **Article 255**

#### **Holders of Rights Arising from an Increase in Basic Capital from the Company's Assets**

(1) The company's shareholders as identified in the Central Registry of Securities at the time of making a decision to increase basic capital of the company, and/or the company's shareholders on a date specified in a decision to increase basic capital of the company, shall be entitled to free shares issued as a result of the increase in the basic capital in proportion to their share in the existing initial capital of the company.

(2) A decision of the shareholders assembly contrary to paragraph (1) of this Article shall be null and void.

(3) The rights referred to in paragraph (1) of this Article shall belong to:

1) subscribers to shares and/or shareholders who have partly paid their shares, in proportion to the portion of their paid up shares in the basic capital of the company;

2) holders of convertible securities or options or other securities entitled acquire shares, in proportion to the nominal value or accounting value of the shares to be converted into or acquired.

(4) The rights referred to in paragraph (1) of this Article shall also belong to own shares held by the company, in proportion to those shares' share in the existing basic capital of the company.

## **Article 256**

### **Fractional Shares**

(1) Where a person acquires a right to a fractional share in an increase in basic capital of an open company from company assets, such right may be transferred and inherited.

(2) The rights arising from a new whole share may be exercised if rights referred to in paragraph (1) of this Article, which together make up a whole share, are combined in one shareholder, or if more than one holder of such right, whose rights to part of a share together make up a whole share, exercise such rights together.

## **Article 257**

### **The Right to Dividends and Distributions on in Liquidation**

(1) New shares acquired on the basis of an increase in basic capital of an open company from the company's assets and/or a portion of nominal or accounting value of shares which is increased on the same basis, shall be entitled to a dividend or to a distribution of assets of a company in liquidation for an entire business year in which a decision to increase initial capital of a company from its assets is made, unless otherwise determined in the decision on the increase.

(2) A decision to increase basic capital of an open company from the company's assets may include new shares in the distribution of the company's profits for a business year that ended before the making of such decision, where such decision is made before the decision to distribute profits for a business year that precedes the year in which the decision to increase basic capital from own assets has been made.

## **Article 258**

### **Notification of the Securities Commission and Entry into Central Registry**

(1) Following completion of the procedure referred to in Articles 254 and 255 of this Law, the Securities Commission shall be notified in accordance with the law which regulates securities markets.

(2) Upon receipt of the decision of Securities Commission in the matter referred to in paragraph (1) of this Article, the Central Registry of Securities shall be promptly notified to make an entry of the new issue of shares and their holders, and/or to make an entry of an increase in the nominal or accounting value of the shares.

(3) If an open joint stock company keeps a book of shares, the entries referred to in paragraph (2) of this Article shall be recorded in the book of shares.

## **Article 259**

### **Acquisition of Shares and Share Certificates**

(1) New shares or share certificates resulting from an increase in basic capital of a company from its assets may be issued or acquired after the registration provided for in paragraph (2) of Article 258 of this Law.

(2) New shares or share certificates issued before such registration shall be null and void, and the issuer and the board of directors shall be jointly and severally liable for damage caused by any such issuance to shareholders.

(3) The issuance of shares and share certificates as provided for in paragraph (1) of this Article shall be entered into the appropriate accounts in the Central Registry of Securities.

## **Article 260**

### **Registration and Publication of the Decision**

(1) A decision on increase in basic capital of an open joint stock company from its assets shall be registered and published in accordance with the law which regulates registration of business entities.

(2) The decision on increase in initial capital of an open joint stock company from company assets shall be null and void unless entered into the register within three months from the date of its adoption.

(3) The time period referred to in paragraph (2) of this Article shall be suspended if court proceedings for contesting such decision have been initiated in accordance with this Law.

(4) The basic capital of a company shall be increased from company assets as of the date of entry of such decision into the Registry.

## **Section 3**

### **Reduction of Basic Capital**

#### **Subsection 1**

#### **Basic Principles**



## **Article 261**

### **Decision**

- (1) A decision to decrease basic capital of an open joint stock company through cancellation of own shares shall be made by the board of directors of the company. The decision to decrease basic capital in every other case shall be made by the shareholders' assembly, unless the Articles of Association or by-laws provide otherwise.
- (2) A decision to decrease basic capital of an open joint stock company shall specify the level, purpose, type and method of reduction of basic capital.
- (3) Such a decision shall be reflected in an amendment of the Articles of Association.

## **Article 262**

### **Type of Reduction**

- (1) Reduction of basic capital of an open joint stock company may be carried out through regular reduction, simple reduction or reduction for the purpose of conversion into reserves.
- (2) Basic capital of a company may be reduced simultaneously with the increase in its basic capital on another basis.

## **Subsection 2**

### **Regular Reduction**

## **Article 263**

### **Methods**

Regular reduction of basic capital of an open company shall be carried out through:

- 1) withdrawal and cancellation of own shares or withdrawal and cancellation of shares held by shareholders;
- 2) decrease in nominal or accounting value of shares; or
- 3) repayment of the amount paid by shareholders for partly paid shares and cancellation of such shares.

## **Article 264**

### **Cancellation of Own Shares and Withdrawal and Cancellation of Shares**

- (1) When reducing the basic capital of an open company the first shares to be cancelled shall be shares owned by the company which must be cancelled pursuant to paragraphs (3) and (4) of Article 224 of this Law.

(2) If a company holds none of its own shares, its basic capital may be reduced by withdrawal and cancellation of shares held by shareholders in accordance with the provisions of Article 227-229 of this Law.

(3) Withdrawal and cancellation of shares held by shareholders and regular reduction of basic capital resulting therefrom may only be undertaken by an open joint stock company in accordance with provisions of this Law protecting creditors' rights.

(4) Paragraph (3) of this Article shall not apply in the following cases when initial capital is not reduced:

1) when the fully paid shares placed at the disposal of the company free of charge are withdrawn and cancelled;

2) when the fully paid shares are withdrawn and cancelled from assets available for such purpose in accordance with restrictions in Article 230 of this Law;

3) in the case of share without nominal value, when the assembly decides to increase the participation of the remaining shares in basic capital of the company by withdrawal and cancellation of shares, or in the case of shares with nominal value, when the withdrawn

shares are cancelled and the par value of non-withdrawn issued shares is increased up to the amount that is sufficient to avoid reduction of basic capital, and when the withdrawn and cancelled shares have been acquired from the assets available for such purposes in accordance with Article 230 of this Law; or

4) in the event of simultaneous issuance of new shares with nominal value equal to the nominal or accounting value of withdrawn shares in accordance with the provisions of this Law.

## **Article 265**

### **Applicability of Other Articles**

The provisions of Article 264 shall apply mutatis mutandis in the event of reduction in capital stock as a result of reduction of the nominal value of a class of shares with nominal value or reduction of the accounting value of shares without nominal value, and in the event of reduction in capital stock as a result of paying capital for partly paid shares or not issuing such shares.

## **Article 266**

### **Principle of Equality**

(1) A resolution authorizing regular reduction in capital stock of an open company in regular procedure shall not violate the principle of equality of shareholders of one class of shares.

(2) The principle of equality of shareholders of one class of shares shall be exercised through proportionate cancellation of the shareholders shares, i.e. proportionate reduction of

nominal value of shares with nominal value or accounting value of shares without nominal value, as well as through cancellation of shares and reduction in capital arising from trading at a stock exchange or other securities markets or from public offerings to interested parties, in accordance with the law which regulates securities markets, the Articles of Association or the shareholders' decision to authorize the reduction in capital. An offer for shares for cancellation shall state the specific number of shares.

(3) If it has been stated in a decision authorizing reduction in capital that the reduction shall be in a fixed amount, which amount may not be achieved through tenders for cancellation through the stock exchange or other securities markets or through public offerings, the decision must change the amount stated in the decision, or another method of reduction in capital stock shall be resorted to.

(4) The principle of equality of shareholders of one class of shares shall also be exercised through reduction in capital stock (subscribed capital) as a result of the company not

allotting to shareholders unpaid shares which they have failed to pay when due in accordance with this Law.

#### **Article 267**

##### **Registration and Publication of the Decision to Decrease**

A decision on decrease in basic capital of an open company in a regular procedure shall be registered and published in accordance with the law which regulates registration of business entities.

#### **Article 268**

##### **Notice of Decision and Protection of Creditors**

(1) Upon registration of such a decision it shall be published two times at least 30 days apart with an invitation to creditors to file their claims.

(2) Creditors whose non-matured claims have arisen prior to the second notice of such publication may claim their rights no later than 90 days following the second notice. Such creditors may claim security or payment if the decision of shareholders. Within 90 days from the date of the second publication securing of claims may not be claimed by secured creditors.

(4) In the event of a regular reduction of capital of a company, shareholders' claims may be settled following a period of 90 days after the date of the second notice of after creditors duly filed claims have been settled.

#### **Article 269**

##### **Filing with the Central Registry of Securities**

(1) Any reduction in capital of an open company shall be filed without delay with the Central Registry of Securities for the purpose of registration, in the appropriate accounts of

shareholders, records on cancelled shares, and removing from records any partly paid shares for which the shareholders have been paid by the company.

(2) If an open company keeps a book of shares the decrease shall be recorded in the book of shares.

### **Article 270**

#### **Registration of Decrease, Publication and Effectiveness**

(1) A regular reduction in basic capital of an open company shall be registered and published in accordance with the law which regulates the registration of business entities.

(2) Such a reduction may not be registered before the creditors claims pursuant to Article 268 of this Law have been settled and said reduction has been entered in the Central Registry of Securities in accordance with Article 269 of tis Law.

(3) The reduction in basic capital of the open company shall be effective as of the date of the publication of the registration, and shall be in the amount of the reduction in nominal and/or accounting value of the shares in question.

(4) Subscribed capital of an open company corporation shall be decreased as of the date of notice of publication of registration of the reduction. in the amount of payment to shareholders of partly paid shares.

### **Subsection 3**

#### **Reduction through Simplified Procedure**

#### **Article 271 Principle**

(1) The basic capital of an open company may be reduced by a simplified procedure for the purpose of equalizing reduced value of assets and covering losses. That purpose shall be stated in any decision authorizing reduction by simplified procedure.

(2) Such a reduction for the purpose of covering losses may be carried out only to the extent that the company does not utilize any unallocated profits or reserves for such purposes.

(3) Such a reduction shall not be subject to the provisions of this Law relating to the invitation to creditors to file their claims and the protection of creditors rights upon a regular reduction in capital.

(4) A reduction in capital under paragraph (1) of this Article shall be subject mutatis mutandis to the provisions of Articles 263-267 and 269-270 of this Law.

### **Subsection 4**

#### **Reduction for Purpose of Creating Reserves**

## **Article 272**

### **Limit**

(1) The provisions of Article 277 with regard to the invitation to creditors to file their claims and the protection of creditors rights upon a regular reduction of capital shall not apply to a reduction in capital for creating reserves for future losses or an increase in basic capital from the assets of the company in which the reduction does not exceed 10% of the capital.

(2) In a reduction of basic capital referred to in paragraph (1) of this Article, reserves created shall be equal to the amount of capital reduced as a result of cancellation of shares or the amount of capital reduced as a result of reduction of nominal or accounting value of shares.

(3) Reduction in basic capital under paragraph (1) of this Article shall be subject mutatis mutandis to the provisions of Articles 263-267 and 269-270 of this Law.

## **Subsection 5**

### **Capital Following Reduction**

#### **Article 273**

##### **Rules**

(1) The financial statements for the business year preceding the year in which a decision on reduction of basic capital was made shall contain such amounts of value of capital capital gains and revenues reserves as are expected to arise following the reduction of capital.

(2) Decisions authorizing reduction in basic capital and on adopting financial statements shall be made at the same time.

(3) Financial statements of an open joint stock company may be published in accordance with the law which regulates securities markets only after registration of the decision authorizing the reduction in capital,

## **Subsection 6**

### **Simultaneous Decrease and Increase**

#### **Article 274**

##### **The Largest Amount of Decrease (Reduction)**

(1) The basic capital of an open joint stock company may not be decreased in a regular reduction procedure below the minimum amount of basic capital required under paragraph (2) of Article 233 of this Law. In a case of a decrease below such amount, liquidation or

bankruptcy proceedings shall be initiated in accordance with law.

(2) As an exception to paragraph (1) of this Article, regular reduction of basic capital of a joint stock company below the above minimum shall be possible if a decision to increase the basic capital up to the required minimum is made at the same time as the decision on reduction, provided that such increase is not by means of in kind assets.

(3) Decisions on regular reduction and simultaneous increase of basic capital of an open joint stock company shall be null and void if the increase or decrease is not entered into the register within six months of the date of the decision. This time period shall not run during a dispute seeking to nullify the decision on decrease or increase of the basic capital or while awaiting decision thereon the competent body, if such approval is required.

(4) Provisions of Article 234 of this Law on minimum nominal value of shares shall apply in the case of simultaneous decrease and increase of the basic capital.

## **Chapter 10**

### **Shareholders' Assembly**

#### **Section 1**

#### **General Provisions Concerning the Shareholders' Assembly**

#### **Article 275**

#### **Exercising Shareholders' Rights**

(1) The shareholders' assembly of a joint stock company consists of the company's shareholders.

(2) Every shareholder, personally or through his authorized representative, shall have the right to attend the shareholders' assembly, vote if his shares carry the right to vote, ask questions and receive answers regarding matters included on the agenda, and make proposals for the agenda as provided in this Law.

(3) Paragraphs (2)-(4) of Article 136 of this Law (relating to a single-member limited liability company) shall apply mutatis mutandis to a single-shareholder joint stock company.

(4) Members of the board of directors and members of any supervisory board of a joint stock company and the company's independent auditor shall attend the shareholders' assembly if possible regardless of whether they are shareholders.

#### **Section 2**

#### **Types of Assembly**

## **Article 276**

### **Annual Assembly**

- (1) The shareholders' assembly shall be convened at least once a year (the "annual assembly") not later than the later of three months after preparation and submission to the board of the company's annual financial statements for each financial year or six months after the end of the company's financial year.
- (2) The annual assembly shall be held on a date and at a time stated in the company's Articles of Association or, if not there stated, shall be fixed by the board of directors in a manner consistent with the Articles of Association and this Law.
- (3) The annual assembly shall be held at the registered office of the company unless the Articles of Association specify a different place.
- (4) Failure to hold the annual assembly at the time required by this Article shall not affect otherwise valid company action.

## **Article 277**

### **Extraordinary Assembly and Convening by Minority Shareholders**

- (1) Apart from the annual assembly, a company shall hold an extraordinary assembly either:
  - 1) at the call of the board of directors or any other person who is authorized by the Articles of Association to call an extraordinary assembly;
  - 2) at the call of the liquidator if the company is in liquidation; or
  - 3) upon the written demand of holders of at least 10% of all the votes entitled to be cast on an issue at the proposed extraordinary assembly.
- (2) A demand referred to in subparagraph 3) of paragraph (1) of this Article must be dated and signed by all of such shareholders, and must identify such shareholders and state the number of shares they each hold, must state the purpose or purposes for which the assembly is called and the agenda for the assembly.
- (3) Such a demand shall be considered to have been received by the company if it has been delivered to the company's registered office addressed to the board of directors.
- (4) The record date for determining the list of shareholders entitled to demand an extraordinary assembly shall be the date on which the first shareholder has signed the demand.
- (5) The board of directors must make a decision to convene or refuse to convene such a meeting within 10 days after the demand has been received. Not later than seven days after making its decision the board shall send written notice of the decision to each of the

persons demanding the assembly at the addresses stated in the demand. A decision to refuse to convene an extraordinary assembly must state the reasons for the refusal.

(6) Such a demand may be refused:

- 1) if the procedure stated in subparagraph 3) of paragraph (1) of this Article and paragraphs (2)-(5) of this Article has not been fully complied with;
- 2) if the shareholders who have submitted the demand do not hold the required number of votes; or
- 3) if none of the proposed issues for the extraordinary assembly is within the competence of a shareholder assembly.

(7) An extraordinary shareholders' assembly may make decisions only on matters stated in the demand made pursuant to subparagraph 3) of paragraph (1) of this Article and paragraphs (2)-(4) of this Article.

## **Article 278**

### **Court-Ordered Assembly**

(1) If an annual assembly has not been held within the time period required by this Law, the competent court may in a non-contentious proceeding order the assembly to be held upon the request of any shareholder who is entitled to attend and vote at an annual assembly, or any director of the company. The court shall have power to appoint an interim representative empowered to convene or preside at the assembly, set the place and date of the assembly, and set its agenda in accordance with this Law.

(2) If an extraordinary assembly has not been held at latest within 30 days after delivery of the demand or at the day defined by the board of managers in accordance with the paragraph (5) of Article 277, the competent court in non-contentious proceeding may order the assembly to be held upon the request of any shareholder who signed the demand.

(3) In the cases referred to in paragraphs (1) and (2) of this Article, the court in non-contentious proceeding is obligated to make a decision within 48 hours after the receipt of the request.

(4) A company shall bear the expenses of any shareholders' assembly held by court order.

## **Article 279**

### **Extraordinary Assembly of a Closed Company**

An extraordinary shareholders' assembly may be held without a proper convening of a session and without publishing the agenda in accordance with this Law if all shareholders with a right to vote are present and if no shareholder dissents, unless the company's Articles of Association or by-laws provide otherwise.



## **Article 280 Extraordinary**

### **Assembly in Financial Crisis**

A company's directors shall convene a shareholders assembly without delay if it has been learned during preparation of annual or other financial statements that the company faces a loss which amounts to 50% or more of the company's basic capital.

### **Section 3**

#### **Procedure for Convening an Assembly**

### **Article 281**

#### **Notice to Shareholders**

(1) Written notice to each shareholder of an annual assembly shall be given not less than 30 nor more than 60 days before the date of the annual assembly, and written notice to each shareholder of an extraordinary assembly shall be given not less than 15 nor more than 30 days before the date of the extraordinary assembly. The notice shall be given by mail or email (but only if the shareholder has agreed in writing to notice by email) to each shareholder of record who is entitled to vote at the assembly. The notice shall be given by or at the direction of the chairman of the board or another director, or by another person who is authorized to call the meeting.

(2) The notice referred to in paragraph (1) of this Article shall be sent with the company's financial statement together with related auditors' reports, a report of the supervisory board if the company has one, a report of the board of directors on the company's operations, the text of any proposed amendments to the Articles of Association, a description of any contracts or transactions proposed for approval, and any other matters which are required to be in the notice by the company's Articles of Association, this Law, the law which regulates securities markets or any other law.

(3) The date of delivery of the notice referred to in paragraph (1) of this Article shall be considered to be the date of sending by post by recorded delivery to the post office or the date of emailing, as the case may be.

(4) As an exception to paragraph (1) of this Article, an open company may, instead of sending individual notice to each shareholder, publish an announcement continuously on the company's website during the applicable time period referred to in paragraph (1) of this Article and shall, in addition, publish it in at least one daily newspaper distributed throughout Serbia with a print run of at least 100,000 copies, not less than 30 nor more than 60 days before the date of the assembly in the case of an annual assembly, and not less than 15 nor more than 30 days before the date of the assembly in the case of an extraordinary assembly.

(5) The notice of an annual assembly referred to in paragraph (4) of this Article shall state the date, time and place of the meeting, the company's proposed agenda and list of issues to be voted on at the meeting (including candidates for election to the board of directors and any proposal for dividends), and shall include a statement that the company will provide

copies of the documents referred to in paragraph (2) of this Article to any shareholder who requests them, at the company's registered office during regular business hours.

(6) The notice of an extraordinary assembly referred to in paragraph (4) of this Article shall state the date, time and place of the meeting, a description of the purpose for which the assembly is to be held, and the agenda which is proposed by the persons who called or demanded the meeting.

## **Article 282**

### **Waiver of Notice in Writing**

Whenever any notice to shareholders is required to be given under this Law or a company's Articles of Association or by-laws, a waiver of such notice in writing signed by the person entitled to such notice shall be deemed equivalent to the giving of such notice.

## **Article 283**

### **Waiver by Attendance**

(1) A shareholder's attendance at an assembly shall constitute a waiver of any objection by the shareholder to a lack of notice or defective notice of the assembly.

(2) As an exception to paragraph (1) of this Article, a shareholder may file an objection in written form at the beginning of the assembly to the holding of the assembly or taking action at the assembly because proper notice was not given.

(3) The objection referred to in paragraph (2) of this Article shall be decided in a form specified by the company's by-laws and the assembly's operating procedures and rules.

## **Article 284**

### **Agenda for an Assembly**

(1) At a shareholders assembly, decisions may be made only on matters within the scope of the applicable notice and agenda referred to in this Law, but this restriction shall not prevent discussion of other matters.

(2) A shareholder or shareholders holding at least 10% of all the votes entitled to be cast for the board of directors of a company shall have the right to propose and require that a maximum of two new issues be included on the agenda.

(3) Any proposal referred to in paragraph (2) of this Article must be submitted in writing within seven days from the date at which the convening of an annual shareholders' assembly has been announced, or within five days in the event of an extraordinary shareholders assembly.

(4) Each proposal referred to in paragraphs (2) and (3) of this Article shall include the names of the shareholders making the proposal, the number of votes they have (to the extent known to the proposer), and shall be submitted to the company, addressed to the

board of directors at the company's registered office.

(5) For purposes of this Article, no shareholder shall be counted in more than one group holding a stated percentage of votes.

(6) If the board fails to respond to a shareholders' request made pursuant to paragraph (2) of this Article, or if it rejects the request, the competent court in a non-contentious proceeding shall have the power, on request of any submitting shareholder, to order that the shareholders' request must be granted. The court shall make its decision within 48 hours after receipt of the request.

## **Article 285**

### **Chairman at an Assembly**

- (1) A chairman shall preside at each shareholders' assembly.
- (2) The chairman shall be elected at the beginning of the assembly if the agenda properly provides for that.
- (3) The chairman may also be designated or appointed as provided in the company's by-laws.
- (4) The chairman may establish rules and regulations for the conduct of the assembly which are fair to the shareholders.

## **Article 286**

### **List of Shareholders and Record Date for an Assembly**

(1) A company's Articles of Association may specify or provide the method for setting the record date for determining the list of shareholders who are entitled to notice of an Assembly, to demand convening of an extraordinary assembly, to vote, to submit

minority shareholders' proposals in accordance with this Law, and to take any other action (herein called a "record date").

(2) If the Articles of Association does not specify or provide the method for setting the date referred to in paragraph (1) of this Article, the board of directors may do so. If the board of directors does not do so:

- 1) in the case of an assembly other than an extraordinary assembly, the record date shall be the date on which the notice of the meeting is first given; and
- 2) in the case of an extraordinary assembly, the record date shall be the date on which the first demand was signed and dated by a shareholder.

(3) A record date may not, in any event, be more than 60 nor less than 10 days before the assembly at which action is to be taken.

(4) The list of shareholders for an assembly shall be compiled as of the record date from the shareholder list in the Central Registry of Securities and shall be available at the company's registered office to all shareholders entitled to vote at the assembly for inspection and copying at their own cost and for the opportunity to object to any irregularities in the list.

(5) Such list of shareholders shall contain the name and address of each shareholder and the number of voting shares held by each shareholder.

#### **Article 287**

##### **Voting in Person or by Proxy**

(1) A shareholder may vote his shares in person or by an authorized representative (a "proxy") in accordance with this Law or the company's by-laws.

(2) A shareholder may appoint a proxy only by power of attorney in writing which names the person who shall be the proxy and states the number, type and class of shares for which the proxy is given. If so provided in the company's Articles of Association or by-laws, the power of attorney may be given in electronic format if its authenticity can be assured.

(3) Signed copies of the power of attorney shall be delivered both to the proxy and the company.

(4) A power of attorney shall be valid for only one assembly, which for this purpose includes any reconvening of an assembly which was adjourned for reasons of lack of time, lack of quorum or otherwise.

(5) If the power of attorney contains instructions on how to vote on a particular matter, the proxy must vote in accordance with those instructions. If the power of attorney does not contain instructions on how to vote on a matter, the proxy shall exercise the right to vote on that matter only in good faith with the purpose of serving the shareholder's own best interest.

(6) A person (or a related person to a person under this Law) who is a director or management body member of a company or of a controlling shareholder of a company may not be a proxy for an employee or a related person of an employee of the company.

(7) If a shareholder who is entitled to vote at an assembly transfers his shares to another person before the assembly, he shall retain the right to attend the assembly and vote but may grant that right to his transferee by a power of attorney referred to in Article 286 of this Law.

(8) A proxy is obligated to inform a shareholder who appointed him about his voting at the assembly.

(9) The responsibility of a proxy for exercising the right to vote as provided in paragraphs (5) and (8) this Article may not be released or limited in advance.

(10) A shareholder who has given the power of attorney may revoke it at any time prior to voting at the assembly meeting by a written revocation delivered to the company and the

proxy, or by attending the meeting and voting in person.

#### **Article 288**

##### **Voting Committee**

(1) Unless provided otherwise in a company's Articles of Association or by-laws, the chairman of a shareholders' assembly shall appoint a keeper of the minutes, two shareholders to review and approve the minutes, and a voting committee.

(2) The voting committee shall be composed of at least three members who shall:

1) verify the list of shareholders present in person or by proxy and verify the identities of the proxies;

2) verify the number of shares and number of votes of each shareholder and each proxy;

3) verify the validity of each power of attorney appointing a proxy and the instructions in each power of attorney;

4) count votes;

5) verify and announce results of voting;

6) transfer the ballots to the company's archive for safekeeping; and

7) perform other activities in accordance with any rules of procedure of the assembly.

(3) The voting committee shall be obligated to act in an impartial and fair manner towards all shareholders and to submit a signed, written report about its work which shall serve as evidence of the voting results at the assembly but which shall not be free from challenge by any shareholder acting in good faith.

(4) In the case of a company with more than 50 shareholders, a member of the voting committee may not be a director, a management body member, a candidate for either body, or a related person of any thereof.

#### **Section 4**

##### **Informing Shareholders and Competence**

#### **Article 289**

##### **Right of Shareholders to Information at Assembly**

(1) At each annual shareholders assembly the company's board of directors shall make an accurate and complete report to the shareholders on the state and operations of the company including its financial condition.

(2) If the company has acquired its own shares, the board shall state in its report on the state of the company the reasons for the acquisition, the number and nominal or accounting value of the acquired shares, whether they were acquired without consideration or were paid for, the amount paid, the number of its own shares the company holds and the number of shares which it has reissued.

(3) If a shareholder is denied information requested pursuant to this Article, he may request that this denial be recorded in the minutes of the assembly together with the reasons for the denial.

(4) A shareholder may ask the competent court to order that such information be provided. Such request shall be made not later than 15 days after the date of the assembly meeting at which the information in question was denied.

## **Article 290**

### **Competence and Book of Decisions of the Assembly**

(1) The following matters are to be decided by the shareholders' assembly:

1) amendment of the Articles of Association, including but not limited to amendments that establish, increase or decrease the authorized number of shares of, or change the rights or preferences of, any type or class of stock, or increase or decrease the company's basic capital (but not including amendments which may be made by the board under this Law);

2) authorization and concluding of a status change or transformation into another form of company or an acquisition or disposition of major assets in accordance with this Law;

3) decision on distribution of profit and covering of losses, if the Articles of Association or by-laws of the company do not provide otherwise;

4) adoption of the company's annual financial statements including reports of the board of directors, auditors and supervisory board (if there is a supervisory board) relating to those financial statements;

5) policies on compensation and bonuses of directors;

6) election or removal of directors;

7) termination of the company;

8) appointment and removal of the company's auditors;

9) matters submitted to the assembly by the company's board of directors for decision in accordance with this Law;

10) expenditures relating to bonuses for the company's directors by issuing shares, options financial or in-kind grants;

11) other matters stated in this Law or the company's Articles of Association to be within

the exclusive competence of the shareholders' assembly;

(2) All decisions made by the shareholder assembly shall be entered without delay into a company book of decisions.

## **Article 291**

### **Adoption of Annual Financial Reports and Reports on Business Activities**

(1) The board of directors shall submit to the annual shareholders' assembly the financial statements and statements on business activities together with the statement by the auditor thereon, and other reports in accordance with this Law for inspection and adoption.

(2) Any adoption by the shareholders' assembly of a company's annual or other financial statements or any other statements shall not affect any right or remedy available to the shareholders if such statements are later found to be incorrect or misleading.

## **Section 5**

### **Method of Work and Voting Procedures**

## **Article 292 Quorum**

(1) A simple majority of the total number of votes of the shares entitled to vote on a matter (a "simple quorum") shall constitute a quorum for action of an assembly on that matter, unless the company's Articles of Association requires a greater quorum. The votes of those shares which may, in accordance with this Law, vote in writing shall also constitute part of the quorum.

(2) If an assembly is adjourned because of lack of quorum it may be reconvened with the same proposed agenda but not later than 15 days from the date of the adjournment. The quorum required at such a reconvened assembly shall be one-third of the votes of the shares entitled to vote, unless the Articles of Association require a greater quorum.

(3) If there is no quorum at such reconvened assembly or it is not held within such time period, another assembly must be convened and held in accordance with this Law.

(4) The presence or absence of a quorum at an assembly shall be determined prior to beginning deliberations on the agenda items at the assembly.

(5) Any amendment of a company's Articles of Association that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

(6) If at an assembly the required quorum is present for action on some but not all of the matters to be considered, action may still be taken on the matters as to which a quorum is

present. In any event, a properly convened meeting may decide on the time and place for a

reconvened meeting as referred to in paragraphs (2) and (3) of this Article.

(7) If a company's Articles of Association or this Law requires group voting by a single type or class of shares on a matter, the quorum for such voting shall be as provided in paragraphs (1)-(6) of this Article.

### **Article 293**

#### **Vote Required for a Decision**

(1) If a quorum is present, the affirmative vote of a simple majority of the votes of the shares present in person or by proxy and entitled to vote on that matter shall be the decision of the assembly on that matter, unless a greater number of votes or voting by classes is required by this Law or the company's Articles of Association.

(2) Whenever this Law states that a qualified majority of votes is required on a matter, the term "qualified majority" shall mean the affirmative votes of at least two-thirds of the votes of all of the shares entitled to vote on that matter.

(3) The Articles of Association or by-laws of any company may supersede the two-thirds vote requirement of paragraph (2) of this Article as to that company by specifying any smaller or larger vote requirement not less than a simple majority of the votes of all of the shares entitled to vote on the matter and not less than a simple majority of all of the shares of each class of shares entitled to separate group voting on the matter.

### **Article 294**

#### **Voting Rights of a Share**

(1) Except as provided in this Article, each outstanding ordinary share shall be entitled to one vote on every matter voted on at an assembly, and each outstanding preferred share shall have only the voting rights stated in the company's Articles of Association, which shall be subject to the restrictions stated in paragraph (6) of Article 209 of this Law.

(2) Shares held by the company may not be voted. Securities other than shares may not vote.

(3) A company's shares may not be voted at an assembly if the shares are owned, directly or indirectly, by another entity and the company owns, directly or indirectly, shares or other interests in that other subordinated entity which entitle the company to control the voting by that other entity of that other controlled entity's shares of the company.

### **Article 295**

#### **Certain Voting Agreements Prohibited**

(1) An agreement by a shareholder or a proxy to vote following instructions of the company or any director or management body member of the company shall be null and void.



(2) An agreement by a shareholder to vote, or to refrain from voting, in return for privileges or other consideration provided to him by the company or any director or management body member of the company, shall be null and void.

## **Article 296**

### **Meeting by Conference Telephone**

An assembly in a joint stock company with not more than ten shareholders may be held through conference telephone or other audio or visual communication equipment if all of the participants can listen and talk to each other. The persons participating in such an assembly shall be considered to be personally present at the assembly.

## **Article 297**

### **Form of Voting**

(1) Voting at an assembly shall be by secret ballot (which may be in form for computer processing) if the company has more than 100 shareholders or when so requested by shareholders with a minimum of 10% attending or represented shares with right to vote on the matter in the following cases:

- 1) when voting for election or removal of a director, an independent auditor or liquidator; and
- 2) when voting on financial reports, operation reports and on the system of compensation for company directors.

(2) A ballot shall in any case contain the following:

- 1) the company's registered name and the date and time of the assembly;
- 2) the issues subject to voting as items of the agenda;
- 3) provision for voting "in favor," "against" or "abstain" on every issue,
- 4) for voting for directors, a clear statement of all the candidate's names and statement of the body (board of directors or supervisory board) voted for.

(3) If the voting is conducted by ballot:

- 1) a vote on matters other than election of directors shall be counted only if the shareholder marked one and only one of the three options stated in subparagraph 3) of paragraph (2) of this Article;
- 2) a vote on election or removal of a director without cumulative voting in accordance with this Law shall be counted only if the shareholder votes for a number of candidates not exceeding the total number of directors to be elected; and

3) a vote on election or removal of a director with cumulative voting shall be counted only if the shareholder's total number of votes for all candidates does not exceed the total number of votes of the shareholder.

(4) If the ballot contains more than one issue for voting, invalid voting on one shall not adversely affect validity of voting on any other issue.

(5) Voting in other cases than described in paragraph (1) of this Article shall be by show of hands or another open procedure.

## **Article 298**

### **Voting Rights of Holders of Specific Types**

(1) The right to vote shares which are pledged shall be in the pledgor.

(2) The shares held of record by another company or legal entity, domestic or foreign, may be voted only by a proxy or other legal representative of that other company or entity.

(3) In the case of shares held in the name of a deceased person, minor or other person not having legal capacity, the voting may be done through a legal representative as provided by law without transfer of the shares to the representative.

(4) In the case of shares held by a bankruptcy administrator or liquidator, the voting is done by such person without transferring the shares into such person's name if the power for such voting is contained in an appropriate court decision authorizing such person.

## **Article 299**

### **Effective Date of Assembly Decisions**

A decision of an assembly shall be legally effective as of the time it is made except in following cases:

1) if the decision itself specifies that another effective time than that time shall be the effective time; or

2) if the law expressly provides that a decision becomes effective upon the date of entering it into the Registry and publication, then the time of registration and publication shall be the effective time.

## **Article 300**

### **Disqualification to Vote in Certain Cases**

(1) A shareholder may not vote at an assembly in the following cases:

1) when relieving that shareholder from an obligation to the company or satisfying the company's claims against that shareholder;

- 2) when initiating or terminating a lawsuit against that shareholder; or
  - 3) when approving an act or transaction in which that shareholder has a personal conflict of interest with the company in accordance with this Law.
- (2) Limitations stated in paragraph (1) of this Article to a shareholder apply also to related persons as defined in this Law.
  - (3) There shall be no limitation on the right of a shareholder or his proxy to vote when deciding on his election or removal as a member of the board of directors, supervisory board, executive body or as a liquidator.
  - (4) The votes of a shareholder who is disqualified under this Article shall also not be counted in determining the quorum for decision making.

### **Article 301**

#### **Record of an Assembly**

- (1) Every decision of an assembly shall be recorded in minutes of the assembly by a recording clerk.
- (2) The chairman of the assembly shall be responsible for assuring that proper minutes are made.
- (3) The minutes shall be prepared not later than 15 days after the date of the assembly.
- (4) The minutes shall state: the place and time of the assembly, the agenda, the name of the recording clerk, the chairperson and voting committee members, the quorum, a summary of the discussions and speeches, the votes for, against and abstained on each decision, the manner of voting, and a list of decisions made.
- (5) The list of persons present and evidence of proper convening of the assembly shall also be included in the minutes.
- (6) The minutes shall be signed by the chairman of the assembly, two appointed shareholders and the recording clerk.
- (7) A failure to comply fully with paragraphs (1)-(6) of this Article shall not affect the validity of a decision of the assembly or otherwise valid company action, if its authenticity can be proved in another way.

### **Section 6**

#### **Invalidity of an Assembly Decision**

##### **Subsection 1**

#### **General Grounds for Invalidity**

## **Article 302**

### **Grounds for Invalidity**

(1) The competent court may hold that a decision of a shareholders' assembly is invalid if the decision:

- 1) was adopted at an assembly which was not convened in accordance with this Law or the company's Articles of Association or by-laws;
- 2) was adopted contrary to this Law or the company's Articles of Association or by-laws;
- 3) is contrary to law or the company's Articles of Association or by-laws; or
- 4) in other cases prescribed by this Law.

(2) A complaint seeking such a court decision may be brought by a shareholder who voted against the decision at the assembly, or a shareholder who was not been properly invited to the assembly or was prevented from attending the assembly.

(3) Such a complaint may also be brought by any member of the board of directors or a supervisory board.

(4) If the assembly decision is required to be registered in the Registry, the complaint shall not in itself prevent such registration, but the Registry may postpone registration should it find it justified.

(5) If such assembly decision is already registered, it shall be subject to deregistration by the court at the request of a person referred to in paragraphs (2) and (3) of this Article.

### **Subsection 2**

#### **Special Grounds for Invalidity**

## **Article 303**

### **Invalidity of Election of Director or Board Members**

(1) Except for cases referred to in Article 302 of this Law, the election of a member of the board of directors is invalid if:

- 1) the board was established contrary to this Law or the company's Articles of Association or by-laws;
- 2) the person elected was not nominated or elected in accordance with this Law or the company's Articles of Association or by-laws;
- 3) the shareholders' assembly elected more members to the board than prescribed by this Law of the company's Articles of Association or by-laws; or

- 4) the person elected does not meet qualifications required for his election.
- (2) The provisions of paragraph (1) of this Article shall apply mutatis mutandis to appointment or election of members of the management body, or any supervisory board or audit committee or an internal auditor.

### **Article 304**

#### **Invalidity of Decision on Adoption of Annual Financial Reports**

(1) Except in cases referred to in Article 302 of this Law, a shareholders' assembly decision on adoption of annual financial reports can be held invalid if:

- 1) the contents of the report does not comply with the laws or regulations which exclusively or predominantly protect the interests of the company's creditors; or
- 2) the auditing of the report was not performed in accordance with law or persons authorized to perform the audit failed to perform it.

(2) The invalidity of the assembly decision or a board of directors' decision on the annual financial reports may result in invalidity of an assembly decision on profit distribution based on the invalid decision.

### **Subsection 3**

#### **Rules on Invalidity Not Applied**

**Article 305 Exceptions** An assembly decision shall not be held invalid if:

- 1) the defect was minor and the claimant or other persons suffered no significant legal consequences;
- 2) invalidity would adversely affect the rights of third parties acquired in good faith; or
- 3) in a case where the decision was made contrary to the Law, the Articles of Association or by-laws, the defect was waived or cured in accordance with Articles 282 or 283 of this Law.

### **Subsection 4**

#### **Invalidity Procedure**

### **Article 306**

#### **Complaint and Procedure**

- (1) A complaint for holding an assembly decision to be invalid shall be brought against the company.
- (2) The complaint shall be brought within 30 days after the date of learning of the decision

and not in any event later than six months (and three months in the case of a listed company) from date of adoption of the decision.

(3) If the claimant was present at the meeting when the decision was adopted, this count shall start the next day after the meeting was held. If the claimant was not present at the meeting, this count shall start with the first day after the date he knew or under the circumstances should have known of the decision.

(4) The company may be represented by a special representative designated by the shareholders' assembly in accordance with the Articles of Association or the company's

by-laws taking into consideration the circumstances of the case into account, or the competent court in a non-contentious proceeding.

(5) The court may, at the company's request, order the claimant to deposit collateral in case the charges made cause damage to the company.

(6) The court may order a temporary measure aimed at preventing the implementation of the decision, which is subject to establishing its invalidity, if it deems it likely that its execution may cause irreparable damage to the company.

(7) If more than one proceeding is conducted for establishing the invalidity of the assembly decision, they shall be combined into one. The proceeding for establishing the invalidity of the assembly decision is urgent.

(8) The court may set a reasonable deadline for harmonizing the decision which initiated proceedings under this Law, Articles of Association or the by-laws, should it find this to be necessary and possible. In case of expiration of such a time period, the court may extend the time period.

(9) In a case where the company claims that Article 305 applies, the court may allow a time period for the board of directors to provide proof to support that claim. In a case where the board of directors does not meet the deadline the court may reject the complaint.

(10) All shareholders may be involved in the dispute.

(11) A court decision which establishes invalidity of the assembly decision shall be effective in favor of and against all shareholders and binding with respect to the relationships among the shareholders and the company, the company and the members of the company bodies.

(12) If the complaint is rejected on the ground that there was no basis for the complaint, the claimants shall be jointly and severally liable for damages if they filed the complaint in bad faith or due to gross negligence.

(13) If an invalidated assembly decision was registered in the Registry, the court shall, ex officio, send the decision on invalidity to the Registry for its registration and publication. The entering of the decision shall be published in the same manner that the invalidated decision was publicized.

(14) If an invalidated assembly decision relates to an amendments of the Articles of

Association, the full text of the Articles of Association together with the decision shall be sent to the Registry with a duly verified signature of an authorized person, taking into consideration the court decision and relevant amendments of the Articles of Association.

## **Chapter 11**

### **Board of Directors and Management Body**

#### **Section 1**

#### **General Provisions Concerning the Board of Directors**

##### **Article 307**

##### **General Requirements**

- (1) A closed joint stock company must have a single director or a board of directors.
- (2) An open joint stock company must have a board of directors.
- (3) The provisions of this Law relating to a board of directors of an open company shall apply also to a single director of a closed company which does not have a board consisting of more than one director.

#### **Section 2**

#### **Status Issues Concerning the Board of Directors**

##### **Article 308**

##### **Number of Directors**

- (1) The number of members of the board of directors of an open company shall be stated in the company's Articles of Association.
- (2) The board of an open company shall have not less than three members and not more than 15 members.

##### **Article 309**

##### **Election of Directors and Cumulative Voting**

- (1) All of the members of a company's board of directors:
  - 1) shall be elected by the shareholders at each annual shareholders' assembly; and
  - 2) may be elected by the shareholders at any extraordinary shareholder assembly which has been convened for that purpose.

(2) Candidates for election to the board may be nominated by the incumbent (existing) board, by shareholders, or by a nominating committee of the board if such exists (herein called “nominators”).

(3) In all elections of directors, every shareholder shall have the right to vote the number of shares held by such shareholder for as many persons as there are directors to be elected.

(4) Unless provided otherwise in the Articles of Association or bylaws, in all open companies the directors will be elected with cumulative voting.

(5) With cumulative voting as referred to in paragraph (4) of this Article, every shareholder shall have the right to cumulate his votes and give one candidate a number of votes which equals the number of directors to be elected multiplied by the number of the shareholder’s shares, or to distribute such cumulated votes in any proportion he wishes among any number of the candidates for election.

(6) The Articles of Association of any closed company may provide for cumulative voting for election of directors.

## **Article 310**

### **Independent and Non-Executive Directors**

(1) In a listed open joint stock company a majority of the members of the board of directors shall be non-executive directors and, of them, at least two members shall be independent directors.

(2) Nominators referred to paragraph (2) of Article 309 shall nominate at least three candidates for non-executive board positions.

(3) For purposes of this Law, “independent director” of a company means, as of any point in time, a director of a company who, or whose family members either separately or together with him or each other, during the two preceding years:

1) was or were not an employee or employees of the company;

2) did not make to or receive from the company payments of more than 10,000 Euro or equivalent;

3) did not own more than a 10% stock or other ownership interest, directly or indirectly, in an entity that made to or received from the company payments of more than such amount;

4) did not act as a director or manager of an entity that made to or received from the company payments of more than such amount;

5) did not own directly or indirectly (including for this purpose ownership by any family member or related person) stock of the company representing more than 10% of the company’s capital; and



6) was not an auditor for the company.

(4) For purposes of this Law, “non-executive director” means a person who is not a member of the management body of the company.

### **Article 311**

#### **Term of Office of Directors**

(1) The term of office of all directors, including directors elected to fill a vacancy, shall expire at the next annual shareholders’ assembly following their election.

(2) A vacancy in a board shall be filled by election at the next shareholders’ assembly at which directors are to be elected, except that a company’s Articles of Association or by-laws may provide that the board may fill such vacancy until such time.

(3) If the number of directors falls below half of the number fixed in the company’s Articles of Association or by-laws and the board does not fill the vacancies pursuant to authorization referred to in paragraph (2) of this Article, the remaining directors shall call a shareholders’ meeting for the purpose of filling the vacancies.

### **Article 312**

#### **Chairman of the Board**

(1) A chairman of the board shall be elected by the board from among themselves, by simple majority of the total number of directors, unless the Articles of Association or by-laws prescribes a different majority.

(2) The board may remove and replace the chairman at any time.

(3) The chairman of the board may also have the title of president of the company, unless provided otherwise in the Articles of Association or by-laws.

(4) The chairman of the board may also be the chief executive officer of the company, unless provided otherwise in the Articles of Association or by-laws.

(5) The chairman of the board shall convene and preside at meetings of the board and shall be responsible for taking and maintaining minutes of all board meetings.

(6) Until a chairman is elected and if he is absent from a meeting, another director chosen by a majority of the directors present shall preside at any meeting.

### **Section 3**

#### **Method of Work and Competence**

### **Article 313**

#### **Competence of the Board**

(1) The competence of a company's board of directors shall include the making of decisions relating to:

- 1) monitoring the accuracy of financial information;
- 2) guiding the company's development and strategies and overseeing its management and administration;
- 3) determining or approving business plans for the company;
- 4) convening shareholders' assemblies and establishing the initial agenda;
- 5) appointing and removing procura;
- 6) preparing draft decisions for an assembly and monitoring their implementation;
- 7) fixing the record date for determining the list of shareholders entitled to participate in an assembly;
- 8) issuing shares within the limits prescribed by the Articles of Association and this Law;
- 9) issuing bonds, options to acquire shares and other securities within the limits prescribed by the Articles of Association and this Law;
- 10) determining the value of shares and other property in accordance with this Law;
- 11) appointing the members of the company's management body, approving contracts between them and the company, establishing their remuneration, and deciding on termination of their term of office or their employment on any grounds;
- 12) determining the amounts, record dates, payment dates and procedures for dividends when the Articles of Association give the board such authority; and
- 13) deciding other matters which are referred to the competence of the board in the company's Articles of Association.

(2) Activities which are included within the competence of the board of directors may be transferred to the shareholders by decision of the board of directors, unless the Articles of Association or by-laws provide otherwise or decided by other persons or bodies of the company, except the shareholders at a shareholders' assembly.

#### **Article 314**

#### **Liability for Business Books**

Directors of a joint stock company shall be responsible for keeping the business books and internal supervision of the business in accordance with law.

#### **Article 315**

#### **Meetings of the Board**

- (1) The board shall hold at least four regular meetings a year, one of which shall be at least two months prior to the annual shareholders' assembly.
- (2) Apart from its regular meetings the board may convene extraordinary meetings at the call of the chairman, and the chairman shall do so or at the request of at least one-third of the members of the board. If the chairman fails to convene a meeting at the written request of at least one-third of the directors, the meeting may be convened by those directors.
- (3) Written notice shall be sent to all the members not later than 8 days prior to the date of an extraordinary meeting except in urgent cases where that is not practicable. Attendance of a director at any meeting shall constitute waiver of any required notice of the meeting except where a director attends for the purpose of objecting to the meeting as not lawfully convened and states that purpose at the meeting.
- (4) The board may adopt procedural rules for regulating its meetings to the extent that that is not done in the company's Articles of Association or by-laws.

### **Article 316**

#### **Meeting by Conference Telephone and Actions Without a Meeting**

- (1) Unless specifically prohibited by a company's Articles of Association or by-laws, a meeting of a company's board may be held by conference telephone or other audio or visual communications equipment in all participants can hear and talk to each other. The persons attending a meeting in this way shall be considered to be present at the meeting.
- (2) Unless a company's Articles of Association or by-laws require that action by the board must be taken at a meeting, any action which may be taken at a meeting may be taken without a meeting if a consent in writing, stating the action so taken, is signed by all of the directors entitled to vote on such matter. The action shall come into effect when the consent is signed by all the directors.

### **Article 317**

#### **Committees of the Board**

- (1) A board of an open company shall create at least two committees, each consisting of at least three directors, to review, study, make recommendations on, or take other action on matters which are within the competence of the board.
- (2) All decisions of a committee of a board of directors shall be subject to approval by the entire board.
- (3) The committees referred to in paragraph (1) of this Article shall include:
  - 1) a nominating committee, which shall identify persons qualified to become board of directors or management body members, and make recommendations to the whole board of directors including recommendations of candidates for board membership to be included by

the board of directors on the agenda for the next annual shareholders' assembly; and

2) a remuneration committee, which shall review the company's remuneration policies for board of directors, management body members and auditor, make recommendations regarding remuneration policies and amounts for specific persons to the whole board, taking account of total remuneration including salaries, fees, expenses and employee benefits, and taking into consideration standards for remuneration in accordance with law.

(4) Provisions for election, number of members, removal, term, meeting procedures and other matters shall be determined by the board or the company's by-laws.

## **Article 318**

### **Corporate Governance Guidelines**

(1) The board of a listed company may establish or adopt written corporate governance guidelines covering matters such as standards for qualification and independence of a director, ethical standards directors' responsibilities including meeting attendance, diligence in reviewing materials, and rules for disclosure and review of potential conflicts of interest with the company, director compensation policy, succession planning for both

directors and management body members, and other corporate governance matters deemed appropriate.

(2) The company shall publish such guidelines on its website and make them available in print to any shareholder who requests it.

(3) At each annual shareholders' assembly the company's board of directors may report to the assembly on the company's compliance with its guidelines and explain the extent if any to which it has varied them or believes that any noncompliance was justified.

## **Section 4**

### **Decision Making**

## **Article 319**

### **Quorum and Vote Required for Decisions**

(1) The quorum for decision-making and transaction of business by a company's board shall be a majority of the total number of directors fixed in the company's Articles of Association, unless the Articles of Association or by-laws requires a greater number.

(2) The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act and decision of the board, unless the Articles of Association or by-laws requires a greater number of directors.

(3) All decisions of the board shall be entered into the company's book of decisions without delay.

(4) A decision of the board shall be effective at the time it is made.

(5) If the votes of the board members are equally divided, the chairman of the board shall have a tie-breaking vote, unless provided otherwise in the company's Articles of Association or by-laws.

## **Article 320**

### **Disqualification to Vote in Certain Cases**

The provisions of of this Law on disqualification of a shareholders' right to vote at an assembly shall apply mutatis mutandis to voting by directors at a board meeting.

## **Article 321**

### **Records of Meetings**

(1) Minutes of the meeting shall be taken at every meeting of the board and the minutes of each meeting shall be submitted to the board for its review and approval at the next meeting. The minutes shall be signed by the chairman of the board or other person who presided at the meeting and any recording clerk who took them.

(2) The minutes of a meeting shall be prepared no later than 10 days following the meeting.

(3) The minutes shall include the time and place of the meeting, the names of those attending, the agenda, the issues that were subject to voting, the voting results including the names of those who voted in favor, against, or who abstained and the decisions adopted at the meeting, and a summary of the discussions on those decisions.

(4) Failure to act in accordance with the provisions of paragraphs (1)-(3) of this Article shall not affect otherwise valid actions and decisions by the board of directors.

## **Section 5**

### **Management Body of a Company**

## **Article 322**

### **Definition**

(1) An open joint stock company shall have a management body.

(2) A closed joint stock company may have a management body.

(3) A company's board of directors shall elect the members of the management body.

(4) The members of a management body may be called managing directors.

(5) A person may be both a member of the board of directors and the management body,

but in an open company no more than half of the board of directors may be management body members.

(6) The competence of the management body shall include implementation of decisions of the board of directors and all matters associated with management and operation of the current activities of the company except matters within the exclusive competence of the board of directors or the shareholders' assembly.

(7) Members of the management body shall be obligated to observe all limitations on their authority prescribed by this Law, the Articles of Association, or any decision of the shareholders' assembly or the board of directors prescribing such limitations.

(8) A company's Articles of Association or by-laws, or a decision of the board of directors, may prescribe specific functions, authorities, duties and titles for other members of the management body, and may prescribe specific procedures for convening and holding meetings and making decisions of the management body.

(9) Any member of the management body may be removed by the board of directors at any time, with or without specific cause, whenever in the board's judgment the best interests of the company would be served by such removal, but such removal shall not prejudice contract rights, if any, of the person so removed.

### **Article 323**

#### **President of the Management Body and Representation of the Company**

(1) A president of a company's management body shall be elected by the company's board of directors.

(2) The board of directors may designate the president as the general manager or chief executive officer of the company.

(3) The president of the management body shall convene and preside at meetings of the management body, shall organize its work, and cause a record of such meetings to be prepared.

(4) The president shall have authority to represent the company, after registration and publication of the registration, generally without any specific power of attorney.

(5) A company may also grant such authority to other members of the management body if consistent with the Articles of Association of the company.

(6) If more than one person referred to in paragraphs (4) and (5) of this Article represents the company they may act independently unless otherwise specified in the Articles of Association and filed in the Registry and published in accordance with this Law and the law which regulates registration of business entities.

### **Section 6**

#### **Special Duties of the Board of Directors and Management Body**

## **Article 324**

### **Reporting by the Board to the Shareholders' Assembly and by the Management Body to the Board**

(1) The board of directors shall report to the shareholders on the following matters:

1) not less than once each year, on the intended business policy and other general matters regarding the future conduct of the company's business, including any deviations from previously-set goals and the reasons for such deviations;

2) at each annual shareholders' assembly, on the profitability, economic condition and solvency of the company;

3) not less than every six months, on the state of the business, in particular revenues, and the condition of the company; and

4) promptly, on business transactions that may have a material impact on the company's profitability and solvency, so that the shareholders may be aware of such matters.

(2) The reports referred to in paragraph (1) of this Article shall include the above items with respect to any controlled companies and dependent companies in the sense of this Law.

(3) The shareholders' assembly may request the board to report on other issues significant for the company's operations and its status.

(4) The reports of the board to the shareholders shall be in writing and shall be accurate and complete.

(5) The board of directors may at any time ask the management body to report on business operations which may significantly influence the company's status, business relations with other companies, and any other matter referred to above in this Article. Any director may request such report which shall be given, however, to the board of directors as a body.

(6) The members of the management body of the company shall have a duty to keep the board of directors regularly and fully informed regarding the matters referred to in paragraph (5) of this Article.

## **Section 7**

### **Remuneration of Directors and Management Body Members**

## **Article 325**

### **Remuneration Principles**

(1) Independent members of the board of directors shall not have employment with the company.

- (2) Members of the management body are in employment by the company.
- (3) A non-executive member of the board of directors may be in employment with the company.
- (4) A director who is not in employment with the company may perform his duties pursuant to a separately concluded contract with the company which states his remuneration and other terms of service.
- (5) A contract referred to in paragraph (4) of this Article must be approved by the shareholders' assembly.
- (6) The shareholders assembly shall approve a contract with the members of the board which contains elements referred to in paragraph (4) of this Article. In the case of open joint stock, the remuneration paid to members of the board of directors and members of the management body may be included in the financial reports submitted to the annual shareholders' assembly may be published in accordance with the Law on Securities.

## **Section 8**

### **Resignation, Removal and Certain Liabilities of a Director or Management Body Member**

#### **Subsection 1**

#### **Status and Liability**

#### **Article 326**

#### **Resignation**

- (1) A member of the board of directors may resign at any time by giving written notice to the board of directors or the chairman.
- (2) The resignation becomes effective when the notice is given unless the notice specifies a future date.
- (3) A resignation of a director terminates the resigning person's membership of the board of directors. Such termination does not require a separate company decision.
- (4) A resignation may be revoked only with the consent of the board of directors.
- (5) The provisions of paragraphs (1)-(4) of this Article shall also apply to resignation by a member of the management body.

#### **Article 327**

#### **Removal of a Director**

- (1) A member of the board of directors may be removed by a shareholders' assembly



decision at any time, with or without a stated reason, if the shareholders believe that that is in the best interest of the company.

(2) Any such removal shall be effective if approved by the vote of at least a majority of the votes of shares entitled to vote on the election of directors at the assembly, except that:

1) no director may be removed at an assembly unless the notice of the assembly given in accordance with Article paragraph (5) of Article 281 of this Law states that a purpose of the assembly was to vote on the removal of such director at the assembly; and

2) if the company has cumulative voting for directors and less than the entire board is to be removed, no director may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors.

(3) The removal of a director shall not, in itself, prejudice any right to compensation upon removal which the director may have under a contract with the company. However, the election or status of a person as a director shall not, in itself, create any such rights.

(4) A member of the management body may be removed by decision of the board of directors at any time, with or without a stated reason, if the board believes that that is in the best interest of the company. Paragraph (3) of this Article shall apply mutatis mutandis in the case of any such removal.

## **Subsection 2**

### **Personal Liability of Directors in Certain Cases**

#### **Article 328**

##### **Certain Cases**

(1) A member of the board of directors who is present at a meeting of the board at which action is taken shall be deemed to have agreed to such action unless he has stated his disagreement and his disagreement has been entered into the minutes of the meeting or sent by him in writing immediately after the meeting to the person who presided or kept minutes of the meeting. A person who is absent from the meeting shall be deemed to have agreed to such action unless he files his disagreement in the same manner immediately after he has notice of the action.

(2) Members of the board and management body shall, in particular, be liable to the company for damages resulting from breach of their obligations to the company if they have in violation of this Law:

1) returned capital to a shareholder;

2) paid interest or dividends to a shareholder;

3) caused the company to subscribe to, pledge, acquire or cancel its own shares;

- 4) approved a loan or credit;
  - 5) made payments during liquidation;
  - 6) caused the company after its termination to conduct business other than business which is necessary for liquidation and winding up of the company's business and assets; or
  - 7) violated their duties to the company stated in Articles 32-34 and 36-38 of this Law.
- (3) Violation of duties as stated in paragraph (2) of this Article shall be a basis for removal of members of the board and management body.

## **Chapter 12**

### **Supervision**

#### **Section 1**

#### **Basic Principles**

##### **Article 329**

#### **Supervisory Board, Internal Auditor or Audit Committee**

- (1) The Articles of Association or by-laws of an open company may, and of a listed company must, provide that the company shall have a supervisory board, an internal auditor or an audit committee.
- (2) A company must have a supervisory board if a law other than this Law requires that it have a supervisory board because of the activities which it conducts.
- (3) The Articles of Association or by-laws of a closed company may provide that the company shall have an internal auditor or an audit committee.
- (4) A supervisory board or an audit committee shall have at least three members and its total number of members shall be odd.
- (5) An internal auditor shall be a natural person.

##### **Article 330**

#### **Membership, Election and Removal of Supervisory Board**

- (1) A member of a supervisory board may not be a member of the company's board of directors. All of the members of a supervisory board must be persons who qualify under the definition of independent director in this Law.
- (2) The members and the chairman of a supervisory board shall be elected by the shareholders' assembly, except that the initial members may be appointed in the initial

Articles of Association or by a decision of the founders of the company.

(3) The procedures for election and removal of members of a supervisory board shall be as provided in Articles 309, paragraphs (4) and (5) and 327 of this Law.

### **Article 331**

#### **Membership, Election and Removal of Internal Auditor and Audit Committee**

(1) An internal auditor and the members of an audit committee shall be elected by the company's board of directors from among its members who are independent directors if there are such persons. If their number is not sufficient, the missing members shall be elected by the shareholders' assembly.

(2) The initial internal auditor or audit committee members may be appointed in the initial Articles of Association or by a decision of the founders of the company.

(3) Such persons may be removed at any time by the same persons who can elect them at that time, with or without a stated reason.

(4) Any such removal shall not, in itself, prejudice any right to compensation which the person may have under a contract with the company, but his status as an internal auditor or member of the audit committee shall not in itself create any such rights.

(5) A person elected as an auditor must meet the requirements prescribed by law.

### **Article 332**

#### **Competence and Method of Work**

(1) The supervisory board, internal auditor or audit committee shall report to the shareholders' assembly on the following:

- 1) the accounting, reporting and financial practices of the company and its related companies;
- 2) the company's compliance with legal and regulatory requirements;
- 3) the qualifications, independence and performance of the company's independent auditor; and
- 4) contracts between the company and members of the board of directors and related persons to members of the board of directors as defined in this Law.

(2) In performing its functions the supervisory board, internal auditor or audit committee shall review and discuss with the board of directors, and also with the company's outside auditor when thought appropriate, the matters referred to in paragraph (1) of this Article and specifically the following:

- 1) the selection, compensation and oversight of the work of the outside auditor;

- 2) the adequacy and completeness of the annual and other financial statements of the company and the basis for proposals for distribution of profit and other distributions to shareholders;
- 3) the adequacy and completeness of the company's disclosure of financial and other information to the shareholders;
- 4) conformity of the organization and activities of the company with the corporate governance guidelines;
- 5) the adequacy of the company's policies and procedures for compliance with this Law; and
- 6) procedures for handling any complaints from shareholders, governmental bodies or other persons concerning the foregoing.

(3) The supervisory board, internal auditor or audit committee shall present a report to the shareholders on the foregoing at each annual shareholders' assembly and at any extraordinary shareholders' assembly when it considers a report to be appropriate or necessary.

(4) In carrying out their duties the supervisory board, internal auditor or audit committee may inspect all documents of the company, request statements and explanations of members of the board of directors or employees and inspect the state of the company's assets.

(5) They shall also have the authority to hire legal or other experts to assist in carrying out their duties and to pay reasonable compensation to such experts as determined by the supervisory board, internal auditor or audit committee.

(6) The procedures for meeting and other action of such bodies shall be as stated in Articles 315-317 and Articles 319-321 of this Law.

### **Article 333**

#### **Auditor**

- (1) A joint stock company shall have an auditor in accordance with the law which regulates accounting and audit with supervisory authorizations as determined by that law.
- (2) The auditor of a joint stock company shall be notified and invited at the same time as the company's shareholders for a shareholders assembly or a decision in writing without a meeting so that he can participate in the decision-making procedure in accordance with the law or the company's by-laws.

### **Article 334**

#### **Fiduciary Agent-Expert**

(1) If requested by shareholders holding shares representing at least 20% of a company's basic capital, the shareholders' assembly may appoint a fiduciary agent-expert to review the company's financial reports and business books for the previous three years. If such review is related to assessment of work of members of the board of directors or the supervisory board, or if it is related to instigation of a dispute in court between the company and members of the board of directors or the supervisory board, such members may not participate in voting on the decision on appointment of such expert.

(2) If the shareholders' assembly, after the request of shareholders referred to in paragraph (1) of this Article, does not decide to appoint a fiduciary expert, the competent court upon request filed by such shareholders may, in a non-contentious proceeding, appoint one or more fiduciary agent-experts if the court finds it likely that violations of the law or the company's Articles of Association have occurred.

(3) The request referred to in paragraph (2) of this Article must be submitted to the court within 15 days after the shareholders' assembly meeting at which the proposal to appoint a fiduciary expert was rejected.

(4) Prior to appointment of the fiduciary agent-expert the court shall gather statements on the matter from the members of the board of directors and the supervisory board.

(5) The court may order the shareholders who made the request to pledge collateral which the court finds reasonably adequate.

(6) Only a person who meets the requirements prescribed by law to qualify as an external auditor and accountant for the company may be appointed as the fiduciary agent-expert.

(7) The term, rights, obligations and responsibilities as well as other issues related to status of the fiduciary agent-expert shall be stated in the by-laws of the company or in the decision on appointment of the expert.

(8) If shareholders have initiated a non-contentious procedure in court for appointment of a fiduciary agent-expert, the court may issue an order to the Central Registry of Securities that such shareholders may not transfer their shares until completion of the fiduciary agent-expert's review.

## **Article 335**

### **Authorization of Fiduciary Agent-Expert**

(1) A fiduciary agent-expert shall have the right to inspect the business books and documents of the company and to demand information and statements from members of the board of directors and the supervisory board as well as from employees of the company in order to determine the state of business of the company. All persons the fiduciary agent-expert asks to give information and/or statements must give them truthfully and without delay.

(2) The compensation to be paid to a fiduciary agent-expert appointed by the shareholders' assembly shall be determined by the assembly, while the compensation of a fiduciary agent-expert appointed by the court shall be determined by the court.

## **Article 336**

### **Report of Fiduciary Agent–Expert**

- (1) A fiduciary agent-expert shall submit his report without delay to the board of directors and the supervisory board in compliance with the law which regulates accounting and audit.
- (2) Shareholders who made a request for appointment of the fiduciary agent-expert by a court shall have the right to inspect the audit report and the attached documentation.
- (3) The report and documentation referred to in paragraph (2) of this Article shall be made available to all interested persons who have the right to inspect it, at the company's business office.
- (4) The board of directors and a supervisory board of the company shall, at the next shareholders' assembly, submit the report prepared by the expert and ask the assembly to make any appropriate decisions after considering the report.
- (5) If the report shows that serious violations of the law, the Articles of Association or the by-laws occurred, an extraordinary shareholders' assembly shall be convened without delay. Based upon the expert's findings a court may also, on request of minority shareholders referred to in paragraphs (1), subparagraph (3) of Article 277 of this Law, order the company to convene a shareholders' assembly within a period of time determined by the court.
- (6) At an assembly convened to consider findings of the fiduciary agent-expert, the board of directors and a supervisory board shall make statements on any irregularities and shall state any measures that the fiduciary agent-expert proposes or that they propose need to be taken. The supervisory board shall also state its opinion on the issue of the right of the company to recover damages.
- (7) An request for a special audit by a fiduciary agent-expert shall be deemed to have been unjustified if the validity and accuracy of the financial reports are confirmed in their entirety, i.e. if the business books are proved to have been kept in orderly manner.
- (8) In a case referred to in paragraph (7) of this Article, shareholders of the company who, in bad faith or through gross negligence demanded the special audit may be held liable to the company for damages suffered by the company due to their demand.

## **Chapter 13**

### **Corporate Secretary**

#### **Article 337**

#### **Appointment and Status**

- (1) An open joint stock company shall have a secretary elected by the board of directors.

- (2) The term of office of the secretary shall be stated in the by-laws.
- (3) Compensation and other rights of the secretary shall be determined by an agreement between the secretary and the board of directors, upon the proposal of the chairman.
- (4) The secretary shall be responsible for keeping the book of shares, preparing for and keeping minutes of a shareholders' assembly and meetings of the board of directors, any supervisory board and the management body, keeping the registry of the minutes of a shareholders' assembly, meetings of the board of directors and any supervisory board, and keeping documents as required by this Law and the by-laws of the company, other than financial reports.
- (5) The secretary of an open company shall be responsible for organizing work and implementing decisions of the shareholders' assembly, the board of directors and any supervisory board.

## **Chapter 14**

### **Amendments to the Articles of Association**

#### **Section 1**

#### **Article 338**

##### **Amendment by the Board of Directors**

A company's Articles of Association may be amended by the company's board of directors without shareholders' assembly decision:

- 1) if the amendment is to change the persons authorized to represent the company or to make other changes which do not affect the rights of any shareholder; or
- 2) if the amendment is to state an increase in the number of issued shares and capital to reflect the issuance of shares by the board of directors pursuant to authority granted to it referred to in paragraphs (4)-(6) of Article 205 of this Law.

#### **Article 339**

##### **Amendment by the Shareholders' Assembly**

- (1) A company's Articles of Association may be amended by a qualified 2/3 majority of votes of shareholders with voting rights upon proposal of the board of directors.
- (2) With the proposal of the board of directors referred to in paragraph (1) of this Article, the board shall submit written notice and explanation of the proposed amendment, a statement that it will be included on the assembly agenda, and if appropriate notice of dissenting shareholders' right to payment for their shares in accordance with this Law.
- (3) If any type or class of shares is entitled to group voting on the amendment, the proposed amendment shall be adopted upon receiving the affirmative votes of a qualified majority of the votes of the shares of each group entitled to group voting on the amendment and of the total number of votes of the shares entitled to vote on the

amendment.

**Article 340**  
**Registration of an Amendment to the Articles of Association**

- (1) An amendment shall be deemed adopted on the date of its adoption.
- (2) An amendment shall be registered and published in accordance with the law which regulates registration of business entities.

**Chapter 15**  
**Matters for Voting by Holders of Preferred Stock**

**Article 341**  
**Group Voting**

The holders of any type or class of shares shall be entitled to vote as a group on matters which:

- 1) increase or decrease the total number of authorized shares of such group;
- 2) change any of the rights or preferences of the shares of such group;
- 3) create a right of the holders of any other shares to exchange or convert their shares into shares of the type or class held by such group;
- 4) change the shares held by such group into a different number of shares or into shares of another type or class;
- 5) result in issuance of a new type or class of shares having rights or preferences superior or substantially equal to those of such group, or increase the rights and preferences of any type or class of stock having rights and preferences substantially equal to or superior to those of such group, or increase the rights and preferences of any type or class of stock having rights and preferences subordinate to those of such group if such increase would then make them substantially equal or superior to those of such group;
- 6) limit or deny the existing preemptive rights of the shares of such group;
- 7) cancel or otherwise affect accumulated dividends on the shares of such group;
- 8) limit or deny the voting rights of such group; or
- 9) otherwise change the rights or preferences of the shares held by such group so as to affect them adversely.

**Chapter 16**  
**Company Documents**



## **Types**

### **Article 342 (1)**

A joint stock company shall keep the following:

- 1) its Articles of Association including all amendments thereto;
- 2) its by-laws, if it has by-laws, including all amendments thereto;
- 3) the decision on its registration;
- 4) internal documents approved by its shareholders' assembly and other bodies of the company;
- 5) foundation documents of every branch and representative office;
- 6) documents proving the ownership and other rights of the company over its assets;
- 7) minutes and decisions of all shareholders' assemblies, board of directors' meetings and supervisory board meetings;
- 8) written orders and decisions of its management body;
- 9) minutes of any auditors' committee and their written orders and conclusions;
- 10) financial reports, reports on business operations and auditors' reports;
- 11) any prospectus for shares and other securities;
- 12) accounting files and accounts;
- 13) a list of related companies under this Law;
- 14) the book of shares;
- 15) a list of full names and addresses of all members of the board of directors and all persons authorized to represent the company, with information as to whether they represent the company individually or jointly;
- 16) a list of full names and addresses of all members of the supervisory board, audit committee, internal auditor and auditor, if the company has such;
- 17) a list of all transfers of shares including pledges and any other transfers to a person by which he does not become a shareholder; and
- 18) a list of contracts between the company and members of the board of directors, management body and any supervisory board.

(2) A company must keep the documents referred to in paragraph (1) of this Article at its registered office or another place known to and accessible to all of the company's shareholders.

(3) A joint stock company shall keep its Articles of Association and all amendments permanently, and shall keep the remaining documents referred to in paragraph (1) of this Article at least five years, after which such documents shall be kept in accordance with regulations regulating archiving.

### **Article 343**

#### **Access to Documents**

(1) A company must make the documents referred to in Article 342 available to any shareholder, and any previous shareholder with respect to the period when he was a shareholder, for inspection and copying at the company's office during regular business hours of the company, except in cases regulated by a separate law.

(2) A company may take any necessary steps to require a person requesting information to identify himself and his status as a shareholder or former shareholder before the information is provided.

### **Article 344**

#### **Access by Court Order**

(1) If a company refuses to provide information required by Article 343 of this Law to be provided for a period exceeding five days after receiving a proper request in writing therefore, the person making the request may request the competent court in a non-contentious proceeding to order the company to provide the information.

(2) The court shall make its decision on such request within three days after its receipt of the request.

(3) A person receiving non-public information from a company shall be obligated to maintain its confidentiality and not publish it in a way which would cause damage to the company.

(4) As an exception to paragraph (3) of this Article, the publication shall be allowed if so prescribed by law.

## **Chapter 17**

### **Dissolution and Related Court Matters**

#### **Article 345**

##### **Events Causing Dissolution**

A joint stock company shall dissolve upon the occurrence of any of the following events:

- 1) expiration of the company's term;
- 2) a final decision to dissolve of its shareholders' assembly by qualified majority vote;
- 3) a final decision of the competent court that the company's registration was null and void and ordering deletion of the company from the Registry ex officio;
- 4) a decision of the bankruptcy panel in bankruptcy proceedings based on inability to cover the costs of the bankruptcy proceedings from the company's bankruptcy estate;
- 5) liquidation in bankruptcy;
- 6) in other cases defined by law or specified in the Articles of Association as causing dissolution of the company.

## **Article 346**

### **Dissolution and Other Court Remedies on Shareholder Request**

(1) On request by shareholders who represent 20% or more of the capital of a company, the competent court may order the dissolution of the company or may order other remedies in this Article if:

1) the directors are deadlocked in the management of the company, whether because of even division in the number of directors or for other reasons; the shareholders are unable to break the deadlock; and the company's business can no longer be conducted to the shareholders' general advantage;

2) the shareholders are deadlocked in voting power and have failed for a period that includes at least two annual assembly dates to elect successors to directors; and the company's business can no longer be conducted to the shareholders' general advantage;

3) the directors or other persons in control of the company have acted illegally, oppressively or fraudulently toward the requesting shareholders; or

4) the company's assets are being wasted or misapplied.

(2) In a case referred to in paragraph (1) of this Article the court may order that the company be dissolved immediately or, if it finds that the grounds stated above are curable, it may set a time period not longer than one year for cure.

(3) If the grounds are not cured within that time a procedure for liquidation shall be initiated in accordance with this Law, and the court shall have the power appoint the liquidators.

(4) As an alternative to dissolution the court shall also have the power to order one or more of the following remedies:

1) the removal from office of any director or management body member;

- 2) the appointment of a person as a director or management body member;
  - 3) the appointment of a temporary representative of the company;
  - 4) an audit or accounting of the company's funds or other property;
  - 5) the payment of dividends;
  - 6) the purchase by the company of the minority shareholders' shares for their value determined by the court with the assistance of independent appraisers; or
  - 7) the award of damages to any party suffering damages.
- (5) The request of shareholders referred to in paragraph (1) of this Article shall be brought against the company.

## **PART FOUR**

### **LIQUIDATION OF BUSINESS COMPANIES**

#### **Chapter 1**

#### **General Provisions and Initiating Proceedings**

#### **Article 347**

#### **General Provisions**

Liquidation of a company shall be conducted in accordance with this Law when the company has sufficient assets to cover all of its liabilities, including in the following situations:

- 1) an order forbidding the company from conducting its business because necessary conditions for conducting the business are not met and the company fails to fulfil such conditions within the period stated in the order or does not change the business activity;
- 2) natural or other conditions necessary for the conduct of its business do not exist;
- 3) the period for which the company was founded has expired;
- 4) in the case of a partnership, the number of partners decreases to one and is not increased within six months, unless otherwise provided in this Law;
- 5) the company is not organized as required by this Law;
- 6) the company has not conducted any business for a continuous period of more than two years;

7) the companys founding is declared null and void under the Law.

#### **Article 348**

##### **Decision to Liquidate**

(1) A liquidation shall be authorized by the companys partners, members or shareholders as follows:

- 1) in the case of a general partnership, by unanimous decision of the partners, unless the Articles of Association specifies a lower vote not less than a majority;
- 2) in the case of a limited partnership, by unanimous decision of the general and limited partners, unless the Articles of Association specifies a lower vote not less than amajority;
- 3) in the case of a limited liability company, by membersdecision as provided in paragraph (2) of Article 146 of this Law; and
- 4) in the case of a joint stock company, by decision of a qualified majority of shareholders as defined in paragraph (2) of Article 293 of this Law.

(2) In all cases, the provisions of this Law and the companys Articles of Association, partnership agreement, company agreement or by-laws regarding notice and voting procedures shall apply with respect to the decision to liquidate.

#### **Article 349**

##### **Entry into the Registry and Publication**

A companys decision to liquidate shall be entered into the Registry and published in accordance with the law regulating registration of business entitites.

#### **Chapter 2**

##### **Liquidation and Creditors**

#### **Article 350**

##### **Individual Notice to Known Creditors**

(1) The company shall deliver written notice to its known creditors enclosing a copy of the entry into the Registry of its decision to liquidate.

(2) The notice referred to in paragraph (1) of this Article shall particularly state:

- 1) a mailing address where a claim by the claimant must be sent;
- 2) the deadline, which must not be earlier than 120 days from the date of delivery of the written notice, by which the company in liquidation must receive the claim; and
- 3) a warning that the claim will be barred if the claim is not received by the company at

that address by that deadline.

(3) A claim against the company shall be barred if the claimant did not deliver the claim to the company in liquidation by the deadline referred to in subparagraph 2) of paragraph (2) of this Article, or if a claimant whose claim was rejected by the company in liquidation does not begin court proceedings to enforce the claim within 30 days after the rejection was received by the claimant.

(4) A claim referred to in paragraph (3) of this Article does not include a claim based on an event occurring after the effective date of the company's decision to liquidate.

### **Article 351**

#### **Published Notice to All Creditors**

(1) The company shall publish notice of its liquidation referred to in Article 349 of this Law.

(2) The notice referred to in paragraph (1) of this Article:

1) must be published at least three times at intervals not less than 15 nor more than 30 days apart;

2) must refer to this Article of this Law;

3) must provide a mailing address where a claim by any creditor must be sent; and

4) must contain a warning that a claim against the company will be barred if the claimant does not begin court proceedings in accordance with this Law.

(3) A claim against the company shall be barred if:

1) the creditor does not submit the claim within 30 days after the last date of publication of the notice referred to in subparagraph 1) paragraph (2) of this Article; or

2) a claimant whose claim was rejected by the company in liquidation does not begin court proceedings to enforce the claim within 30 days after the rejection was received by the claimant.

### **Chapter 3**

#### **Status of Company and Liquidators**

### **Article 352**

#### **Status of a Company During Liquidation**

(1) During liquidation a company may not conduct any business except business which is necessary for the process of liquidation, such as selling its assets, paying creditors, assembling claims and other activities necessary for liquidation.

(2) During liquidation a company shall not pay dividends or make other distributions to partners, members or shareholders prior to the payment of all creditors.

### **Article 353**

#### **The Liquidators**

(1) During liquidation a company's activities and business shall be conducted by the same company persons exercising the same authority as they had before, unless the company appoints another person or persons to conduct such activities and business.

(2) The person or persons who have such authority during liquidation are called the "liquidators."

(3) On request of any person referred to in paragraph (1) of this Article, the competent court may for justified reasons appoint a liquidator to replace a liquidator appointed by the company or to act together with such liquidator.

### **Article 354**

#### **Removal of Liquidators**

Any liquidator may be removed in the same manner in which he was appointed.

### **Article 355**

#### **Entry of the Appointment and Removal of the Liquidators into the Registry**

The appointment or removal of a liquidator shall be entered into the Registry and published in accordance with the law which regulates registration of business entities.

### **Article 356**

#### **Activities of the Liquidators**

(1) The liquidators of a company shall close the operations of a company, collect claims, pay liabilities and liquidate the company's assets.

(2) Within their competences the liquidators of a company shall be responsible for conducting the operations of the company.

(3) The liquidators shall represent a company in liquidation.

## **Chapter 4**

### **Liquidation Balance Sheet**

#### **Article 357**

### **Liquidation Balance Sheet and Financial Statements**

(1) The liquidators of a company shall prepare a balance sheet not later than three months after the date of initiation of liquidation proceedings (the “initial liquidation balance sheet”). Such balance sheet shall be delivered by the liquidators to the partners, members or shareholders assembly of the company for approval. The assets and liabilities of the company, measures necessary to carry out liquidation, and the period of time needed for the liquidation procedure to be completed, shall be stated in the balance sheet.

(2) All the assets of the company referred to in paragraph (1) of this Article shall be shown in the balance sheet with their sale or estimated sale value.

(3) Not later than three months after expiration of any business year, if the liquidation lasts for more than one year, the liquidators shall submit a temporary report on their activities, with the explanation as to why liquidation has continued without being completed, and a financial report.

### **Article 358**

#### **Termination of Liquidation and Commencement of Bankruptcy**

(1) If the liquidators establish that the assets of a company are not sufficient to cover all the claims of creditors they shall terminate the liquidation procedure under this Law and initiate bankruptcy liquidation proceedings under the law which regulates bankruptcy procedure.

(2) If liquidation is terminated as referred to in paragraph (1) of this Article the liquidators shall submit the termination to the Registry for registration and publication in accordance with the law which regulates registration of business entities.

### **Article 359**

#### **Liquidation Report and Proposal for Distribution of Assets**

(1) After settlement of a company's debts, the liquidators shall prepare a report on the completed liquidation with a final liquidation balance sheet and proposal for distribution of the company's assets.

(2) The final liquidation balance sheet shall include a report on the sources of income and disposition of income, a list of assets disposed of and income generated a statement of whether there are other open issues and proposed solutions for any such open issues, the amount of liquidation costs, and the liquidator's compensation.

(3) The report and the final liquidation balance sheet shall be adopted by the partners, members or shareholders of the company, unless provided otherwise in a company decision or in a decision of the competent court.

## **Chapter 5**

### **Payments to Company Owners and Completion of Liquidation**

#### **Article 360**



## **Distribution to Partners, Members or Shareholders**

- (1) The assets of a company which remain after settlement of its liabilities to creditors and other claims shall be distributed by the liquidators among the partners, members or shareholders of the company.
- (2) Unless provided otherwise in a company's Articles of Association, partnership agreement, company agreement or by-laws, or in a decision of the competent court, the distribution referred to in paragraph (1) of this Article shall be in the following order of priority:
  - 1) to payment of any partners, members or holders of preferred stocks which have preferential rights to distributions on liquidation as stated in the company's Articles of Association or agreement of partners, members or shareholders; and
  - 2) to partners (in case of a general or limited partnership) or members (in the case of a limited liability company) in proportion to their paid-in contributions to the company, and shareholders (in the case of a joint stock company) in proportion to the number of shares held by them.
- (3) Limited partners of a limited partnership, members of a limited liability company, and shareholders of a joint stock company who received distributions in good faith after the company has complied fully with the procedures stated in Articles 350 and/or 351 as applicable are obligated to return what they received if it is necessary to pay creditors.
- (4) If there is a dispute regarding distribution of company's assets among partners, members or shareholders of a company, the liquidators may postpone distribution until final settlement of the dispute, unless otherwise ordered by the competent court.

## **Article 361**

### **Compensation of Liquidators**

- (1) Liquidators shall be entitled to be reimbursed for the costs they incur and to be paid for their work. The amount of the costs and fees shall be determined by the partners, members or shareholders of the company and may be determined by a competent court in the case of dispute.
- (2) The liquidators shall be creditors of the company with respect to such reimbursement and compensation.
- (3) Such costs and compensation may be paid during the liquidation if it is evident that such payment will not affect the meeting of the company's obligations to other creditors.

## **Article 362**

### **Finalization of the Liquidation**

- (1) When the liquidation of a company is completed, and upon the approval by the

partners, members' meeting or shareholders' assembly of the financial report prepared as of the date of the completion of the liquidation and the report on the conduct of liquidation, the liquidators shall without delay submit such reports and appropriate decisions to the company and the Registry, together with a request for deleting the company from the Registry in accordance with the law which regulates registration of business entities.

(2) If after completion of the liquidation a meeting of the company's partners, members or shareholders is not held for the approval referred to in paragraph (1) of this Article due to lack of quorum, the liquidators shall bring the proceedings to an end for purposes of paragraph (1) of this Article without the approval of the financial report and of the report on the conduct of the liquidation by the partners, members' meeting or shareholders' assembly.

(3) Business books and documents of the company that was liquidated shall be kept in accordance with regulations concerning archives material.

(4) Information as to where the business books and documentation of the company are held shall be entered in the Registry in accordance with the law which regulates registration of business entities.

(5) All persons having a legal interest may inspect such books and documents of the liquidated company, in accordance with the law relating to publicly available documents.

(6) If it later becomes necessary to carry out further measures after the company's liquidation, the competent court may at the proposal of a person having a legal interest therein reappoint the liquidators or appoint new liquidators.

### **Article 363**

#### **Accountability of Liquidators for Damage**

(1) Liquidators shall be accountable to the company's partners, members, shareholders and creditors for damages caused to them by the liquidators in accordance with Articles 32-34, 36 and 37 of this Law.

(2) Liquidators shall not be accountable to creditors, partners, members or shareholders of the company for any losses, obligations or reduction in the value of property which resulted from the making of conscientious and reasonable business decisions in connection with the conduct of the company's liquidation.

(3) A claim against liquidators under paragraph (1) of this Article shall be barred if not made within one year from the date of deletion of the company from the Registry.

(4) If more than one liquidator is liable for the same damage, they shall be liable jointly and severally.

### **Article 364**

#### **Accountability of Partners, Members and Shareholders After Liquidation**

(1) General partners of a general partnership or a limited partnership shall be liable jointly and severally for any obligations in the liquidation procedure after completion of that process and the company's deletion from the Registry.

(2) A limited partner of a limited partnership, a member of a limited liability company, and a shareholder of a joint stock company shall be jointly liable for any obligations of the company in the liquidation process after completion of that process and a company's deletion from the Registry up to the amount of the assets received from the liquidation.

## **Article 365**

### **Notifying the Tax Administration**

The liquidators of a company shall notify the proper tax authorities of the liquidation by submitting to them the report on liquidation and any other reports or documents required by law.

## **PART FIVE**

### **LINKED BUSINESS COMPANIES**

#### **Chapter 1**

#### **Linked Companies**

### **Article 366**

#### **Definition and Types of Linked Companies**

(1) "Linked companies" in this Law means two or more companies which are linked either:

- 1) by ownership of shares or partnership interests (companies linked by share in capital);
- 2) by contract (companies linked by contract); or
- 3) by both capital and contract (mixed linked companies).

(2) Linked companies as defined in paragraph (1) of this Article include one controlling (dominant) company and one or more dependent companies.

(3) Linked companies (by capital, contract or mixed) are organized as concerns, holdings, business groups or other organizational forms in accordance with provisions of this Law.

(4) Linked companies are organized as concerns when the dominant business activity of the controlling company is other than management or control of the dependent companies.

(5) Linked companies are organized as holdings when the dominant company's exclusive business activity is management and financing of the dependent companies.

(6) Linked companies organized as business groups when the controlling company's business activity includes activities referred to in both paragraphs (4) and (5) of this Article.

(7) Linking of companies in violation of laws governing protection of competition is prohibited.

#### **Article 367**

##### **Control by Share in Capital**

(1) "Controlling member or shareholder" of a limited liability company or a joint stock company means a person who, either alone or together with one or more other persons ("acting in concert"):

1) has more than 50% of the voting power in the company, which in a joint stock company shall mean ownership and power to vote more than 50% of the ordinary shares (majority vote); or

2) otherwise exercises a controlling influence over the management of the company by virtue of his position as a member or shareholder (or on the basis of a contract in accordance with this Law).

(2) A person who, alone or with one or more other persons, has more than 20% of the votes of a company shall be presumed to exercise a controlling influence under this Law.

#### **Article 368**

##### **Acting in Concert**

(1) "Acting in concert" means:

1) action taken by two or more persons based on a joint agreement with the aim to acquire or relinquish or exercise voting rights of a person; or

2) use of voting rights for the purpose of executing joint effort on the management or business operations of that person or the election of bodies of a company (or a majority of its members) or otherwise having influence on the conduct of business of that person.

(2) Persons acting as stated in paragraph (1) of this Article are:

1) a company and its board of directors or a member of its board of directors, individuals who are directly subordinated to the board of directors or management body of the company, and a representative or liquidator of that company or related entities; and

2) persons who comprise linked companies.

(3) Individuals who act in concert as defined in paragraph (1) of this Article are:

1) a limited liability company and its members or only its members;

- 2) a partnership and its partners or only its partners;
- 3) a limited partnership and its general partners, or only its partners;
- 4) linked entities in accordance with this Law; or
- 5) other persons or entities in accordance with the law governing their legal status.

## **Chapter 2**

### **Special Provisions for Companies Linked by Capital Share**

#### **Article 369**

##### **Disclosure to Dependent Company**

(1) A company or other person that becomes or ceases to be a controlling member or shareholder of a company is obligated to inform that company, the Securities Commission and the body regulating protection of competition in accordance with the law governing protection of competition.

(2) The obligation referred to in paragraph (1) of this Article is also applicable with respect to the law which regulates securities markets.

#### **Article 370**

##### **Business Name**

A dependent company shall also identify its controlling company in its name, memorandum or other business documents.

#### **Article 371**

##### **Liability of Controlling Company and Directors**

(1) A controlling company shall be liable to a dependent company as provided in Articles 32-34, 36 and 37 of this Law.

(2) Directors of a controlling company shall be liable to a dependent company as provided in Articles 32-34, 36 and 37 of this Law.

#### **Article 372**

##### **Reports to Members or Shareholders of a Dependent Company**

(1) The board of directors of a dependent company shall present a written report to the annual shareholders' assembly or members' meeting of the company on the company's relations during at least the previous fiscal year with all other companies to which it is linked by share in capital, as part of the board's report on business activities of the

company.

(2) If audit of financial reports of a dependent company is mandatory under the law which regulates accounting and audit, the audit obligation shall also apply with respect to the report referred to in paragraph (1) of this Article.

(3) A member or shareholder of companies linked by capital shall be fully informed of the structure of the group, the management system, the management, business transactions within the group, as well as of the principles relating to conflict of interest of a company with other companies.

### **Chapter 3**

#### **Provisions for Companies Linked by Contract**

##### **Article 373**

###### **Contract on Relations between Controlling and Dependent Company and Transfer of Profit**

(1) If a controlling company and a dependent company enter into a contract for management of the dependent company by the controlling company or on transfer of profit of the dependent company to the controlling company, the controlling company shall be liable for damage caused to the dependent company by wrongful activities or omissions under the contract as provided in this Law.

(2) A contract referred to in paragraph (1) of this Article shall be registered with the dependent company and published in accordance with the law regulating registration of business entities, for the contract to be effective.

(3) A contract referred to in paragraph (1) of this Article shall be effective after registration and publication of the registration in accordance with this Law.

##### **Article 374**

###### **Contents of and Liabilities Under the Contract**

(1) A contract of the kind referred to in Article 373 of this Law must be in writing and must particularly state rights and liabilities of the controlling company, measures for protection of the dependent company, the scope of any transfer of profit, measures for compensation to the dependent company or covering of the dependent company's losses by the controlling company, measures for protection of any minority members or shareholders of the dependent company, and measures for and protection of the dependent company's creditors after termination of the contract.

(2) Article 371 of this Law shall apply with respect to liability of the controlling company for damage caused to the dependent company, and liability of directors of the controlling and dependent companies, and any persons who act in concert with them for damage caused to the dependent company, but this shall not limit or exclude any other legal remedies for breach of the contract under law which regulates contractual obligations.

## **Article 375**

### **Approval of the Contract**

(1) A contract of the kind referred to in Article 373 of this Law shall be adopted by the members' meeting or shareholders' assembly of the controlling company and all

dependent companies by a qualified majority as defined in paragraph (2) of Article 293 of this Law.

(2) If the contracting party is a partnership or a limited partnership, the contract must be approved by all partners with unlimited liability, unless provided otherwise in the Articles of Association or partnership agreement.

(3) The shareholders or members must be given sufficient time before or during the assembly or meeting at which approval is to be given, to review the following:

- 1) the text of the contract, which shall also be available at the session; and
- 2) other material information concerning the contract and the business operations of all other companies who are parties to the contract.

(4) A copy of the contract referred to in Article 373 of this Law shall be attached to the minutes of the assembly or meeting.

## **Article 376**

### **Termination and Registration of Termination**

(1) A contract of the kind referred to in Article 373 of this Law shall be terminated by agreement, expiration of term, or otherwise in accordance with the contract and law which regulates contractual obligations.

(3) The termination of a contract referred to in Article 373 of this Law shall be registered and published in accordance with the law which regulates registration of business entities.

## **PART SIX**

### **REORGANIZATION OF BUSINESS COMPANIES**

#### **Title 1**

#### **STATUS CHANGE**

##### **Chapter 1**

##### **Basic Principles**

#### **Article 377**

## **Definition of Reorganization**

A reorganization of a business company under this Law means a status change of the company or a change of legal form of the company.

### **Article 378**

#### **Definition of Status Change**

- (1) A status change under this Law means a merger, a division or a separation.
- (2) A merger and a division may be combined, and a merger and a separation may be combined.
- (3) A company's decision on a status change in accordance with this Law may not be nullified on the basis of a challenge to the share exchange proportions.
- (4) If companies with different legal forms participate in a status change, the provisions of this Law relating to change of legal form shall apply as appropriate to the status change.
- (5) A business company may not undergo a status change which is in violation of the law which regulates competition.

### **Article 379**

#### **Financial Report**

- (1) Each company participating in a status change shall prepare a financial statement stating its financial condition on an agreed date relating to the merger, division or separation in accordance with the law which regulates accounting and audit.
- (2) The entry of the status change into the Registry shall be not later than eight months following the date of the financial statement referred to in paragraph (1) of this Article.

### **Article 380**

#### **Status Change During a Liquidation**

A company may carry out a status change while it is in liquidation so long as it has not begun distributing its assets to its shareholders, members or partners in the liquidation.

## **Chapter 2**

### **Types of Status Change**

#### **Article 381**

##### **Merger**



(1) A merger of business companies under this law may be either:

- 1) a merger by acquisition; or
- 2) a merger by formation of a new company.

(2) A “merger by acquisition” is a status change whereby a company (an “acquired company”) ceases to exist without being liquidated and simultaneously transfers to an already-existing company (an “acquiring company”) all its assets and liabilities in exchange for the issuance to its shareholders or members of shares in the acquiring company and possibly also a cash payment, which may not exceed 10% of the nominal or accounting value of the shares so issued.

(3) A “merger by formation of a new company” is a status change whereby two or more companies (“companies terminated by merger”) cease to exist without being liquidated and simultaneously transfer to a newly-founded company (a “new company”) all their assets and liabilities in exchange for the issuance to their shareholders or members of shares of the newly-founded company and possibly also a cash payment which may not exceed 10 % of the nominal or accounting value of the shares so issued.

## **Article 382**

### **Division**

(1) A division of business companies under this Law may be either:

- 1) a division by acquisition;
- 2) a division by formation of two or more new companies; or
- 3) a division by acquisition and formation of two of more companies.

(2) A “division by acquisition” is a status change whereby a company (a “company terminated by division”) ceases to exist without being liquidated and simultaneously transfers to two or more already-existing acquiring companies (“acquiring companies”) all its assets and liabilities in exchange for the issuance to its shareholders or members of shares in the acquiring companies and possibly also a cash payment, which may not exceed 10 % of the nominal or accounting value of the shares so issued.

(3) A “division by formation of two or more new companies” is a status change whereby a company ceases to exist without being liquidated and simultaneously transfers to two or more new companies (or two or more companies with which it is merged into a new company) all its assets and liabilities in exchange for the issuance of shares of the acquiring companies and possibly also a cash payment which may not exceed 10 % of the nominal or accounting value of the shares so issued.

## **Article 383**

### **Separation**

(1) A separation of business companies under this Law may be either:

- 1) a separation by acquisition;
- 2) a separation by formation of one or more new companies; or
- 3) a separation by acquisition and formation of one or more new companies.

(2) A “separation by acquisition” is a status change whereby the separated company transfers one or more parts or its assets and accompanying liabilities to one or more existing companies, while the company remains in existence as a legal entity, and all or part of its shareholders or members, while adhering to the principle of equality, become shareholders or members of the acquiring company in exchange for shares of the separated company (and the reduction of its initial capital in that amount without application of the rule or regular decrease) for shares of the acquiring company and possibly also a cash payment which may not exceed 10 % of the nominal or accounting value of the shares so issued.

(3) A “separation by formation of one or more new companies” is a status change whereby the separated company transfers one or more parts of its assets and accompanying liabilities to one or more newly founded companies in exchange for shares of the separated company (and the reduction of its initial capital in that amount without application of the rule of regular decrease) for issuance to its shareholders or members of

shares in the newly founded companies and, possibly also a cash payment which may not exceed 10 % of the nominal or accounting value of the shares so issued.

(4) The provisions of this law on division by acquisition and division by formation of one or more new companies shall apply as appropriate to separation by acquisition and separation by formation of one or more new companies, unless provided otherwise in this Law.

### **Chapter 3**

#### **Regular Merger by Acquisition of Joint Stock Companies**

##### **Section 1**

##### **Preparation**

##### **Article 384**

##### **Contract for Merger by Acquisition**

(1) The board of directors of each company participating in a merger by acquisition shall prepare a draft contract for merger by acquisition in written form.

(2) The contract shall include:

- 1) the form, type, registered name and registered office of each company in the merger;

- 2) the share exchange ratio and the amount of any cash payment;
  - 3) the terms of the allocation of shares in the acquiring company to shareholders of each acquired company;
  - 4) the date from which the holding of such shares entitles the holders to participate in profits of the acquiring company on the bases if exchange of shares and any special conditions affecting that entitlement;
  - 5) the date from which the transactions of each acquired company shall be treated for accounting purposes as being those of the acquiring company (the “merger date”);
  - 6) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
  - 7) any special advantage or preference given to independent financial advisers or directors of any company in the merger; and
  - 8) the Articles of Association and by-laws of the acquiring company as they will be in effect immediately following the merger.
- (3) The contract referred to in paragraph (1) of this Article shall include drafts of amendments to the Articles of Association and by-laws of the company to be made.

#### **Article 385**

##### **Board of Directors Report**

- (1) The board of directors of each company participating in the merger shall also prepare a detailed written report including an explanation of the draft contract of merger and an analysis of profitability and markets of each company with reference to the legal and economic grounds of the merger and exchange ratio of shares.
- (2) The report referred to in paragraph (1) of this Article shall particularly include a description of any difficulties encountered in the process of evaluation of companies participating in the merger, if such difficulties occurred.
- (3) The board of directors of each company which participates in a merger must inform the shareholders’ assembly of any material or financial changes in assets and liabilities between the date of signing of the merger contract and the date of the assemblies of meetings of the companies in the merger.

#### **Article 386**

##### **Auditor’s Report**

- (1) The draft contract for merger and the report of the board of each participating company shall be reviewed by one or more independent auditors appointed by the competent court in a non-contentious proceeding initiated by joint application of the companies.

(2) The auditors shall prepare and submit to each company which participates in the merger by acquisition a written report on auditing of the merger not later than two months after the date of their appointment, which shall particularly state:

- 1) the method of valuation of all companies participating in the merger by acquisition used to establish the exchange ratio of shares proposed in the draft plan of merger;
- 2) reasons for use of application of that particular valuation method, including reasons why that particular method is considered adequate in that particular case; and
- 3) any particular difficulties the auditor encountered in the process of valuation of the participating companies, if such difficulties occurred.

(3) The auditors shall be authorized to demand and receive from all of the companies in the merger all required data and documents necessary for successful completion of the audit, as well as to take any actions necessary for checking the accuracy and credibility of data and documents received from the companies, pursuant to the Law on Accounting.

#### **Article 387**

#### **Supervisory Board Report**

If any company in the merger by acquisition has a supervisory board, the board of directors report and the auditor's report on the merger shall be reviewed by the supervisory board and it shall issue its own report on the subject.

#### **Section 2**

#### **Decision Making**

#### **Article 388**

#### **Announcement of the Contract**

The draft contract for merger shall be submitted to the Registry and published in accordance with the law which regulates registration of business entities by each participating company at least 30 days prior to the date set for the assembly or meeting at which the merger is to be voted on.

#### **Article 389**

#### **Examination of Documents**

(1) Each company participating in a merger by acquisition shall, for at least one month prior to the assembly at which the merger is to be voted on, make available at its registered office for their shareholders to examine the following documents:

- 1) the draft contract for merger by acquisition;
- 2) amendments to be made to the Articles of Association and by-laws of the acquiring

company;

3) the annual financial statements of all the participating companies for the previous three years;

4) a special accounting statement which reflects the financial condition of each company as of a date not more than three months before of the date of the contract for merger, if the latest annual financial statement was as of a date more than six months before the date of the contract for merger;

5) the reports of the boards of directors of all companies in participating in the merger by acquisition or their joint report on the subject;

6) the audit reports of all participating companies or their joint audit report; and

7) the report of the supervisory board of each participating company which has a supervisory board.

(2) The special accounting statement referred to in subparagraph 4) of paragraph (1) of this Article shall be prepared applying the same method and in the same form as the latest annual financial statement.

(3) Assessments of value in the special accounting report may be based only on changes in the accounting of the participating company compared to the situation stated in the latest annual financial statement, without need to make an inventory of its assets.

(4) The special accounting report shall, however, state the accounting decreases and increases of the company's asset value occurring after the latest annual report, as well as all significant changes in the real asset value of the participating company which have not been stated in the company's books.

(5) Each company participating in a merger by acquisition shall provide to every shareholder at their request, a copy free of charge of each document referred to in paragraph (1) of this Article.

## **Article 390**

### **Shareholders' Approval of the Contract for Merger**

(1) The draft contract for merger shall be adopted by the shareholders' assembly of each company participating in the merger by acquisition by a qualified majority as defined in paragraph (2) of Article 293 of this Law.

(2) If a company participating in the merger by acquisition has more than one type or class of shares, the contract for merger shall be adopted by a qualified majority of shareholders of each class of shares whose rights are to be affected by the decision, in accordance with paragraph (1) of this Article.

(3) The draft contract for merger shall be adopted without variation by the assemblies of

all companies participating in the merger by acquisition.

(4) Signatures of authorized representatives of each participating company on the draft contract for merger shall be certified.

(5) All required changes in the Articles of Association and by-laws of the acquiring company shall be adopted together with the contract for merger and in the same manner as the decision adopting the contract for merger.

(6) The contract for merger shall be filed with the minutes of the assembly meeting of each company participating in the merger by acquisition.

### **Article 391**

#### **Merger by Acquisition Without Decision of the Acquiring Company's Assembly**

(1) A merger by acquisition may be carried out based solely on a decision of the board of directors of the acquiring company, without action by the shareholders' assembly, provided that:

1) the draft contract for merger is published in accordance with the law which regulates registration of business entities at least 30 days prior to the shareholders' assembly of each company to be merged at which the decision on merger is to be adopted;

2) the shareholders of the acquiring company are able to examine at its registered office the contract for merger, the annual financial statements of all participating companies for the previous three years, the special accounting statement for the current year, the board of director's report, the audit report on the merger by acquisition and any supervisory board's report, at least 30 days prior to the shareholders' assembly of each company at which the decision on merger is to be adopted; and

3) one or more acquiring company's shareholders whose participation in the basic capital of the company is at least 5% have not requested within 30 days after the date of the draft contract for merger that an extraordinary shareholders' assembly of the acquiring company be held to decide on the merger.

(2) All the conditions stated in paragraph (1) of this Article must be fulfilled.

### **Section 3**

#### **Execution of Merger by Acquisition**

### **Article 392**

#### **Capital Increase**

(1) If in a merger by acquisition the basic capital of the acquiring company is to be increased, the increase shall be realized pursuant to the provisions of this Law on increase of capital of a company by new contributions, and the following provisions shall not apply to issuance of shares of the acquiring company to shareholders of an acquired company:

- 1) the provisions on prohibition of increase of the initial capital before the subscribed shares are fully entered into basic capital;
  - 2) the provisions on terms and conditions for subscription of new shares, on permission of the Securities Commission to issue shares, in a public offering and prospectus, on the evidence that the cash or in kind contributions are paid into the company's basic capital as an attachment to the application for entry into the Registry, and other provisions incompatible with share replacement (exchange) in the merger; and
  - 3) the provisions on preemptive rights of shareholders of participating companies to acquire new shares.
- (2) Shareholders who subscribed to shares in an acquired company before the merger but did not pay for them in full before the exchange for the acquiring company's shares, shall continue to be obligated to pay for those shares after the merger, under terms identical to those before the merger, unless provided otherwise in the plan of merger.

### **Article 393**

#### **Prohibition of Creating Phantom Capital**

- (1) If a company to be merged by acquisition owns shares directly or indirectly in the acquiring company or vice versa, an increase of the basic capital of the acquiring company by the amount of shares it owns in the companies to be acquired as well as by the amount these companies own in the acquiring company, is prohibited.
- (2) Shares of a company to be acquired by merger and vice versa shall be considered as own shares of the company to be acquired upon the registration of the merger by acquisition.
- (3) The acquiring company shall not in the merger issue its shares for:
  - 1) shares of a company to be acquired which are owned by the acquiring company, whether directly or through third parties holding the shares in favor of the acquiring company; or
  - 2) shares of companies merged whether owned directly or indirectly through third parties in favor of these companies.
- (4) Shares referred to in paragraph (2) of this Article shall be shares of the acquiring company pursuant to paragraph (2) of Article 224 of this Law.
- (5) The acquiring company may, with the consent of the companies to be acquired, exchange their own shares for shares of the acquiring company instead of issuing new

shares in the process of exchange pursuant to proportion of exchange stated in the contract for merger by acquisition.

### **Article 394**

#### **The Acquiring Company's Basic Capital**

The values shown in the financial report closing statement balance sheet of the merged companies shall be shown in the balance sheet of the acquiring company after the merger in accordance with the law which regulates accounting and audit.

## **Section 4**

### **Protection of Creditors**

#### **Article 395**

##### **Right to Security and Payment for Claims**

(1) All creditors whose debts originated before the publication of the draft contract of merger shall have a right within 30 days from the date of publication to demand in written form payment or guaranties of payment of the debts of a company in the merger, both debts then due and debts to be due in the future.

(2) Creditors who have not demanded payment or guaranties within the term stated in paragraph (1) of this Article shall have a right within six months from the date of publication to demand written guarantees of outstanding debts which are not due, if they can show that the merger puts payment at risk.

(3) Creditors who have outstanding debts sufficiently secured and creditors who would have preferential claims in a bankruptcy shall not have the rights provided in paragraphs (1) and (2) of this Article.

(4) Creditors shall be notified of the above rights to payment or guaranties at the time of the publication referred to in paragraphs (1) and (2) of this Article.

(5) Guarantees of debts can be provided to creditors using assets of an acquired company and the acquiring company.

(6) The board of directors of the acquiring company shall manage the assets of each acquired company separately until the outstanding debts are paid or sufficiently secured for the creditors as provided in paragraphs (1) and (2) of this Article.

(7) A creditor of each acquired company and the acquiring company shall have a preference in debt settlement from the assets of the company which was their original debtor, in relation to creditors of other companies merged in the merger.

(8) Creditors who consider that their claims are placed at risk by the merger may file a complaint with the competent court requesting an order that the merger by acquisition shall not take place.

(9) If the board of directors of the acquiring company does not act for protection of creditors in accordance with paragraphs (1)-(7) of this Article, the competent court may order that the merger shall not take place if the court finds that the merger would seriously affect the creditors.



## **Article 396**

### **Protection of Bondholders**

The provisions of Article 395 of this Law shall apply also to holders of bonds and other debt securities of a company to be acquired, unless provided otherwise in the instruments governing the issuance of their securities or otherwise agreed by the holders in accordance with in paragraph (10) of Article 210 of this Law.

## **Article 397**

### **Protection of Special Rights Holders**

(1) The acquiring company shall secure to holders of securities other than shares of an acquired company, including convertible bonds, options, warrants, and other securities, the same rights after the merger, unless provided otherwise in the instruments governing the issuance of their securities or otherwise agreed by the holders as referred to in paragraph (10) of Article 210 of this Law.

(2) If the acquiring company does not act in accordance with paragraph (1) of this Article, it shall be liable to reimburse such holders of special rights for the loss or modification of these rights based on their public market value and, if they do not have a public market value, according to the value approved by the auditors of the merger by acquisition.

## **Section 5**

### **Finalization of the Merger**

## **Article 398**

### **Application for Registration**

(1) Each acquired and acquiring company in a merger shall apply for registration of the merger in the Registry in accordance with the law which regulates registration of business entities.

(2) If a decision on merger by acquisition is contested, the Registry shall not terminate the registration procedure for the merger if it finds that there is a need for urgent decision-making and that other preconditions to register the merger by acquisition have been accomplished.

(3) In deciding whether a registration is urgent, the Registry shall take into consideration the safeguarding of rights in the contest proceedings, the probability of the complaining party's success, and the damage to the companies which would arise from postponement of the merger by acquisition.

## **Article 399**

### **Registration and Publication**

- (1) The registration of a merger and its publication shall be in accordance with the law which regulates registration of business entities.
- (2) If an acquiring company increases its basic capital on the basis of the merger, that increase shall be submitted for registration together the application for registration of the merger.
- (3) An acquiring company shall enter the acquired companies' shareholders shares into the Central Registry of Securities in the names of those companies' former shareholders.

## **Article 400**

### **Effect of Merger**

Upon registration of a merger by acquisition:

- 1) all of the acquired company's assets and claims are transferred to the acquiring company including the acquired company's claims against third parties;
- 2) the acquired company's debts and other obligations to third parties are transferred to the acquiring company, which becomes the debtor;
- 3) any debts between an acquired company and the acquiring company which are unpaid are annulled since the creditor and the debtor are merged into one entity;
- 4) the acquired company's shareholders become shareholders of the acquiring company;
- 5) the acquired company ceases to exist, without liquidation;
- 6) shares issued by the acquired company are cancelled and exchanged for shares of the acquiring company and cash if the contract for merger so provides;
- 7) third parties' rights, such as liens and other rights, which encumber acquired company's shares, shall be passed onto the shares issued by the acquiring company to the same shareholders in exchange for encumbered shares, or they shall be realized as a cash settlement recognized together with or instead of the above share exchange as provided in the contract for merger;
- 8) permits, concessions, other benefits and exemptions provided for or accrued to the acquired company are transferred to the acquiring company, unless provided otherwise by the regulations governing issuance of licenses, concessions, benefits and exemptions;
- 9) functions of authorized representatives of shareholders of each company to be merged by acquisition, as well as functions of members of its board of directors and any supervisory board and its auditor, shall be continued only in accordance with the contract for merger by acquisition; and
- 10) persons employed by an acquired company shall continue to work in the acquiring company in accordance with employment regulations and the contract for merger.

## **Chapter 4**

## **Simplified Merger by Acquisition**

### **Article 401**

#### **Definition**

(1) A “simplified merger by acquisition” is a merger in which the acquiring company holds at least 90% of the voting shares of the acquired company, and is based only on the decision of the assembly of the company to be acquired and without the decision of the acquiring company’s shareholders assembly and without a merger audit.

(2) In a simplified merger by acquisition, a decision of the acquiring company’s assembly and reports of the board of directors and any supervisory board and a merger audit are not necessary if:

1) the draft contract of merger is published at least 30 days before the date of the dependent company’s assembly at which the merger is to be decided upon and, if the company is an open company, the announcement is published in at least one daily newspaper sold throughout Serbia with a circulation of at least 100,000 copies;

2) copies of the draft contract of merger, the annual financial statements of all acquired companies for the preceding three years, and a separate accounting statement for the current year are made available free of charge to the acquiring company’s shareholders at the company’s registered office at least 30 days before the acquired company’s assembly at which the merger is to be decided on.

3) one or more shareholders of the acquiring company holding at least 5% of the votes of shares entitled to vote on the merger, does not demand an assembly of the company in order to decide on the merger within 30 days after the acquired company’s assembly has adopted the draft contract of merger.

(3) It shall be considered that the acquiring company holds 90% of the dependent company if one or more other persons hold it in their name(s) but in favor of the acquiring company.

(4) Except for the matters stated in paragraphs (1)–(3) of this Article, the provisions of this Law on the regular merger by acquisition shall apply to a simplified merger by acquisition.

### **Article 402**

#### **Merger by Acquisition of a Wholly-Owned Dependent Company**

(1) A wholly-owned dependent company may, by decision of its assembly, merge by acquisition with its parent company as its sole shareholder and acquiring company, pursuant to the Article 401 of this Law on simplified merger by acquisition.

(2) In the case of a merger by acquisition of a wholly-owned dependent company with its parent company, the provisions of this Law on liability of members of the board of directors, supervisory board and auditor shall not apply since the acquiring company, as the

sole shareholder of the company to be acquired by acquisition, shall not become its own shareholder by the merger.

## **Chapter 5**

### **Merger by Acquisition of Limited Liability Companies**

#### **Article 403**

##### **Applicability of Other Articles**

(1) The provisions of this Law relating to merger by acquisition of joint stock companies shall apply mutatis mutandis to a merger by acquisition of limited liability companies, unless provided otherwise in this Law.

(2) For purposes of paragraph (1) of this Article, a member of a limited liability company is considered to be a shareholder; his share in the company is considered to be the total of all shares the shareholder holds in a joint stock company; and a members' meeting is considered to be a shareholders' assembly.

#### **Article 404**

##### **Preparation for Members' Meeting**

(1) The board of directors or a director of a limited liability company participating in a merger by acquisition shall not be required to submit to the Registry or publish the contract of merger pursuant to the law which regulates the registration of business entities.

(2) The board of directors or a single director of a limited liability company participating in a merger by acquisition shall send to each member of the company, at least 15 days prior to the meeting at which the decision on the merger is to be approved, the following documents:

- 1) the draft contract of merger by acquisition;
- 2) the annual financial statements of the companies which participate in the merger by acquisition for the preceding three years;
- 3) a special accounting statement which reflects the state of the company to be acquired and the acquiring company on, or not more than three months before, the date on which the draft contract of merger by acquisition was prepared, if the latest financial report of the companies refers to the business year which ended more than six months prior to the date of the contract for merger by acquisition;
- 4) the reports on the merger by acquisition of the directors of each company to be acquired and the acquiring company and their joint report; and
- 5) an auditor's report, if an auditor's report is required and under the law on accounting and audit for that particular company.

## **Chapter 6**

### **Merger by Acquisition of Joint Stock Company and Limited Liability Company**

#### **Article 405 Applicability**

##### **of Other Articles**

(1) One or more joint stock companies may merge by acquisition into a limited liability company as the acquiring company and one or more limited liability companies may merge by acquisition into a joint stock company as the acquiring company.

(2) The provisions of this Law on merger by acquisition of joint stock companies and merger by acquisition of limited liability companies shall apply mutatis mutandis to mergers referred to in paragraph (1) of this Article.

#### **Article 406**

##### **Joint Stock Company as the Company to be Acquired by Merger**

(1) If a limited liability company is the acquiring company and a joint stock company is a company to be acquired by merger, the contract for merger by acquisition shall state the nominal value of the shares to be provided to each shareholder of the joint stock company as a new member of the limited liability company.

(2) If an open joint stock company is to be acquired by a limited liability company, it must convert into a closed joint stock company under this Law and the law which regulates securities markets, for the purpose of protection of shareholders and holders of other securities issued by the open joint stock company.

(3) If a limited liability company as the acquiring company intends to replace shares owned by shareholders of the acquired joint stock company by assignment of shares held by it rather than new shares, the limited liability company shall list all shareholders in the contract for merger by acquisition, as new members to be assigned its own shares, as well as the nominal value of each such assigned share.

#### **Article 407**

##### **Limited Liability Company as the Company to be Acquired by Merger**

If a joint stock company is the acquiring company and a limited liability company is a company to be acquired, the contract for merger shall state the nominal value of the shares of each member of the company and the number of shares of the joint stock company to be provided to him in accordance with the proportion specified in the plan.

## **Chapter 7**

### **Merger by Formation of a New Company**

## **Article 408**

### **Merger of Joint Stock Companies by Formation of a New Company**

- (1) The provisions of this Law on merger by acquisition of joint stock companies shall apply mutatis mutandis to merger of joint stock companies by formation of a new company, unless provided otherwise in this Article.
- (2) For this purpose, the merging companies referred to in paragraph (1) of this Article shall be considered to be companies to be acquired by merger, the new company shall be considered to be the acquiring company and the contract of merger by formation of a new company shall be considered to be the contract of merger by acquisition.
- (3) A merger by formation of a new company may not be carried out without decision of the shareholders' assembly of the companies to be acquired, and a merger by formation of a new company may not be carried out under the provisions for simplified acquisition.
- (4) The contract for merger by formation of a new company shall serve as the Articles of Association of the new company.
- (5) The contract for merger by formation of a new company shall include, as parties to the contract, the merged companies, and shall state their registered names, registered offices, forms of organization and business purposes, regardless of the fact that they will cease to exist by the merger by formation of a new company and that their shareholders shall become shareholders of the new company.
- (6) Besides the elements envisaged by this Law for contracts for merger by acquisition, the contract for merger by formation of a new company shall also include the items required for the Articles of Association of a joint stock company.
- (7) The contract for merger by formation of a new company, as the Articles of Association of the new company, shall also include provisions on special rights, founding costs, participation stakes in assets and rights and manner of bringing those into possession of the new company from the Articles of Association of each company to be acquired by formation of a new company.
- (8) The provisions of this Law on founding of a joint stock company shall apply mutatis mutandis to founding of the new company, except that in case of founding of the new company no permission of the Securities Commission shall be required with respect to exchange of shares of the merged companies with shares of the new company, unless, at the time of merger by formation of a new company, such shares are publicly offered for sale for the first time.
- (9) The companies to be merged by formation of a new company shall apply for entry of founding of the new company into the Registry.
- (10) By entering of the new company into the Registry, the merged companies shall be deleted from the Registry.

## **Article 409**

### **Merger of Limited Liability Companies by Formation of a New Company**

The provisions of this Law on merger by acquisition of limited liability companies, and the provisions of this Law on merger by formation of a new company shall apply mutatis mutandis to merger of limited liability companies by formation of a new company.

## **Article 410**

### **Merger by Formation of a New Company with Joint Stock Companies and Limited Liability Companies**

- (1) One or more joint stock companies and one or more limited liability companies may merge by formation of a new company.
- (2) The provisions of this Law on merger by acquisition between joint stock companies and limited liability companies shall apply mutatis mutandis to merger by formation of a new company referred to in paragraph (1) of this Article.
- (3) For the purpose of paragraph (2) of this Article, merged companies shall be considered to be companies that cease to exist by acquisition, the new company shall be considered to be the acquiring company and the contract of merger by formation of a new company shall be deemed to be the plan of merger by acquisition, unless provided otherwise in this Article.
- (4) If the new company is a limited liability company, the provisions of this Law on merger by acquisition of joint stock companies shall apply mutatis mutandis to participation of the joint stock company in the merger by formation of a new company. If the new company is a joint stock company, the provisions of this Law on merger by acquisition of limited liability companies shall apply mutatis mutandis to participation of the limited liability company in the merger by formation of a new company.
- (5) Merger by formation of a new company may not be carried out without decision of the shareholders' assembly of the companies that are to cease to exist in the merger, and may not be carried out under the provisions for simplified acquisition.
- (6) The contract for merger by formation of a new company shall serve as the Articles of Association of the new company.
- (7) The contract for merger by formation of a new company shall include, as founders of the new company, the companies that have ceased to exist in the merger, including their registered names, registered offices, forms of organization and business purposes, although they cease to exist in the merger by formation of a new company and their shareholders will become shareholders or members of the new company.
- (8) Besides the elements of the contract for merger by acquisition envisaged by this Law, the contract for merger by formation of a new company shall also include elements envisaged by the Articles of Association of a joint stock company or a limited liability company.

(10) The provisions of this Law on founding of joint stock companies apply accordingly to founding of the new joint stock company, except that in case of founding of the new joint stock company, no permission of the Securities Commission is required with respect to replacement of shares of the merged companies with shares of the new company, unless, at the time of merger by foundation of a new company these shares are publicly offered for sale for the first time.

(11) Besides the elements envisaged by this Law for plans of merger by acquisition, the plan of merger by formation of a new company of the new limited liability company shall also include elements envisaged for the Articles of Association of a limited liability company.

(12) The provisions of this Law on registration and publication of mergers by acquisition of joint stock companies and limited liability companies shall apply mutatis mutandis to registration and publication of mergers by formation of a new company of joint stock companies and limited liability companies.

## **Chapter 8**

### **Division by Acquisition of Joint Stock Companies**

#### **Section 1**

#### **Basic Principles**

#### **Article 411**

#### **Applicability of Other Articles**

The provisions of this Law relating to merger by acquisition of joint stock companies shall apply mutatis mutandis to a division by acquisition, except as provided otherwise in this Law.

#### **Section 2**

#### **Draft Contract for Division by Acquisition**

#### **Article 412**

#### **Form and Content of Contract**

(1) The board of directors of each company participating in a division by acquisition shall prepare a draft contract for division in written form.

(2) The draft contract referred to in paragraph (1) of this Article shall include:

- 1) the registered name, form and registered office of each company in the division;
- 2) the share exchange ratio and the amount of any cash payment;



- 3) the terms relating to the allocation of shares in the recipient companies;
  - 4) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting the entitlement;
  - 5) the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies;
  - 6) any special rights granted to holders of shares or other securities of recipient companies, and any measures proposed concerning them;
  - 7) any special rights given to financial advisers or directors of any company in the division;
  - 8) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies; and
  - 9) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criteria on which such allocation is based.
- (3) The contract referred to in paragraph (1) of this Article shall include all proposed changes to the Articles of Association or by-laws of the companies in the division.

### **Article 413**

#### **Unallocated Assets and Liabilities**

- (1) Where an asset is not allocated by the contract of division and where interpretation of the contract does not make a decision on its allocation possible, the asset or the

consideration therefor shall be allocated to all of the recipient companies in proportion to the share of the net assets allocated to each of those companies under the contract of division.

- (2) Where a liability is not allocated by the contract of division and where interpretation of the contract does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it.

### **Section 3**

#### **Decision Making**

### **Article 414**

#### **Decision**

- (1) The contract for division shall be adopted by the shareholders' assembly of each company participating in the division by a qualified majority as defined in paragraph (2) of Article 293 of this Law.

(2) If a company participating in the division has more than one type or class of shares, the contract for division shall be adopted by shareholders of each class of shares whose rights will be affected by the division at a voting session held for holders of that particular class of shares, in accordance with paragraph (1) of this Article.

(3) The signatures on the contract for division of authorized representatives of each participating company shall be certified.

(4) The contract for division shall be filed with the minutes of the assembly meeting of each company at which the contract was adopted.

## **Article 415**

### **Division Without Decision of a Recipient Company's Assembly**

(1) A division may be carried out based solely on a decision of the board of directors of a recipient company, without action by the recipient company's shareholders' assembly, provided that:

1) the contract is announced pursuant to Article 388 of this Law at least one month prior to the date of the shareholders' assembly of the dividing company at which the decision on division is to be made;

2) the shareholders of each recipient company are able to examine all of the documents referred to in Article 401 of this Law; and

3) one or more shareholders of a recipient company whose participation in the capital of the company is at least 5% have not requested, within 30 days after the date of the assembly of the dividing company at which the contract was approved, that a shareholders' assembly be held to decide on the division.

(2) All the conditions referred to in paragraph (1) of this Article must be fulfilled.

## **Section 4**

### **Implementation**

## **Article 416**

### **Share Exchange**

The provisions of subparagraph 6) of paragraph (1) of Article 400 of this Law, relating to share exchange and withdrawal and cancellation of shares in a merger by acquisition, shall apply mutatis mutandis to the share exchange in the division.

## **Section 5**

### **Protection of Creditors**

## **Article 417**

## **Joint and Several Liability**

All of the recipient companies in a division shall be jointly and severally liable for all of the obligations and liabilities of the dividing company following the registration and effectiveness of the division, except as may be otherwise agreed by any particular creditor.

### **Section 6**

#### **Completion of Division**

##### **Article 418**

#### **Application for Registration**

(1) Each company in a division shall apply for registration of the division in the Registry in accordance with the law which regulates registration of business entities.

(2) If a decision on a division is contested, the Registry shall not terminate the registration procedure for the division if it finds that there is a need for urgent decision-making and that other preconditions to register the division have been accomplished.

(3) In deciding whether a registration is urgent, the Registry shall take into consideration the safeguarding of rights in the contest proceedings, the probability of the complaining party's success, and the damage to the companies which would arise from the postponement of the division.

##### **Article 419**

#### **Registration and Publication**

The registration of a division and its publication shall be in accordance with the law which regulates registration of business entities.

##### **Article 420**

#### **Effect of Division**

Upon registration of a division:

1) the assets of the dividing company including outstanding claims and other rights, and the liabilities of the dividing company including liabilities to third parties, are transferred to the recipient companies, divided in accordance with the allocation laid down in the contract for division;

2) the shareholders of dividing company are shareholders of one or more of the recipient companies in accordance with the allocation laid down in the contract for division;

3) persons employed by the divided company shall continue to work in a recipient company in accordance with employment regulations and the contract for division; and

- 4) the dividing company ceases to exist.

## **Chapter 9**

### **Division by Formation of a New Joint Stock Company**

#### **Article 421**

##### **General Provisions**

- (1) The provisions of this Law relating to division by acquisition, forming an appropriate form of company and merger by formation of a new company shall apply mutatis

mutandis to division by formation of new companies and to a division in which both an already-existing company and a newly-founded company are recipient companies.

- (2) The contract for division by formation of a new company and the Articles of Association of each new company shall be approved at a shareholders' assembly of the dividing company.

- (3) The contract for division by formation of a new company shall include, as parties to the contract, the dividing and recipient companies with the dividing company being the founder of the new company, and shall state the companies' registered names, registered offices, forms of organization and business purposes, and shall state that shareholders of the dividing company will become shareholders of the new company.

## **Chapter 10**

### **Separation by Acquisition and Separation by Formation of a New Joint Stock Company**

#### **Article 422**

##### **Application of Other Articles**

- (1) The provisions of this Law relating to division by acquisition and division by formation of a new company shall apply mutatis mutandis to separation by acquisition of joint stock companies, and the provisions of this Law relating to division by formation of a new company shall apply mutatis mutandis to separation by formation of new joint stock companies, unless provided otherwise in this Law.

- (2) The contract for separation shall state the method for decrease of basic capital of the dividing company and its shares resulting from the separation.

- (3) The final balance sheet of the divided company and the initial balance sheet of each new recipient company, as well as the initial balance sheet of the divided company showing its assets and liabilities after the separation, must be included in the contract for separation.

- (4) The time period between the dates of the balance sheets specified in paragraph (3) of this Article and the date on which an application for registration of the separation is made

shall not exceed eight months.

(5) The Articles of Association of the divided joint stock company shall be amended in accordance with the provisions of this Law relating to amendments to Articles of Association of a company.

(6) Separation by formation or separation by acquisition of a joint stock company shall be entered into the Registry only after the decrease of basic capital of the divided company has been registered.

## **Chapter 11**

### **Division and Separation of a Limited Liability Company**

#### **Article 423**

##### **Application of Other Articles**

The provisions of this Law relating to division of a joint stock company shall apply mutatis mutandis to division and separation of a limited liability company.

## **Chapter 12**

### **Division of a Joint Stock Company and Separation of Part of a Joint Stock Company and Limited Liability Company**

#### **Article 424**

##### **Combined Division and Separation**

(1) Division of a joint stock company and separation of part of a joint stock company into two or more limited liability companies, or into a combination of those two legal forms, as well as division and separation of part of a limited liability company into two or more joint stock companies or into a combination of both of those forms, are permitted in accordance with this Law.

(2) The provisions of this Law on division and separation of joint stock companies and limited liability companies shall apply mutatis mutandis to a transaction referred to in paragraph (1) of this Article.

## **Chapter 13**

### **Status Changes of General and Limited Partnership**

#### **Article 425**

##### **Merger, Division and Separation Involving General and Limited Partnership**

(1) A general or a limited partnership may merge with a limited liability company or a limited liability company.

(2) The merger of a general or limited partnership with a limited liability company or a joint stock company shall be subject, mutatis mutandis, to the provisions of this Law on merger of limited liability companies, unless provided otherwise in this Law.

(3) A merger of a joint stock company, whether it is an acquired or an acquiring company, and a general or limited partnership shall be subject to the provisions of this Law on mergers of joint stock companies, unless provided otherwise in this Law.

(4) If an open joint stock company merges through acquisition or through formation of a new company with a general or limited partnership, the joint stock company shall meet any requirements with respect to going private contained in this Law or the law which regulates securities markets.

(5) A decision to carry out a merger involving a general or a limited partnership shall be adopted by all company parties to the merger and must also be consented to by all persons who upon the merger shall have unlimited liability to third parties for obligations of the surviving company in the merger.

(6) A division or separation involving a general or limited partnership, limited liability company, or joint-stock company which results in one or more general or limited partnerships being a surviving entity shall be subject to the provisions of paragraphs (1)-(6) of this Article and the provisions of this Law relating to status change by division or separation of limited liability companies and joint stock companies.

## **Title 2**

### **Change of Legal Form**

#### **Chapter 1**

#### **Basic Principles**

#### **Article 426**

#### **Definition**

The change of a company's legal form is the conversion of the company from one form of company into another form of company in accordance with this Law.

#### **Article 427**

#### **Change of Legal Form in the Process of Liquidation**

(1) A business company may carry out a conversion while it is in liquidation so long as it has not begun distributing to its partners, members or shareholders its assets remaining after satisfaction of creditors.

(2) In making a decision to convert referred to in paragraph (1) of this Article, a company is obligated to suspend or terminate the liquidation procedure and register and publish its

decision.

## **Article 428**

### **Registration and Publication**

- (1) A company's change of legal form shall be registered and published in accordance with the law regulating registration of business entities.
- (2) Upon a change of legal form a business company shall continue its operations as a company with another legal form.

## **Article 429**

### **Applicability of Other Articles and Exemption from Court Annulment**

- (1) Upon conversion of a company the provisions of this Law relating to formation of a company in the new form shall apply mutatis mutandis, unless provided otherwise in this Law.
- (2) A company's decision to change legal form articles of conversion may not be nullified on the grounds of disproportionate share exchange ratio or contribution under this Law.

## **Chapter 2**

### **Types of Changes of Legal Form**

#### **Section 1**

### **Article 430**

#### **Conversion of Joint Stock Company into Limited Liability Company**

- (1) A joint stock company may be converted into a limited liability company in the following manner:
  - 1) The board of directors of the joint stock company shall adopt a resolution proposing a conversion, meeting the requirements of this Law. The decision to convert shall be made by the shareholders' assembly.
  - 2) The company shall give notice of such assembly to all shareholders in accordance with Article 281 of this Law at least 30 days before the convening of the assembly.
- (2) A notice referred to in paragraph (1) of this Article shall state that the reason for convening the assembly and the location where the shareholders will have access to the following documents:
  - 1) a draft of the decision on conversion together with a report of the board of directors explaining the terms and conditions and the legal and the economic basis for conversion

and a description of any problems encountered during the assessment regarding the conversion;

2) any recommendations by the board of directors regarding the decision on conversion and the reasons for such recommendations; and

3) information on the right of the shareholders to dissent from the decision on conversion and their right to require valuation and payment for their shares in accordance with this Law.

(3) The decision on conversion shall be put to a vote at the shareholders' assembly. The decision shall be considered approved and adopted if it receives the affirmative vote of a qualified majority as defined in paragraph (3) of Article 293 of this Law.

(4) If the company has more than one class of shares, the decision on conversion shall be adopted by a qualified majority of shareholders as referred to in paragraph (3) of this Article of each class whose rights are decreased by the conversion voting as a group.

(5) Approval and adoption by such shareholders must also include adoption of changes of the Articles of Association in accordance with paragraphs (3) and (4) of this Article.

#### **Article 431**

**Contents of the Decision on Conversion** A decision on conversion shall particularly

contain the following:

1) the company name and registered office of a joint stock company to be converted and of the limited liability company into which the joint stock company will be converted;

2) the conditions of the conversion;

3) the manner and the terms of converting the shares of the joint stock company into shares of the limited liability company or into cash or other property; and the method by which such shares or other forms of payment are paid to the shareholders of the joint stock company; and

4) other details and information in accordance with law, the Articles of Association, by-laws or company agreement.

#### **Article 432**

##### **Registration and Publication**

(1) Following the completion of the conversion in accordance with Article 430 of this Law, the limited liability company shall submit an application to the Registry in accordance with the law which regulates registration of business entities for the purpose of registration and publication of the conversion.

(2) Once the requirements of paragraph (1) of this Article are met, the Registry shall



immediately register the decision on of conversion and the Articles of Association of the limited liability company in the Registry.

### **Article 433**

#### **Legal Effect of Conversion**

When the registration is effective the following legal consequences come into effect:

- 1) the companies participating in the shall be a single company, being the limited liability company identified in the conversion decision, and the joint stock company shall cease to exist as a legal entity;
- 2) the limited liability company shall have all assets and be liable for all obligations of the joint stock company;
- 3) all court and other proceedings and all claims against the joint stock company shall continue against the limited liability company, which, in every case, shall be the legal successor of the joint stock company; and
- 4) the shares of the joint stock company shall be converted into shares of the limited liability company, options, money or other assets in accordance with Article 431 of this Law; and
- 5) the holders of convertible bonds, securities with purchase rights, other securities other than shares, shall be entitled to at least the same rights after the change of legal form, unless provided otherwise in the decision on issuance of such securities or if otherwise agreed with their owners in accordance with paragraph (10) of Article 210 of this Law.

### **Section 2**

#### **Conversion of a Joint Stock Company into General or Limited Partnership**

### **Article 434**

#### **Requirements**

- (1) A joint stock company may change legal form into a partnership or limited partnership by a unanimous decision of all shareholders who will be general partners in the partnership.
- (2) The decision of the joint stock company on change of legal form of that company shall state which shareholders shall be general partners and which shall be limited partners.

### **Article 435**

#### **Effect of Registration and Publication**

When the registration of the conversion of a joint stock company into a general partnership

is effective, the following legal consequences come into effect:

- 1) the joint stock company continues as a partnership or limited partnership and thereby ceases to exist as a joint stock company;
- 2) a partnership or limited partnership is the legal successor to the joint stock company;
- 3) all powers of the joint stock company bodies are terminated;  
and
- 4) other legal consequences shall be in accordance with the nature of the general partnership or limited partnership formed by change of legal form of the joint stock company.

### **Section 3**

#### **Conversion of Limited Liability Company into Joint Stock Company**

##### **Article 436**

##### **Decision on Conversion of Limited Liability Company into Joint Stock Company**

- (1) The provisions of this Law pertaining to the conversion of a joint stock company into a limited liability company shall apply mutatis mutandis to the conversion of a limited

liability company into a joint stock company, unless provided otherwise by the provisions of this Law relating to limited liability companies.

- (2) The provisions of this Law relating to minimum basic capital of a joint stock company and nominal value of shares of a joint stock company shall apply after the conversion of a limited liability company to a joint stock company.

##### **Article 437**

##### **Appointment of the Bodies and Registration**

- (1) The appointment of the members of the board of directors of the joint stock company shall be reported together with the resolution on conversion of the limited liability company into a joint stock company.

- (2) Registration of the conversion of a limited liability company into a joint stock company shall be published in accordance with the law which regulates registration of business entities.

##### **Article 438**

##### **Conversion of Shares**

- (1) Upon registration of the conversion, the limited liability company shall continue operating as a joint stock company. Shares of the limited liability company shall be

converted into shares of the joint stock company. Rights of third parties relating to a share of the limited liability company will be converted to rights relating to shares of the joint stock company.

(2) The shares of a limited liability company shall be converted into shares of the joint stock company by deletion from the book of shares and recording in the Central Registry of Securities.

(3) Conversion of shares of the limited liability company into shares of the joint stock company shall not require approval by the Securities Commission.

#### **Article 439**

##### **Conversion of Limited Liability Company into General or Limited Partnership**

Conversion of a limited liability company into a general or limited partnership shall be subject to the provisions of this Law relating to conversion of a joint stock company into a general or limited partnership.

#### **Section 4**

##### **Conversion of General or Limited Partnership into Joint Stock Company or Limited Liability Company**

#### **Article 440**

##### **Requirements**

(1) A general or limited partnership may be converted into a joint stock company or a limited liability company by unanimous decision of all partners in the case of a general partnership and all limited partners in the case of a limited partnership.

(2) General partners of the general or limited partnership shall remain jointly and severally liable as before for the converted entity's debts until registration and publication of the conversion in accordance with this Law.

(3) Conversion of a general or limited partnership into a joint stock company or a limited liability company shall be subject to the provisions of this Law relating to conversion such types of companies.

#### **Article 441**

##### **Conversion of General Partnership into Limited Partnership and Vice Versa**

(1) Conversion of a general partnership into a limited partnership or vice versa shall be deemed effective if approved by all partners and provided that general requirements for this conversion pursuant to this Act have been met.

(2) The effect of conversion of a general partnership into a limited partnership and vice versa shall be subject to the provisions of this Law relating to conversion of such types of

companies.

## **PART SEVEN**

### **ACQUISITION AND DISPOSAL OF MAJOR ASSETS**

#### **Article 442**

##### **Definition**

(1) As used in this Law, “acquisition and disposal of major assets” of a company means any transaction or related series of transactions which results in an acquisition or disposal of assets of the company the market value of which, at the time the company decided to complete the transaction, amounted to at least 30% of the book value of the company’s assets as shown in the last annual balance sheet.

(2) As used in this Law, »acquisition and disposal« means the acquisition or disposal by any means, including but not limited to sale, lease, exchange, pledge or mortgage.

(3) As used in paragraphs (1) and (2) of this Article, “assets” includes any property of the company which has monetary value including but not limited to real estate, movables, property or other rights including intellectual property or contract rights, shares or other interests in another company, or money.

#### **Article 443**

##### **Procedure for Approval of Acquisition and Disposal of Major Assets of a Joint Stock Company**

(1) Any acquisition or disposal of major assets by a joint stock company shall be conducted in the following manner:

1) the board of directors of the joint stock company shall adopt a decision recommending the transaction; and

2) the company shall send notice of such assembly to all shareholders in accordance with Article 281 of this Law. Such notice shall be sent not less than 30 days prior to the day determined for the meeting to be held.

(2) The notice for convening the assembly referred to in subparagraph 2) of Article (1) of this Article shall state that the reason or a reason for convening the assembly is to consider the proposed transaction.

(3) Such notice also contain the following:

1) a report explaining the terms and conditions of the transaction;

2) the recommendations by the board of directors regarding the transaction and the reasons for such recommendations; and

3) information of the right of the shareholders to dissent from the transaction and their right to appraisal and payment for their shares as provided in this Law.

(4) The decision on acquisition and disposal of major assets shall be put to a vote at the shareholders' assembly. Only those shareholders who have the right to vote on that matter may vote. The transaction shall be approved by a qualified majority and, if a particular class of shares is entitled to group voting, the transaction shall be approved if it receives the affirmative vote of a qualified majority of the votes of the shares of each group entitled to group voting on the plan and at least a qualified majority of the total sum of votes of the voting shares for the plan.

(5) A copy of agreements for the acquisition and disposal of major assets shall be filed with the minutes of the assembly referred to in paragraph (4) of this Article.

## **PART EIGHT**

### **SPECIFIC RIGHTS OF SHAREHOLDERS AND MEMBERS TO DISSENT**

#### **Article 444**

##### **Right of Shareholders to Dissent and Require Payment from a Joint Stock Company**

(1) A shareholder of a joint stock company may require payment from the company in an amount equal to the market value of his shares if he voted against or otherwise refrained from voting for:

- 1) an amendment to the Articles of Association of the company that adversely affects his rights in the manner stated in Article 341 of this Law and on which he had a right to vote;
- 2) a reorganization of the company in a status change on which he had the right to vote;
- 3) a reorganization of the company in a conversion on which he had the right to vote;
- 4) an acquisition or disposal of major assets on which he had a right to vote; or
- 5) any other company action that reduces the shareholder's rights and is taken pursuant to a shareholder vote if the company's Articles of Association provides that shareholders are entitled to dissent and obtain payment for their shares at market price under this Article.

(2) A shareholder who is entitled to payment pursuant to this Article may not challenge the above-mentioned action which creates his rights under this Article, unless the action is fraudulent, illegal or constitutes a violation of Article 32 of this Law.

(3) For purposes of paragraph (1) of this Article, market value shall be calculated as of the date the decision approving the company action in question was adopted by the shareholders assembly, not taking into consideration any expected increase or decrease in value as a result of the action.

(4) If the action on the basis of which the rights arose under paragraph (1) of this Article is subject to voting by the shareholders the written invitation for the voting shall contain

information that the shareholders have or may have such rights, and the notification shall also include reference to such rights.

(5) A shareholder who wishes to exercise rights under this Article shall send to the company, prior to the voting at the assembly, a written notification of his intention to exercise such rights if the proposed action is undertaken. The shareholder who fails to

satisfy these requirements within 30 days or votes in favor of the proposed actions shall not be entitled to payment pursuant to this Article.

(6) If the decision on the basis of which the rights arose pursuant to this Article is approved by the shareholders' assembly, the shareholder who submitted written notification of his intention to request payment pursuant to paragraph (5) of this Article shall, within 30 days following the voting, send the company a written request for payment for the purchase of the shares that belong to him, stating his name and address, and the number and type of shares for which payment is requested.

(7) The company shall, within 30 days following the receipt of the request referred to in paragraph (6) of this Article, pay each shareholder satisfying the requirements of this Article an amount that the company believes to be the market value of his shares.

(8) If the shareholder satisfies the requirements referred to in this Article but believes that the amount paid is lower than the market value of his shares determined pursuant to this Law or if the company fails to make the payment, he shall be entitled, within 30 days following the date or due date of such payment, to request an appraisal of the share value by the competent court by filing a request to the court within this 30-day period.

(9) In his complaint to the competent court the shareholder must state his estimate of the market value of his shares for purposes of this Article, and the company must without delay give notice of the request in accordance with Article 281 of this Law to all other shareholders who have properly dissented under this Article.

(10) In response to the filed complaint referred to in paragraph (9) of this Article the court shall have the power to determine the market value and to hire appraisers or other experts to advise on the relation between the prices offered and requested and the market value. The court shall also have the power to order the company to pay its determined market value and to pay the fees and expenses of the dissenting shareholder or shareholders and the appraisal.

(11) A court decision under paragraph (10) of this Article shall apply to all properly dissenting shareholders if the value determined by the court is higher than the amount the company offered under paragraph (7) of this Article, and shall be published in accordance with Article 281 of this Law.

#### **Article 445**

##### **Determining Market Value**

(1) For purposes of this Law, the term "market value" means the average value which is announced or published on the stock exchange or other appropriate market, for the period

which closely precedes the date that is relevant and which is not shorter than three nor longer than six months. In a case where shares are not regularly traded or an appropriate

market does not exist, the market value shall be determined through valuation of the capital of the company with the application of appropriate methods of valuation.

(2) The market value shall be determined through valuation of the capital of the company with application of appropriate methods of valuation.

(3) The market value of shares and interests shall be determined by decision of the board of directors of the company unless, pursuant to the company's Articles of Association or this Law, the determination is made by the competent court through the use of an independent appraiser or other person or body.

(4) If one or more members of the board of directors of a joint stock company has a personal interest in executing the transaction on the basis of which market value is paid to a shareholder, the determination shall be performed by the members of the board of directors not having such interest in accordance with Article 34 of this Law.

(5) The persons determining the market value referred to in paragraphs (1) and (2) of this Article may engage an authorized appraiser to assist them in the determination and shall engage an independent appraiser in the event that payment is required pursuant to Article 444 of this Law.

#### **Article 446**

##### **Rights of Members of a Limited Liability Company or Partnership to Dissent and Receive Payment from the Company**

(1) The specific rights of shareholders stated in Articles 444 and 445 of this Law may be adopted in the Articles of Association, company agreement or partnership agreement of a limited liability company or a general or limited partnership or in a contract for reorganizations of companies (merger, division, separation and change of legal form).

(2) In a case referred to in paragraph (1) of this Article, the provisions of Articles 444 and 445 shall apply mutatis mutandis to the members or partners and to their shares and reimbursement for such shares, or partnership interests, except to the extent that the Articles of Association or other agreement provides otherwise.

#### **Article 447**

##### **Mandatory Sale**

(1) A person who through takeover acquires at least 95% of the shares of a target company through a public offer in accordance with the law which regulates securities markets, shall have the right to purchase the remaining shares which were part of the public offering from the shareholders who did not accept sale through the public offer (non-accepting shareholders) on the terms of the public offer (mandatory purchase).

(2) If the acquirer does not acquire the shares as referred to in paragraph (1) of this Article, then within 180 days from the last date of the public offer, the acquirer shall lose such right.

(3) For the purpose of exercising the right referred to in paragraph (1) of this Article, the acquirer shall send a written request for the mandatory sale to the non-accepting shareholders within 120 days after the last date of the public offer, which request shall state the terms and conditions for the purchase in the public offer. A copy of the request shall be sent to the board of directors of the target company. If the acquirer he acts contrary to this paragraph, the acquirer shall lose the right for mandatory sale.

(4) If in the public offer the acquirer offered selling shareholders a choice between payment in money and payment in other property as consideration for their shares, that choice must also be given to the non-accepting shareholders in writing.

(5) If the acquirer referred to in paragraph (1) of this Article does not receive an answer within 30 days after the request, the acquirer shall have the right to pay the money or transfer the other property offered to the non-accepting shareholders who must then sell their shares for that.

(6) Upon receipt of written information as referred to in paragraph (5) of this Article, the acquirer shall be obligated to enter it in the Central Registry of Securities and to submit it for registration in the Registry in accordance with the law which regulates registration of business entities. The amount shall be held on behalf non-accepting shareholders until paid to them.

#### **Article 448**

##### **Mandatory Purchase**

(1) Shareholders who acquire 95% of the shares of a company (“major shareholder”) shall be obligated to purchase the shares of the remaining shareholders (minority shareholders) on their demand.

(2) A minority shareholder referred to in paragraph (1) of this Article may submit a written request to the major shareholder at the latest within six months after the date of acquisition of the 95%, informing him about the type, class and number of shares offered.

(3) A major shareholder as referred to in paragraph (1) of this Article is obligated at the latest within 30 days from the day of receipt of the written request, send his answer to the minority.

(4) A major shareholder as referred to in paragraph (1) of this Article is obligated to purchase shares from the minority shareholder at the price as of the last shares that were acquired to get to the 95%.

(5) The forced purchase shall be registered in accordance with the law which regulates registration of business entities and entered into the Central Registry of Securities in accordance with the law which regulates securities markets.

#### **Article 449**



## **Court Protection**

Upon request of a refusing shareholder submitted within 30 days after the date of receipt of written request for the forced sale, the competent court in a non-contentious proceeding shall within 30 days for the date of the request to prohibit the offeror from the public offer to proceed with the purchase or sale under terms different from those stated in the public offer.

## **PART NINE**

### **PENALTY PROVISIONS**

#### **Article 450**

##### **Commercial Offences of the Company and Responsible Persons in the Company**

(1) A company shall be fined for conducting a commercial offense in an amount of 10,000 to 3,000,000 CSD if the company:

- 1) conducts business in violation of paragraph (2) of Article 5 of this Law;
- 2) abuses the legal personality of the company in violation of paragraph (1) of Article 15 of this Law;
- 3) uses its abbreviated or modified business name in violation of Article 19 of this Law;
- 4) through a representative concludes an agreement that is not within business activities of the company stated in the Articles of Association of the company as provided in paragraph (4) of Article 25 of this Law;
- 5) violates the provisions of this Law governing the duty not to compete with the company (Article 36);
- 6) violates the provisions of this Law governing the duty to pay at least half of monetary part of the basic capital of the company (paragraph (1) of Article 112 and paragraph (3) of Article 192);
- 7) decreases basic capital in violation of this Law (Article 113, paragraph (5) of Article 233, Articles 261-274);
- 8) maintains the value of basic capital in violation of this Law (Article 113, paragraph (5) of Article 233 and Article 236);
- 9) does not keep a book of shares and book of decisions as required by this Law (Article 119, paragraphs (3) and (4) of Article 136, Article 151, paragraph (2) of Article 290);
- 10) gives financial support for acquiring shares of the company in violation of this Law (paragraph (1) of Article 123 and paragraph (1) of Article 190);
- 11) makes payments to its members or shareholders in violation of this Law (Articles 133

and 230);

12) does not keep business books as required by this Law (Articles 158 and 314);

13) issues shares in the amount less than the amount prescribed by this Law (Article 234);

14) does not keep and maintain documents as required by this Law (Articles 174 and 342);

15) during a liquidation procedure undertakes business activities or pays dividends to partners, members or shareholders in violation of this Law (Article 352);

16) does not make reports about liquidation, final liquidation balance sheet and proposal on distribution of liquidation assets as required by this Law (Article 357);

17) does not make written reports about relations between company and its members attached to the report on business operations of the company (Article 372);

18) violates the provisions of this Law that regulate prohibition of creating phantom capital (Article 393);

19) acquires or disposes of major assets in violation of this Law (Article 443);

20) violates the rights of shareholders to dissent and receive payment for shares in violation of this Law (Article 444 and 446);

21) violates the rights of shareholders for compulsory sale of shares in violation of this Law (Article 447);

22) does not comply with the provisions of this Law or does not settle within the prescribed deadline, unless provided otherwise stipulated in this Law (Article 452).

(2) For conducting the activities referred to in paragraph (1) of this Article, the responsible person in the company shall be fined up to the amount of 2,000-200,000 CSD.

## **Article 451**

### **Petty Offences of a Company and Responsible Persons**

(1) A company shall be fined in an amount from 10,000 to 1,000,000 CSD if:

1) the Articles of Association does not have the contents required by this Law (paragraph (5) of Article 7, paragraph (1) of Article 55, paragraph (1) of Article 92, paragraph (1) of Article 106 and paragraph (1) of Article 185);

2) a representative of the company does not respect the restrictions of the authorization to represent stated in this law (paragraph (1) of Article 25);

3) a contract or any other legal actions are made or taken in cases where there is a conflict of interest (Article 34);

- 4) the company does not keep business secrets (Article 38);
  - 5) the company violates the prohibition of disqualification provisions of this Law (Article 45);
  - 6) the company does not select a person to represent it in violation of this Law (Article 73, 91, 159 and 323);
  - 7) the company amends its Articles of Association in violation of this Law (paragraph (3) of Article 55, Articles 93, 173, 338 and 339);
  - 8) the company does not return to shareholders the amounts they paid in case the foundation was unsuccessful (Article 200);
  - 9) the company does not convene the foundation assembly as required by this Law (Article 198);
  - 10) the company does not convene the Assembly as required by this Law (Articles 138, 139, 276, 277 and 280).
- (2) For violations referred to in paragraph (1) of this Article the responsible person in the company will be fined in an amount from 500 to 50,000 CSD.

## **PART TEN**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 452**

##### **Existing Companies and Entrepreneurs and Duty to Harmonize with this Law**

- (1) Existing companies and other forms of organization for performing economic activity as well as entrepreneurs shall on the effective date of this Law continue to work in the manner and under the conditions under which they were entered into the Registry.
- (2) Entities and entrepreneurs referred to in paragraph (1) of this Article shall harmonize their legal form, the bodies, shareholders and members, capital, shares and other securities or interests, business name, memoranda, parts of enterprises with special authorities in legal transactions, as well as their Articles of Association and other founding agreements, with the provisions of this Law within two years after the effective date of this Law, unless provided otherwise in this Law.
- (3) A limited liability company or joint stock company referred to in paragraph (1) of this Law shall not, during re-registration, be required to submit evidence of compliance with the requirements of this Law respecting basic capital.
- (4) Entities and entrepreneurs who fail to comply with the requirements of paragraph (2) of this Article shall cease to operate and shall be terminated upon completion of liquidation proceedings which shall be carried out at the expense of the person being liquidated and shall be instituted by the Registry ex officio.

## **Article 453**

### **Existing Public Companies**

(1) Existing public companies shall on the effective date of this Law continue work in accordance with regulations that were in force up to the date of the effectiveness of this Law.

(2) Harmonizing the organization of public companies with the provisions of this Law shall be in accordance with regulations referred to in paragraph (1) of this Law.

## **Article 454**

### **Pending Proceedings**

If filings or proceedings for establishment or changes of founders, shareholders or company members, or for the election of bodies and other matters, were commenced

prior to the time this Law became effective and are pending at such time, they will be completed pursuant to the regulations in force at the time they were submitted to the Registry.

## **Article 455**

### **Limitations on Founding of Companies**

(1) The following may not be founders or partners of a partnership or general partners of a limited partnership:

- 1) socially-owned companies;
- 2) companies with majority state or socially-owned capital;
- 3) privatized companies without at least one shareholder or member who has significant capital participation in accordance with this Law.

(2) From the day of effectiveness of this law, founders of the company and partners of the partnership and limited partners of limited partnership cannot be business companies whose founders are companies nor business companies as referred to in subparagraph 3) of paragraph (1) of this Article.

## **Article 456**

### **Termination of Existing Law**

The Enterprise Law ("The Official Gazette SRJ", Nos. 29/96, 33/96, 29/97, 59/98, 74/99, 9/01 and 36/02), except provisions of Articles 392 - 399 and 400A, 400B, 400V and 421A which shall remain in force until the expiration of deadlines for privatization established by the law that regulates privatization, shall be replaced by this Law.

## **Article 457**

### **Effectiveness of This Law**

This Law shall be effective eight days after its publication in the "Official Gazette of the Republic of Serbia."